

Meeting of the Village of Brockport Zoning Board of Appeals was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Monday, June 30, 2014, 7:00pm.

PRESENT: Chair John Bush, Member Robert Duff, Member Douglas Wolcott, Member Laurence Vaughan, Building/Zoning Officer David J. Miller, Clerk Pamela Krahe.

EXCUSED: Member Francisco Borrayo

ALSO PRESENT: Duane Beckett, Carl Coapman, Hollie Geitner, David Strabel, James Zisovski, Steven Zisovski, Fred Webster, Carolyn House, Bob Webster, Hollis Webster, Sal Sciremammano, and one other.

CALL TO ORDER: Chair Bush called the meeting to order and led the Pledge of Allegiance.

REVIEW OF MEETING MINUTES: Chair Bush called for a motion to approve minutes.

➔ Member Vaughan moved, Member Duff seconded, unanimously carried to approve the minutes of the meeting held March 6, 2014 as written.

NEXT MEETING: Thursday, August 7, 2014 at 7:00pm if needed

Public Hearings:

NEW BUSINESS:

1. Name: Duane Beckett for Vulcan Ventures
Address: 80 Clinton Street
Tax Map #: 068.52-2-3
Property Code: 464
Zoning: B-Business
Lot size: 66' wide x 112' deep
Purpose: Use variance to allow a multiple dwelling; Area variances to allow 4 apartments, more than 2 bedrooms, offstreet parking for tenants, and setbacks
Zoning Ordinance: Chapter 58-11 B (4) – use variance; Chapter 58-11 A (10) – area variance for 4 apartments and more than 2 bedrooms; Chapter 58-22 B (2) (a) – area variance for offstreet parking; and Chapter 58-11 E – area variance for setbacks

Applicant Presentation:

Carl Coapman, attorney for applicant Duane Beckett, said he and his client met with B/Z Officer Miller to discuss building 4 upscale apartments on the second floor of 80 Clinton Street, as his client has been unable to rent it out to businesses. The apartments would be between 667 and 762 square feet, which is under the 800 sq.ft. allowed by village code. They feel an interpretation is necessary on whether the term “dwelling” refers to residential buildings; this is a commercial building. He noted the first floor would remain commercial, ensuring the 25% requirement of the code is met.

➔ Member Vaughan moved, Member Wolcott seconded, unanimously carried that the regular meeting be closed and the public hearing be opened at 7:05 pm.

Public Comment:

Chair Bush called three times for public comment; no one came forward.

➔ Member Duff moved, Member Vaughan seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Continued Board discussion on application:

Chair Bush read the criteria for a Use Variance:

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

1. *The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.*
2. *The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.*
3. *That the requested use variance, if granted, will not alter the essential character of the neighborhood; and*
4. *That the alleged hardship has not been self-created.*

The ZBA, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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Chair Bush read the criteria for an Area Variance:

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;*
- 2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;*
- 3. Whether the requested area variance is substantial;*
- 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and*
- 5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.*

The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Applicable code sections were referenced as follows:

- Chapter 58-11 B Prohibited uses. (4) Two-family dwellings and multiple dwellings. [Added 4-17-1995 by L.L. No. 3, 1995]
- Chapter 58-11 A (10) A building may be used for a combination of residential and commercial uses, subject to the following: [Amended 4-17-1995 by L.L. No. 3-1995]
 - (a) No more than two single-family dwellings.
 - (b) Maximum square feet of unit: 800.
 - (c) Maximum number of bedrooms: two.
 - (d) At least 25% of the total building square footage shall be allocated as commercial space. This space shall occupy the first floor from the front of the building toward the rear. [Amended 12-20-1999 by L.L. No. 7-1999]
- Chapter 58-22 B (2) General requirements applicable to all districts (a) Parking space location. All parking spaces shall be located on the same lot as the use for which they are provided.
- Chapter 58-11 E Yards required. Buildings shall be set back at least 47 feet from the center of Main Street and State Street or 40 feet from the center line of any other street within a B District, at least 11 feet from the rear line, and need have no side yard if the rear portion of the building is accessible by alley, street or driveway for motor vehicle delivery and pickup. If such access is not available, a side yard or driveway of at least 11 feet in width should be furnished. [Amended 9-10-1990 by L.L. No. 1, 1990]

Chair Bush asked when Mr. Beckett purchased the property; January 25, 2011. Mr. Coapman mentioned that former owner Mrs. Maxwell had trouble renting the upstairs because of ADA regulations. There is no elevator – only stairs. Chair Bush reminded that the codes were well in place when the property was purchased by the applicant. Mr. Beckett opined the 2nd floor isn't conducive to retail space. Chair Bush asked for dollars-and-cents proof. Member Duff voiced that he hasn't heard how the uses that are permitted haven't been able to make a return. Mr. Coapman offered that potential customers/clients may not be able to climb the stairs or would require having an elevator installed to comply with ADA. The building was rehabbed in 2011, yet it remains unrented. He inquired as to what documentation the board was looking for; the board replied proof that the building can't be used as permitted. Member Duff also asked how the circumstances are unique to that property. Mr. Coapman informed that Mr. Beckett isn't looking for subsidies or abatements for this property. Without a variance to allow the apartments, Coapman called it a "forced condemnation" of the 2nd floor. It was noted there are other properties on the street that are used for residential.

Member Duff reiterated that Chapter 58-11 A lists 2-3 pages of permitted uses in the B-Business district. Mr. Coapman went through most of the examples, showing it would be difficult if not impossible for them to use the 2nd floor. He contended that in 3 years' time, no one has come forward to rent the space.

Chair Bush asked for clarification on the applicant's request for 4 units upstairs rather than 2. Coapman explained that a lay person would consider a "dwelling" as a house, not an apartment. Chair Bush reiterated the proposed square footage is less than 800, and the minimum 25% commercial space requirement is met. Mr. Coapman added that Mr. Beckett owns an empty lot between his building and 26 Clinton that could be used for parking. Guardrails are already in place and he could add a gate/keycard setup for tenants. He understands the two tax parcels would have to be combined in order to provide "on site" parking; the lot can accommodate more than 4 cars.

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Member Vaughan asked for a “common sense” approach. People are not going to hike up the stairs to frequent a business. There is only one single-family residence left on the street. Mr. Beckett has the resources to make this property look better. The village is trying to revitalize that area, this project could help. If the apartments were to have 2 bedrooms each, allowing more tenants, that impacts the area more. Mr. Beckett is looking for professors, young professionals, and grad students as tenants. The neighborhood is not the best, but this would be a start.

The board asked why 4 apartments; Beckett replied 4 is the right size for the space up there. Only two apartments would make them massive, and while larger apartments would command higher rent, you wouldn't be able to get that kind of money. Additionally, if the apartments are larger, the tenant may be encouraged to stack more people in there.

Coapman again went through the points of area and use variances. He reminded the board the property was purchased during the bank/mortgage crisis. Member Duff pointed out the need for consistency and he mentioned a prior application for 50 Clinton for a storage facility, which the board turned down.

Member Duff asked Coapman why he is asking for an interpretation. Mr. Coapman stated a “dwelling” implies a house, not an apartment. He also asked if the allowable “2 bedrooms” is per unit or in totality. Member Vaughan pointed out use of the term “one-family dwelling” in Chapter 58-9.

Mr. Coapman wondered how Member Wolcott felt. Member Wolcott says he can see both sides. If this is approved and sets a precedent, he wondered what other applications may result from that. He also understands the applicant's desire to improve the area and to rent the space. Chair Bush emphasized that each case stands on its own merit, and he doesn't see how this is a financial burden to the applicant. The applicant said, with regard to Clinton Street, you have to start somewhere. Mr. Coapman says the board should look at the totality of the use variance criteria per case law, indicating you can be weak on one point and strong on others. He also commented there is no public opposition to this project, and if you can't rent the space, then what might the village be able to do to help make this better? If the board knows a business that would rent this space, please let him know. Chair Bush stated we used to be a quaint village, but now there are many rentals. Member Vaughan clarified most rentals are residential units; this, however, is a business space. Chair Bush inquired about advertising, as there had been no mention of it. Coapman replied that Mr. Beckett has many contacts through his other business ventures – himself included – and he has used primarily word of mouth as advertisement. When asked, Beckett estimated he would be putting about \$200,000 into the renovation.

Setbacks were discussed. It was also noted that drainage problems crop up every time it rains, which is another strike against the property.

Member Duff revisited the fact that all four prongs of the use variance must be met. Mr. Coapman again noted the board should examine the totality of the four points. Member Vaughan expressed that the code section about setbacks bothers him, and he opined that would pertain to new construction, not to an existing building. Coapman clarified that the setback was not a problem and that parking could be a problem, but the applicant has the property to host the cars.

Mr. Coapman concluded his presentation. Chair Bush asked if the board had additional questions or comments. Member Vaughan remarked he used to have a great deal of contact with landlords and business owners. There is an economic concern here, and to make someone suffer when he is trying to make a go of it isn't fair. If every business owner had to study the code, it would be asking a lot. Supporting this project would be taking a chance, but why not?

Member Wolcott commented that the former “Family Dairy” is still vacant. He doesn't want negative repercussions to this decision. Member Vaughan volunteered that housing is probably the most steady thing you could put in there, as businesses come and go. Member Duff emphasized that no one wants to stand in the way of revitalization, the board just has to realize the authority it has.

➔ Member Vaughan moved, Member Wolcott seconded, carried 3-1 that the application be approved as submitted.

Roll Call vote:
Member Vaughan – in favor
Member Duff – opposed
Member Wolcott – in favor
Chair Bush – in favor

Chair Bush noted he does not want to stand in the way of progress in the Clinton Street area.

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2. Name: Hollie Geitner
Address: 192 Clark Street
Tax Map #: 068.11-3-3
Property Code: 210 single-family
Zoning: O-Residential
Lot size: 1.1 acres
Purpose: Special Conditional Use Permit for home occupation (hair salon)
Zoning Ordinance: 58-9 A (5)

Applicant Presentation:

Hollie Geitner indicated she is a hairdresser, has put in a purchase offer on 192 Clark Street, and would like to open a hair salon upon moving in.

- ➔ Member Vaughan moved, Member Duff seconded, unanimously carried that the regular meeting be closed and the public hearing be opened at 7:57 pm.

Public Comment:

- Sal Sciremammano, 16 Cyrus Way, wondered how many hairdressers would be employed and what customer parking will be.
- ➔ Member Vaughan moved, Member Wolcott seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Continued Board discussion on application:

The applicant explained she is the only hairdresser/employee. As for parking, she expects that 2 customers may overlap on occasion and she will apply to the Planning Board for a driveway expansion.

Chair Bush highlighted Chapter 58-9 A (5) Home occupations as follows:

- "...total floor area...shall not exceed 25%..." Member Vaughan calculated that the salon will take up about 254 sqft, and allowable under code would be up to 495 sqft. He noted she expects 25 clients per week and she's open 36 hours.

The board had no other concerns or questions.

- ➔ Member Duff moved, Member Wolcott seconded, unanimously carried that the application be approved as submitted.
Roll Call vote:
Member Vaughan – in favor
Member Duff – in favor
Member Wolcott – in favor
Chair Bush – in favor

The board welcomed the applicant to the village.

3. Name: David Strabel for James Zisovski
Address: 24 Market Street
Tax Map #: 069.53-1-3
Property Code: 484
Zoning: B-Business
Lot size: 22.18' wide x 77' deep
Purpose: Area variance for setbacks
Zoning Ordinance: Chapter 58-11 E

Applicant Presentation:

David Strabel stated 24 Market is currently single-story. While the building can be made taller, there are front and rear yard setbacks to consider. He would need a 7' setback for the front, which wouldn't match character of the neighborhood. As the building fills the footprint of the property, the rear setback is in play, too.

- ➔ Member Vaughan moved, Member Wolcott seconded, unanimously carried that the regular meeting be closed and the public hearing be opened at 8:07pm.

Public Comment:

- Carolyn House, owns 37 Market, wondered where tenant parking will be. Mr. Strabel pointed out that Chapter 58-22 B (2) (m) [3] exempts this property from onsite parking. Tenants would park in a

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municipal lot or on Market Street. There is some space available because the property owner also owns the alleyway and could use that for parking.

- Received June 30, 2014 by mail was a letter from Edward W. Riley, Esq. of 25 Market St. that read:

Dear Chairman,

It was brought to my attention that "Jimmy Z" is seeking variances relating to 24 Market Street, property directly across the street from my office and real property that I own. My understanding is that a second floor would be added for two apartments and the street level would be devoted to offices or commercial use.

I would support the application of Jimmy and endorse the Board's decision if a variance was granted.

The property has been in a long state of disrepair and suffering from a lack of maintenance as evidenced specifically by the present roof condition. I believe the contemplated renovation and refurbishment is in the best interest of our community and in particular, Market Street neighbors.

Thank you for your consideration.

Very truly yours,

Edward W. Riley

- Received June 26, 2014 via email from Benton Hart:

Dear Mr. Miller,

I am writing to express my support for proposed construction/building on Market St. I have learned that Papa Z would like to add a second story to the old chiropractic office on Market St. As property owners that border their current business, and the building in question, I fully support their desire to invest in this vacant building, and believe that if accepted, the changes will better our business district. Mr. Z. currently runs a well respected business in the village. They serve an important niche market, and as neighbors they are respectful and courteous. Moreover, the current one story building simply does not fit in with the current architecture on the street. I applaud their efforts to develop this building and hope that you will find their application favorable.

I wish I could be their [sic] for the vetting of their application, but am out of the country on business.

Cordially,

Benton Hart

(Owner 61-65 Main St.)

- ➔ Member Vaughan moved, Member Wolcott seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

Continued Board discussion on application:

Chair Bush read the criteria for an Area Variance:

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- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;*
- 2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;*
- 3. Whether the requested area variance is substantial;*
- 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and*
- 5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.*

The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Applicable code section was read as follows:

Chapter 58-11 E Yards required. Buildings shall be set back at least 47 feet from the center of Main Street and State Street or 40 feet from the center line of any other street within a B District, at least 11 feet from the rear line, and need have no side yard if the rear portion of the building is accessible by alley, street or driveway for motor vehicle delivery and pickup. If such access is not available, a side yard or driveway of at least 11 feet in width should be furnished. [Amended 9-10-1990 by L.L. No. 1, 1990]

Chair Bush opened the floor to the Board for questions.

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Chair Bush brought up setbacks, saying a 7' setback on the 2nd story would look silly, and all other buildings are flush with the sidewalk. Mr. Strabel concurred. As for parking, which is not part of this variance request, Chair Bush noted Main Street tenants are told they need to use municipal parking and learn to jockey their cars accordingly. Chair Bush pointed out it would be a police matter for anyone exceeding the 2-hour parking limit on Market Street.

Strabel referred to his proposed drawing and noted he can't put windows on the west wall or north wall because they are party walls. He can on the east side because that's a 10' unnamed alley that belongs to the village.

→ Member Vaughan moved, Member Duff seconded, unanimously carried that the application be approved as submitted.

Roll Call vote:

Member Vaughan – in favor

Member Duff – in favor

Member Wolcott – in favor

Chair Bush – in favor

4. Name: Anthony Palumbo for Ellicott Development Corp
Address: 73 N. Main Street
Tax Map #: 068.44.2.12.1
Property Code: 454
Zoning: B-Business
Lot size: 2.3 acres
Purpose: Special Permit for children's nursery (daycare facility)
Zoning Ordinance: Chapter 58-11 A (11)

Chair Bush noted a representative from Ellicott Development had phoned the Building Department on June 26 to withdraw the application.

Chair Bush asked the record to reflect the board's acknowledgement of the withdrawal of the application.

Adjournment:

→ Member Duff moved, Member Vaughan seconded, unanimously carried that the meeting be adjourned at 8:22pm.

Pamela W. Krahe, Clerk