

**Meeting of the Zoning Board of Appeals of the Village of Brockport was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Monday, January 26, 2004 at 7:00pm.**

**PRESENT:** Chair Jennifer Skoog-Harvey, Vice Chair / Member Irene Manitsas, Member John Bush, Member Carrie Maziarz, Member Charles Switzer, Building/Zoning Officer Scott C. Zarnstorff, Clerk Leslie Ann Morelli.

**EXCUSED:**

**ALSO PRESENT:** Frank A. Alois; Deputy Village Attorney; Chad Markel, Joseph Polvino, Bruce Levine, Joan Hamlin, Norm GianCursio, Joe Mauro, Tony Perry, Linda Borrayo, Benton & Sarah Hart, Fred Webster, Bob Webster.

**CALL TO ORDER:** Chair Skoog-Harvey called the meeting to order and led the Pledge of Allegiance.

**REVIEW OF MEETING MINUTES:** Chair Skoog-Harvey called for a motion to approve the minutes of the November 24, 2003 meeting.

➔ Member Manitsas moved, Member Maziarz seconded, unanimously carried to approve the minutes of the meetings held November 24, 2003 as written.

**CORRESPONDENCE:** None

**NEXT MEETING:** Monday, February 23, 2004 at 7pm or Monday, March 22, 2004 depending on applications submitted.

**Public Hearings:**

7:00pm – Legal notice published in the Suburban News dated January 12, 2004 and mailed to those within 500 feet read as follows:

**VILLAGE OF BROCKPORT  
LEGAL NOTICE**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Brockport will hold a PUBLIC HEARING on **Monday, January 26, 2004 beginning at 7:00pm** in the Conference Room of the Village Municipal Building at 49 State Street, Brockport, New York.

- 1. Application of:      Name:                      Chad J. Markel  
                                 Address:                      30-32 Chappell Street  
                                 Tax Map #:                      068.75-1-11  
                                 Property Code:                      220  
                                 Zoning:                      Residential  
                                 Lot size:                      .20 acre  
                                 Purpose:                      continuance of non-conforming use as 2 family  
                                 Provision of Zoning Ordinance Appealed: 58-20 A (1)
  
- 2. Application of:      Name:                      James Polvino  
                                 Address:                      32 Holley Street  
                                 Tax Map #:                      068.60-3-8  
                                 Property Code:                      210  
                                 Zoning:                      Residential  
                                 Lot size:                      .20 acre  
                                 Purpose:                      continuance of non-conforming use as 2 family  
                                 Provision of Zoning Ordinance Appealed: 58-20 A (1)

All interested parties will be given the opportunity to be heard. Applications are available for review at the Village Clerk's Office.

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

Member Bush read section 58-20A (1) of the Village code. It read as follows. "Any nonconforming use existing at the time of the enactment of the Zoning Code may be continued, and, upon application to and approval by the Zoning Board of Appeals, the Zoning Board of

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Appeals may direct the Building Inspector to issue a certificate of occupancy extending said nonconforming use within the premises as prescribed by the Zoning Board of Appeals to conform as

nearly as practical to the requirements for the district in which the building, structure or use is situated.”

Chair Skoog-Harvey shared that 30-32 Chappell Street is listed as a 220 (two-family) in the Village’s tax and assessment information.

**Applicant Presentation:** 30-32 Chappell Street

Chad Markel said a 1964 map also shows it as a two-family. The applicant (potential buyer) provided an affidavit from one of the heirs to the Sophie Mann estate that states in as a two-family since the 1960’s, prior to the zoning ordinance.

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

**Public Comment:**

Joan Hamlin of 50 Park Avenue commented that she knows it was a two-family in the 1950’s when Alan Green owned it.

Tony Perry said he owns 55 Adams Street nearby and also knows it to be a double. T. Perry reiterated that he feels the ZBA is stepping outside the scope of their authority when it comes to interpreting and granting continuances of non-conforming uses. A non-conforming use is one that has lost its use due to abandonment for a specified period of time. An expansion of a non-conforming use is one that expands physically in size or use.

**Continued Board discussion on application:**

Member Maziarz asked when the applicant plans to purchase the property. Chad Markel said he hopes to close this Friday. Chair Skoog-Harvey asked if it would be owner occupied. He will live in one half and rent out the other half. He said he has lived in the Village for 10 years. This was the best way for him to be able to remain in the Village.

S. Zarnstorff shared that he interviewed both brothers of the late owner, Sophie Mann, a few months ago when they were looking to put the house on the market. Their mother owned it since the 1960’s – always as a two-family. He concurred that a map was found in the Village records identifying it as a two-family. S. Zarnstorff inspected it last Friday. There were a few items needing updating, but they were completed to his satisfaction. Regarding occupancy, the third floor will be closed to the tenants and utilized by the owners for storage. The rental side will house no more than 3 unrelated people. S. Zarnstorff commented that the house is in excellent shape. The parking area on the Mercer Street side needs review. Blacktop will be required come spring.

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

Chair Skoog-Harvey confirmed that SEQRA is not an issue since it is a Type II Action not subject to review.

⇒ Member Manitsas moved, Member Bush seconded, unanimously carried that the application be approved as long as it meets all code requirements.

Chair Skoog-Harvey commented that it is a well-kept property and that the Village encourages it to remain well kept.

**Applicant Presentation:** 32 Holley Street

James Polvino said he has owned 32 Holley Street for many years. It was a three family home when he bought it and he converted it to a two-family. He has done most everything the Building Inspector has requested. The painting will be finished in the spring. He provided some paperwork to S. Zarnstorff.

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

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**Public Comment:**

Jim Stull, former Mayor, commented that he remembers 32 Holley Street being used as at least a two family since he was a child.

Tony Perry asked how many certificates of occupancy are in the file and how do they list the property. S. Zarnstorff said June 1978 as a 3 family, August 1992 as a single family and March

2003 a conditional C of o as a single family.

Benton and Sarah Hart asked if the property is well kept or not impacts the decision. For example, the Chair commented that the last applicant's property was well kept. Chair Skoog-Harvey said the Village is happy to encourage property owners to keep up their property and compliment them when they do.

However, it really is not a factor for the ZBA in the continuance of a non-conforming use. However, it is an issue for S. Zarnstorff, Code Enforcement Officer.

**Continued Board discussion on application:**

Member Switzer questioned a document in his packet from HUD that shows it as a single-family home. J. Polvino said he does not recall that. He said he was confused why the last Building Inspector changed it to single family. Chair Skoog-Harvey questioned a building permit application from August 1992 that states "conversion from 3-family to single family". Member Manitsas said James Polvino signed it and asked him if that is his signature. J. Polvino said yes. Further, the c of o in 1992 classifies the property as a single family. Chair Skoog-Harvey asked J. Polvino if he had information that proves otherwise. J. Polvino said he just followed the instructions of the last Building Inspector.

Attorney Alois asked if he got a mortgage in 1991 or 1992, wondering if changing the status was financially related and not use related. J. Polvino said he does not recall.

Member Maziarz said the ZBA needs some proof to counter these pretty credible documents. S. Zarnstorff said he provided him a list of possible documents that would help. He will forward another copy. J. Polvino said he couldn't find anything. Attorney Alois asked if he had 1990 to 1995 leases. That seems to be the time period in most question. Member Bush referred to a real property transfer report that says 3 to 2 family on the top and single family on the bottom.

Chair Skoog-Harvey said the documentation signed in 1992 by the then Building Inspector and the property owner (James Polvino) makes it difficult to see a continuance of a non-conforming use as a two family.

Member Bush asked if he could solicit written affidavits from former tenants or neighbors. Attorney Alois said that gap needs to be filled in. S. Zarnstorff said further, there was a period of time it was vacant. HUD had possession of the property. That may have driven this back to single family home status if it was more than 9 months. F. Alois asked if J. Polvino ever lived in the house. J. Polvino said no, but his son did for a few years. He also said the utilities have always been separate. There were 3, then they changed it to 2. Member Bush suggested he contact the utility companies for records. F. Alois said they would be on computer and 1990 to 1995 is not that far back to search.

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

Chair Skoog-Harvey confirmed that SEQRA is not an issue since it is a Type II Action not subject to review.

⇒ Member Switzer moved, Member Maziarz seconded, unanimously carried that the application be tabled to give the applicant a chance to search for additional information, particularly targeting the years 1990 to 1995.

**OLD BUSINESS:**

- 1. Application of:      Name:                      Belmont Development Corporation
- Address:                    222 Main Street
- Tax Map #:                068.68-3-1
- Property Code:           484
- Zoning:                    Business / Residential

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- Lot size:                    2.136 acres
- Purpose:                     construction of 32 one-bedroom senior citizen apartments in a single two-story building and related site infrastructure improvements. Site preparation includes demolition of a single story, wood frame commercial building.
- Provision of Zoning Ordinance: 58-9A & 58.11A

**Applicant Presentation:**

Bruce Levine was in attendance. He said Bruce Baird presented at a joint public hearing of the

ZBA and Planning Board on November 24, 2003. Continued site plan review took place at the January 12<sup>th</sup> Planning Board meeting in which some of the ZBA members were present. They had a survey document the boundary lines of the residential and business use districts as the ZBA requested. Village Engineer and Building Inspector comments have been received and pertinent information has been added to the plan. Storm water calculations have been provided. The project is virtually identical to Park Place Apartments. It has 4 more units.

**Continued Board discussion on application:**

Chair Skoog-Harvey said the ZBA's role is to consider granting a special permit. The survey shows that the majority of the property is Business Use District. Member Bush questioned the storm water and drainage. B. Levine responded. Chair Skoog-Harvey reminded Member Bush that those are issues the Planning Board deals with.

Member Maziarz asked if they have gotten anywhere with the Webster's in regards to the access easement. B. Levine said he put a call in a week ago, but has not heard back. The proposed Webster access is off the main drive into a T. They will need to make some improvements.

Chair Skoog-Harvey said it appears that traffic safety concerns are minimal since there is such low trip count data. B. Levine said he acknowledges that it is difficult to turn north and would be best to go around the block. However, they do not see it as a problem. It is what it is. Only 50 percent of the residents will have cars. Member Bush said he tried today and it was impossible to turn north. He asked if they had considered buying a house on Utica Street to tear down and create an entrance. B. Levine said no. The current residents would have likely had a problem with that.

Member Maziarz asked the timeframe of the project. B. Levine said 6 months if good weather – 8 months maximum.

Member Bush said he had asked for information regarding Park Place Apartments such as occupancy and if preference paid to area people. B. Levine said he had not gotten that message. Park Place was constrained by the site size. The 28 units have been full since the beginning. There continues to be a waiting list, which in part justifies the need for this new complex. Market studies have been done that show the demand for affordable senior housing in this area. To have it right in the Village, in walking distance to so much, is highly desirable. Senior citizens make great neighbors. In many cases, the senior does not currently live in Brockport, but they used to or their family members do.

Chair Skoog-Harvey said the quality and success of Park Place Apartments is worth noting. Member Switzer said by and large most of those at the public hearing were not against the project, but wanted assurances of proper screening.

⇒ Member Maziarz moved, Member Switzer seconded, Member Bush opposed, Carried 4 to 1 that a special permit be granted subject to Planning Board approval and Building Inspector satisfaction.

**Adjournment:**

➔ Member Maziarz moved, Member Manitsas seconded, unanimously carried that the meeting be adjourned at 7:55pm.

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Leslie Ann Morelli, Village Clerk

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**DECISION**

**VILLAGE OF BROCKPORT ZONING BOARD OF APPEALS  
30-32 Chappell Street**

The Zoning Board of Appeals ("ZBA") met on September 26, 2004 to hear the application of Chad J. Markell, the contract vendee of premises at 30-32 Chappell St., to continue the property as a 2-family residential rental nonconforming use (w/owner occupancy of one unit). Chairperson Jennifer Skoog-Harvey, and Members Irene Manitsas, Carrie Maziarz, John Bush, and Charles N. Switzer, the full board, were all present.

Mr. Markell presented his application and a Public Hearing was held on proper notice.

The application is made as part of the inspection and issuance process for a certificate

of occupancy; the code provision involved is section 58-20 of the Village of Brockport Zoning Ordinance – “Nonconforming uses”, which states in subdivision “(1)”:

Any nonconforming use existing at the time of the enactment of the Zoning Code may be continued, and, upon application to and approval of the Zoning Board of Appeals, the Zoning Board of Appeals may direct the Building Inspector to issue a certificate of occupancy extending said nonconforming Use within the premises as prescribed by the Zoning Board of Appeals to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.

This Code provision was enacted by Local Law No. 3, filed in the office of the NYS Secretary of State on July 8, 1996, and amended the provision in the Code enacted January 4, 1960, which provided for section 58-20 “Nonconforming uses” in subdivision “(1)” that

Continuance and extension. Any nonconforming use existing at the time of the enactment of this ordinance may be continued, and upon authorization for the issuance of a certificate of occupancy by the Board of Appeals may be extended within the limits of the premises as existed at the time of the enactment of this ordinance [Dec. 21, 1959] and under such terms and conditions as the Board of Appeals may impose so as to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.

The property is listed on the Village tax rolls as a “220” - two family. The tax identification number is 068.75-1-11.

Mr. Markell advised that he is the contract vendee of the property and expected to close shortly. He indicated that a 1964 map showed the property as a two family. Mr. Markell presented a sworn statement from one of the heirs of the Sophie Mann Estate that indicated the property had been used as a two (2) family since the 1960's, a time period that predated the ordinance in question.

A motion was made and duly seconded to close the meeting and open the public hearing.

Joan Hamlin of 50 Park Avenue commented that she knows the property was used as a two family in the 1950's when Alan Green was the owner.

Tony Perry stated that he owns 55 Adams Street and also knows the property to be a double. Mr. Perry stated his opinion that the ZBA did not have authority to issue certificates of continuance for non-conforming uses.

Member Maziarz asked the Mr. Markell when he expected to close his purchase of the property, and he replied that he hopes to close on the Friday following the ZBA meeting. Chair Skoog-Harvey asked if the property would be owner-occupied, and Mr. Markell answered that it was his intention to live in apartment, and rent the other.

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Scott Zarnstorff, the Code Enforcement Officer, advised that he had interviewed both brothers of the late owner, Sophie Mann a few months before when they were looking to put the house on the market. They indicated their mother had owned the property since the 1960's, and that it had always been a two family. Mr. Zarnstorff reported that he had inspected the property on the prior Friday, that there had been a few items needing updating, but that these items had been completed to his satisfaction.

Mr. Zarnstorff reported and Mr. Markell concurred that the third floor would be closed to tenants and utilized by the owners for storage. The rental side of the property would be occupied by not more than 3-unrelated tenants. Mr. Zarnstorff commented that the house was in excellent shape, that the parking area needed some work, and that blacktopping would be required come spring.

There was no opposition to the application from neighbors and interested persons who spoke during the public hearing.

On Motion made and duly seconded, the Public Hearing was closed.

Chair Skoog-Harvey confirmed that SEQRA was not an issue in that the action involved was Type II, and not subject to review.

There were no further comments.

On Motion made by Member Manitsas, seconded by Member Bush, an unanimously carried, the application for continuance of a non-conforming use as a two family was approved, with findings of fact and conclusions of law, as follow.

**FINDING OF FACT AND CONCLUSIONS OF LAW**

1. The property at 30-32 Chappell St. ("the property") has been used as a 2-family since the '50's;
2. The use of the property as a 2-family has been uninterrupted;
3. The current assessment of the property is a "220" classification (two family);
4. The 2-apartment use appears to have been "legal" under the provisions of codes on the books at least from the late fifties;
5. The use and occupancy of the house pre-dates the repealer of the T-Districts in the Village of Brockport (permitting multiple family use and occupancy) that occurred in Local Law #1, filed with the office of the Secretary of State on May 14, 1984.
6. Based on the evidence presented, the property is a lawful pre-existing nonconforming use which may be "continued" under section 58-20(1) of the Zoning Code of the Village of Brockport;
7. Pursuant to section 58-20(1) of the Code, as above, this Board directs the Building Inspector to issue a certificate of occupancy extending said nonconforming Use within the premises as prescribed by the Zoning Board of Appeals to conform as nearly as practical to the requirements for the district in which the building, structure or use is situated.
8. This approval is further conditioned upon continuing full compliance by the owner/applicant with the applicable requirements of law (permits, construction, maintenance, use and occupancy of property, certificates of occupancy, renewals thereof), including, without limitation, the statutes, codes, rules and regulations of the State of NY, the County of Monroe, and the Building and Zoning Codes of the Village of Brockport (and any other applicable jurisdictions), and such other conditions not inconsistent with the above as may reasonably be required by the Building Inspector concerning legality of use and occupancy, including without limitation, the provision by the owner of current leasing information on an annual basis (leases/tenant identities/advertising/tenant applications), or more frequently as the Building Inspector may request, and access to the premises upon reasonable notice for purposes of

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pursuing compliance inspections by the Building Inspector (without requirements of administrative search warrants);

**DECISION**

**VILLAGE OF BROCKPORT ZONING BOARD OF APPEALS  
Belmont Development – 222 Main Street**

A Joint Meeting of the Village of Brockport Zoning Board of Appeals, and Planning Board was held on November 24, 2003, to consider the application of Belmont Development Corp. for a Special use Permit (under Village Code sections 58-9A, and 58.11A) for the construction of 32 one-bedroom senior citizen apartments in a single two-story building, with related site infrastructure, at 222 Main St. The property is zoned Business and Residential, with a site plot of 2.136 acres. The tax map number is 068.68-3-1, and the property code is "484". Chair Jennifer Skoog-Harvey, Vice Chair/Member Irene Manitsas, Member, John Bush, Member Carrie Maziarz, and Member Charles Switzer, were in attendance. Planning Board Members in attendance were, Chair Scott Winner, Member Charles Switzer, Member Art Appleby, Member John Brugger, and Member Annette Locke.

Bruce Baird of Belmont Development Corp. was in attendance and made a presentation on behalf of the applicant. Mr. Baird indicated that several years ago, the applicant build the Park Place Apartments, on Park Avenue in the Village. These units went very well over the years, and were similar to what was being proposed for 222 Main Street. Mr. Baird stated that the Main Street location was strong and desirable, since it was within easy walking distance of shops and offices. Site preparation includes demolition of a single story, wood frame commercial building, that was once a lumber yard, and was last used as a billiard hall. The site plan showed the building as L-shaped - in addition to the 32 single bedroom apartments, the plan included a community room, an office, rest

rooms, and an elevator. Each apartment would be approximately 620-650 square feet. The apartments are subsidized, and not luxury units, but will be decent, safe, sanitary units. From experience and demographics, the tenants would mostly be comprised of single or widowed women in their senior years. The project would be financed through the State Home program, and the Federal Government Rural Development program. The rent and utility allowance will run 30% of the income. Mr. Baird reviewed the ingress/egress at Main Street, and the parking plan. He indicated the applicant intends to leave as wide a buffer as possible - 20 feet around the building, with the remaining 10 feet available for landscaping.

Member Manitsas moved, Member Bush seconded, a motion to close the regular meeting and to open the Public Hearing on the application. The motion was unanimously approved. The Minutes of the Joint meeting summarize the public comments, and are incorporated by reference in this Decision.

Since the jurisdiction of the ZBA depended on the "majority" of the property being located in the "business" zone, Member Maziarz advised the applicant that a computation would be necessary so that the ZBA could make the required determination of a majority of the property being in the business zone in order to establish the basis for ZBA "jurisdiction" pursuant to section 58-11A(11) of the Village Code, to pass on the application for a special use permit.

Issues were raised by comments from the Board members concerning buffering the property from adjoining properties, lighting, ingress and egress, traffic control, noise, drainage, landscaping, financing, tax exemption, forfeiture of tax revenues by the Village, the burden placed on Village services by the proposed project, and the impact of the project on adjoining residential and commercial properties. These questions and comments, and responses from the applicant are detailed fully in the Minutes of the November 24, 2003 meeting, which are incorporated herein by reference.

Chair Skoog-Harvey asked Chair Winner if the Planning Board anticipated taking the lead on SEQR, and Chair Winner advised that the Planning Board would become lead agency.

On a motion made by Member Bush, and seconded by Member Manitsas, and unanimously approved, the Public Hearing was closed, and the regular meeting reopened. It was then moved by Member Maziarz, seconded by Member Switzer, and unanimously carried, that the application be tabled until the January 26<sup>th</sup>, 2004 meeting.

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The application was reopened as "old business" at the ZBA meeting on January 26, 2004. Bruce Levine was in attendance on behalf of Belmont Development Corp. He reported that site plan review took place at the January 12<sup>th</sup>, 2004 meeting of the Planning Board. Members of the ZBA were in attendance. A survey was produced documenting the boundary lines and permitting the computation of the percentage of the property in the "business" zone, and in the "residential" zone. Based on those calculations, approximately 53% of the property was in the business zone; accordingly, the ZBA had jurisdiction to hear and determine the application for a special use permit.

The Village Engineer and Building Inspector advised that comments had been received and pertinent information added to the plan. Storm water calculations were provided. The project is virtually identical to the Park Place Apartments - having 4 more units.

Member Bush had questions and concerns about traffic, ingress and egress, storm water, and drainage. Chair Skoog-Harvey advised that these issues would be dealt with in site plan review and approval before the Planning Board.

The applicant indicated that there negative traffic impacts were minimal - there could be problems turning north, but those were not prohibitive. Also, since only 50% of the residents would have vehicles, it was unlikely there would be traffic concerns. Ingress and egress issues concerning the adjoining property owned by the Websters which shared a 10' easement from the curb cut were discussed, and the applicant was encouraged to work with the Websters to find a solution to potential ingress and egress concerns.

Member Maziarz asked for the construction time line for the project. Mr. Levine responded that 6 months was optimum assuming good weather, with 8 months being the outside time frame in any event.

Chair Skoog-Harvey indicated that the quality and success of the Park Place Apartments were worth noting, and Member Switzer stated that by and large most of the comments at the Public Hearing were positive, and those with questions were primarily concerned with assurances of proper screening.

On that basis Chair Skoog-Harvey indicated that she believed the applicant had met the

tests for the issuance of a special use permit - - that the requested permit and use was in harmony with the requirements of the ordinance, and development in the area, and would not adversely affect the neighborhood.

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On a motion made by Member Maziarz, seconded by Member Switzer, it was moved that the special use permit be granted, subject to site plan review and approval by the Planning Board, completion of the SEQR process, code compliance, the approval of the Building Inspector, and the issuance of all required construction and use permits. The motion was passed, 4 to 1, with Member Bush voting against.

The end.