

T. Haust said the Raleigh's son poured a concrete pad on the back of the house. That is where he would like to add the dining room. T. Haust said he is a builder and would build it himself per S. Zarnstorff and the building code.

T. Haust said he lives in one half rents the other half. He has had 3 different tenants over the 7 years. He said it is probably a poor practice, but he has thrown out all the paperwork related to a tenant after they moved out. He plans to live there and own the house for a long time since he has put a lot into it.

⇒Member Manitsas moved, Member Maziarz seconded, unanimously carried to close the regular meeting and go to public hearing.

Chair Skoog-Harvey asked that any member of the public wishing to comment either for or against the application identify their name and address for the record.

Public Comment:

Tony Perry said this IS an application to extend a non-conforming use since the applicant wants to physically expand the house. However, several months ago the ZBA said that "continuance of a non-conforming use" was more of a property validation process. This is in the Village tax roll as a property code 220, which means double home. F. Aloï said the 220 designation is but one piece of the puzzle proof. It does not close the door either way. T. Perry asked what more is needed if the Village's own records list it as a 220. F. Aloï said it goes beyond the tax classification. T. Perry stated as he has at the last several ZBA meetings that he objects to the ZBA's interpretation of this section of the code and feels that the ZBA has no jurisdiction besides the granting of area variances, use variances, and code interpretation upon request. Chair Skoog-Harvey said it would require a new certificate of occupancy. Therefore, the use needs to be established. T. Perry agrees that the Village should scrutinize the proposed addition, but not the two family use. Chair Skoog-Harvey said the Village has found some inconsistencies with the tax classifications (property codes) and the historic uses of properties. F. Aloï said they hope to reach conclusions and resolve conflicts.

⇒ Member Maziarz moved, Member Switzer seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Continued Board discussion on application:

Member Bush said he has lived down the street for 34 years and has always known this property to be a double. Member Switzer asked if the proposed addition meets setback requirements. S. Zarnstorff said yes. F. Aloï asked if he would be following the existing gutter line. T. Haust said yes.

Chair Skoog-Harvey said any additional historic information the applicant could provide would be helpful.

Chair Skoog-Harvey asked F. Aloï if SEQR is a consideration. F. Aloï said it is a Type II action not subject to review.

⇒ Member Switzer moved, Member Maziarz seconded, unanimously carried that decision on the application be tabled for two weeks. A written decision will follow.

Applicant Presentation:

Chair Skoog-Harvey asked the applicant to describe the application for the public and the Board.

Richard Miller began with 34 South Avenue. He reviewed documents to support that it is and has been a 4-family dwelling. These included a certificate of occupancy from 1973 issued by Willis Knapp, a certificate of occupancy from 1987 using code 411, a county tax profile using code 411, a village tax bill using code 411, and an inspection report punch list from December 10, 2002 that refers to it having 4 apartments.

R. Miller said all requested repairs have been completed including a sophisticated smoke detection system. However, to obtain a certificate of occupancy, he was told the ZBA needed to re-ratify the home as a 4-family dwelling. He said it was used as a 4-unit under past ownership and there has been no substantial change under his ownership. All four units are occupied. R. Miller asked for the ZBA's blessing so he can get a c of o.

⇒Member Bush moved, Member Manitsas seconded, unanimously carried to close the regular meeting and go to public hearing.

Chair Skoog-Harvey asked that any member of the public wishing to comment either for or against the application identify their name and address for the record.

Public Comment:

Francisco Borryo of 155 Utica Street stated that he does not believe the ZBA has the power to grant or deny such applications and that it is an abuse of power.

Tony Perry commended those remarks and stated that people are afraid to come forward. He said the Village is not applying codes in the proper manner. The ZBA does not have the authority to grant or deny a continuance of use. A use exists until it loses its status and becomes non-conforming. He questioned why a property that the Village has coded as a multi-family, in this case a 411 for 4-family, would have to go through this process. He asked if the Village does not trust its own information. He further asked if this is a revenue generating process. Chair Skoog-Harvey replied that the Village Code gives the ZBA the authority to approve such applications.

T. Perry said once R. Miller made all the required repairs for property maintenance and safety he should have been granted a certificate of occupancy. He should not need to be put through this process and be charged a \$150 application fee. Chair Skoog-Harvey said the ZBA recognizes T. Perry's position since he has stated it several times. T. Perry reminded the ZBA that they brought an attorney in as well as someone who served on the codes committee at the time of the revision. This section of the code is not being interpreted correctly. T. Perry said there would come a point that the ZBA and Village will be challenged

⇒ Member Manitsas moved, Member Maziarz seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Continued Board discussion on application:

Member Manitsas asked if 100 percent of the repairs and improvements have been made. R. Miller said yes including an electrical autopsy. S. Zarnstorff concurred.

Chair Skoog-Harvey asked R. Miller to provide background on any concerns or problems or complaints from neighbors. R. Miller said there were complaints from the neighborhood rabble rousers who were a prime mover to the improvements having been made.

Member Bush asked if this house is rented to students. R. Miller said this house is rented to families.
It

is a terrific neighborhood and is a long-term rental. He said he has owned it since 1987 and paid a reasonable price. The Village's "intervention" delayed some of his other long-term investment plans.

Chair Skoog-Harvey thanked R. Miller for the information.

⇒ Member Bush moved, Member Maziarz seconded, unanimously carried that the decision be reserved for 2 weeks. A written decision will be forthcoming on October 6th.

Applicant Presentation:

Chair Skoog-Harvey asked the applicant to describe the application for the public and the Board.

Richard Miller said this case is exactly what the ZBA is all about. He said the proof should show that it is a two-family dwelling. He said he attempted to make this application earlier this year and was rebuffed. Therefore, he requests the ZBA make a decision today. He has owned the house (254 Main Street) for one year. He also owns the property next-door and just down the street. He has lobbied for the ZBA to personally make a site visit of the property. He said it is painfully evident that the Village wants to minimize the number of multi-family dwellings.

R. Miller reviewed various documents including an affirmation from the attorney of the former owner the late Ruth Ann Mansler. It states that it is one house with 2 apartments known to be a double. In addition, the Town and Village property record cards show a property class code of 220. However, there is a hand drawn line through the 220 and penciled in 210. He questioned if a hand drawn line is what it takes to change zoning in the Village. R. Miller said it has always been assessed as a two-family. He provided photographs that show separate utilities: 2 water tanks, 2 water meters, 2 kitchens, 2 bathrooms, 2 electric meters, 2 furnace switches, 2 gas meters, 2 gas furnaces, etc. There are even 2 driveways – one curb cut on Main Street and one on Adams Street. There is an entrance for the downstairs and an entrance for the upstairs.

R. Miller further shared that he held an open house during Max's Mardi Gras Parade where people completed a ballot as to whether the house is a single or a double. 66 entries said double and 3 entries said "it would make a nice single". R. Miller said that Village Attorney Riley lived near it and said it was always a double. R. Miller said that Trustee Wexler occupied one of the apartments when he was new to Brockport many years ago and said it was a double.

R. Miller said there has been some anxiety over the use and repairs. The house has been improved by cleaning out 50 years worth of junk and putting a fresh face on it. Fred Montag did the work. Electrical work was subbed out. This is a long-term hold for R. Miller's real estate portfolio. He said he has turned down many opportunities to rent it waiting for this re-ratification.

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⇒Member Maziarz moved, Member Manitsas seconded, unanimously carried to close the regular meeting and go to public hearing.

Chair Skoog-Harvey asked that any member of the public wishing to comment either for or against the application identify their name and address for the record.

Public Comment:

Michelle Pedley of 270 Main Street said she lives 2 houses away. She moved here 3 ½ years ago to raise her family. There has been a lot of vandalism in the area due to rentals. When 254 Main Street went up for auction she thought it was as a single family. By what the applicant states, it sounds clear that it is a two-family.

Deputy Village Attorney said the mortgage listed on the Monroe County website indicates it is a single family recorded 10-8-02. Also, the tax rolls have it listed as a property code 210 (single family).

Further

there is a letter in the Village files dated 6/29/94 from then-owner Ruth Mansler to then-Assessor Bill Weber asking that it be used as a single family. However, R. Mansler's attorney, Mark Klafehn, recalls it

only as a double. Further, the property has been in litigation and is still pending. The Village issued tickets for illegal construction without permits. It is in the hands of Judge Cody of Town of Sweden Court. R. Miller's attorney placed an application to dismiss. Both sides presented. Because of the pendency of that lawsuit, there was question of continuing with the ZBA application. F. Aloï recommended to the ZBA that they not make a decision on the application until the Court makes its ruling. Further, the issue is not whether the property LOOKS like a double today. It goes to what happened over a number of years. There is no intent on the Village's part to change the property class. However, it appears the former owner requested a change from double to single for assessment purposes. This is a difficult case to resolve. It will take deliberation. He does not recommend the ZBA summarily decide. It is not as simple as it sounds.

M. Pedley asked if it is rented whether as a single or a double if it would be rented to students. R. Miller

said his goal is to rent to long-term tenants.

Sue Miller, R. Miller's sister, said she had friends live there in 1979-1980 and it was a double. She asked why someone would ask to revert a double to a single family. F. Aloï said while it may well have been a double in the 1970's and 1980's and early 1990's, perhaps the property owner (Mansler) felt she

would get a tax break by changing it to a single-family home. Fred Montag said he knows the story behind it. The tenant at the time, Dori Sorce, wanted to take in foster children. She found out this required the property classification to be a single-family home. She asked then-assessor B. Weber for his assistance. She may have rented both units and paid double rent, but wanted it classified as one unit for purposes of taking in foster children.

F. Montag asked when the Board tables an application, when do they again meet. F. Aloï said they would meet in a deliberative session over the next few weeks, prior to the next meeting. F. Montag asked how far back they need to go when providing historical data. So far, we're 34 years back with this

one. F. Aloï said he needs additional time to research case law. F. Montag wondered what else there is to research. He thought S. Zarnstorff knew everything about the property. He conducted inspections and found everything up to snuff.

Phoebe McCauley said she never had any problem living near college students when she lived in the Village. She says she actually misses it and is considering moving back.

Tony Perry said he is not sure that the motivation of going from a 220 to a 210 is fair to put onto R. Miller. The pivoting point is that both apartments were rented. The rent was doubled. He said it is obviously a double by having 2 of everything. He said the process to go from a 220 to a 210 certainly must not have required ZBA approval and a \$150 application fee. It would be unfair to deny this. R. Miller should not be held to a "clerical" decision to go from a 220 to a 210 for paperwork purposes. There was probably monetary incentive to the tenant since foster care provides income. He said it is not right that the ZBA has not accepted numerous invitations to visit the property. It is worth the inspection. F. Aloï said this is a good example where you can not take tax classifications as the Gospel.

R. Miller asked to see the letters supposedly from Mansler and Weber. He said these were not in the

file for 254 Main Street when he FOILED information and he sincerely doubts the authenticity of them. He would challenge the Village's motivation. F. Aloï said they were in the Court file.

T. Perry said this process (220 to 210) was done by the stroke of a pen. Is this how it would be handled

Now? M. Pedley said it should be easier to decrease than to increase the number of units of a dwelling.

Chair Skoog-Harvey agreed and said that single family conforms to the zoning, therefore, the ZBA would not get involved.

⇒ Member Maziarz moved, Member Bush seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

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Continued Board discussion on application:

Chair Skoog-Harvey said she did return R. Miller's call and would be willing to tour the property. She asked if the mortgage was done as a single family or multi family. R. Miller said the mortgage application does not recognize zoning or certificate of occupancy. R. Miller added that the insurance for

the property next door has been raised since 254 Main Street is vacant. Chair Skoog-Harvey said the flyer provided for the auction of 254 Main Street offered it as a single-family home. R. Miller said he did not want to look at any of their sales information. The purchase contract was zoning neutral. Zoning was never discussed. Chair Skoog-Harvey asked about the construction without a building permit. R. Miller said he doesn't know what that refers to. He said if there were an ongoing lawsuit, why is he here? No material alterations were made to the structure – only repairs. F. Montag confirmed that repairs have never required a permit in the past. He tore out and replaced carpeting, rails and made some repairs. Nothing that would require a building permit.

Chair Skoog-Harvey asked why R. Miller would not consider renting the house as a single family home.

R. Miller said then material changes would be needed since it is set up as a double and it would substantially decrease his cash flow. Chair Skoog-Harvey asked if it would be a financial hardship. R. Miller said no, more like starvation with dignity.

Member Maziarz asked why he would make such an investment intentionally without getting information.

R. Miller said he assumes anyone who would have purchased it would have had to come before the ZBA to get a certificate of occupancy for a duplex.

Chair Skoog-Harvey referred to the possible reasoning of the owner and tenant wanting to change the property code from a double to a single. R. Miller questioned what certification exists that R. Mansler really signed that letter. He suggested maybe the tenant did so. It was simply typed on white paper and

did not exist in the property file when he requested a copy. Member Maziarz asked R. Miller if he did or did not check out information on the property before purchase. R. Miller said he requested the property file but not sales information.

F. Aloï asked R. Miller the source of his information regarding Dorie Sorce. R. Miller said she was his son's teacher. F. Aloï asked if she told him this in sum and substance. R. Miller said yes. F. Aloï asked

Fred Montag the source of his information regarding Dorie Sorce. F. Montag said Bill Weber.

F. Aloï again said the Village is awaiting Town of Sweden Judge Cody's ruling. R. Miller said he heard Judge Cody was awaiting the ZBA outcome. F. Aloï suggested a status conference with Judge Cody. R. Miller said no one wants to avoid litigation more than he does.

Chair Skoog-Harvey thanked R. Miller for the information.

⇒ Member Bush moved, Member Maziarz seconded, unanimously carried that the application be tabled.

Adjournment:

➔ Member Manitsas moved, Member Maziarz seconded, unanimously carried that the meeting be adjourned at 8:50pm.