

**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, October 27, 2003 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:** DPW Superintendent Bradley B. Upson (in Village Board workshop)

**ALSO PRESENT:** Deputy Village Attorney Frank A. Aloï, Village Engineer Tom Carpenter of Chatfield Engineers, Planning Board: R. Scott Winner, John Brugger, Annette Locke, Art Appleby, Richard Miller, Robert Carges, Nancy Moredock, Ali Yapiciogli, Christina Manna, Kevin Manna, Barry Howard, Matthew & Melissa Fuino, Valerie Johnston, Scott Winslow, Joan Hamlin, Art Brennan, Mark Edwards, Mike Torregrossa, Guglielmo & Sal Maniscalco, Denise Gray, David Samer, Scott Leonard.

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

**REVIEW OF MEETING MINUTES:** Chair Skoog-Harvey called for a motion to approve the minutes of the September 22, 2003 meeting.

➔ Member Manitsas moved, Member Maziarz seconded, unanimously carried to approve the minutes of the meeting held September 22, 2003 as written.

**CORRESPONDENCE:**

S. Zarnstorff shared that 26 Brockway Place has been sold as a single family home. Therefore, the incomplete application of prior owner, Mr. Altman, can be taken off the pending list.

Chair Skoog-Harvey shared that the applicant regarding 480 East Avenue has withdrawn the application. Therefore, if anyone is here specifically for that item, it will not be addressed.

**NEXT MEETING:** Monday, November 24<sup>th</sup>

**OLD BUSINESS:**

The following were the decisions made since the last meeting.

**32 Fayette Street**

**DECISION**

**VILLAGE OF BROCKPORT ZONING BOARD OF APPEALS**

The Zoning Board of Appeals (“ZBA”) met on September 22, 2003 to hear the application of Todd M. Haust, owner of premises at 32/34 Fayette Street, to continue the property as a nonconforming use as a 2-family, with the addition of a dining room on the owner occupied side of the house. 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.

Chairperson Jennifer Skoog-Harvey, and Members Irene Manitsas, Carrie Maziarz, John Bush, and Charles N. Switzer, the full board, were all present. Mr. Haust presented his application and a Public Hearing was held on proper notice. The Board reserved decision on a motion duly made and seconded.

The property is occupied as a two family, with the owner living on one side, and the second apartment being used for rental. The tax identification number is 069.09-4-1, and the property code classification - - "220". The proposed addition is a dining room to the rear of the owner occupied side of the house. Construction of the 12' by 11' dining room will take place essentially on an existing patio slab that is shown as 15' by 11' (including a short extension) on the drawings submitted.

The owner presented evidence by way of a letter from prior owner Lucille M. Raleigh, dated September 12, 2003, which indicated that the property had been built and occupied as a 2-family since the '30's. The letter stated:

Wyatt and Christine Raleigh, my husbands parents, purchased their home at 32-34 Fayette St. in 1933 from Mr. Handpicks and Norma H. Lawton, his daughter, for \$3000.00 to be paid at \$3.00 per week until paid in full. They lived in the 32 Fayette half and soon rented the 34 Fayette half to Wilfred Twenty man. The house was a double when they bought it. So far as I know it was built as a double house.

Member Bush had personal knowledge of the use and occupancy of the property and stated that he resided near the house and that it had been used as a double for more than 30 years.

The owner stated that the proposed dining room addition would not extend beyond the existing footprint of the house (including the patio in the rear), and was not intended as a habitable sleeping area.

The Building Inspector confirmed that the intended construction would be on an existing patio, and because of the configuration of the rear of the house - half already extended beside the patio - would in effect square off the house over the existing patio. No documentation was located in the Village records to contradict the historic documentation provided by the owner.

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

**FINDING OF FACT AND CONCLUSIONS OF LAW**

1. The property at 32-34 Fayette St. ("the property") has been used as a 2-family since the '30'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 proposed dining room construction on the owner's side of the house will not enlarge the footprint of the house, i.e., the new dining room will be built over an existing patio, and will square off the existing structure;
5. The proposed construction does not enlarge or intensify the present use and occupancy of the house - - the construction is intended as a dining room on the owner's side and is not intended as a habitable bed room or sleeping area;
6. The 2-apartment use appears to have been "legal" under the provisions of codes on the books at least from the late fifties;
7. 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), which occurred in Local Law #1, filed with the office of the Secretary of State on May 14, 1984.
8. 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;
9. 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.

- 10. 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 continuing compliance inspections by the Building Inspector (without requirements of administrative search warrants);

The Decision as above was unanimously approved by the ZBA on the 6<sup>th</sup> day of October, 2003. The Chair and Members signed it and it is on file.

**34 South Avenue**

**DECISION**

**VILLAGE OF BROCKPORT ZONING BOARD OF APPEALS**

The Zoning Board of Appeals (“ZBA”) met on September 22, 2003 to hear the application of Richard Miller, the owner of premises at 34 South Ave., to continue the property as a 4-family nonconforming use (commercial rental/not owner occupied). The application is made as part of the inspection and issuance process for a certificate of occupancy, and does not involve any construction. 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.

Chairperson Jennifer Skoog-Harvey, and Members Irene Manitsas, Carrie Maziarz, John Bush, and Charles N. Switzer, the full board, were all present. Mr. Miller presented his application and a Public Hearing was held on proper notice. The Board reserved decision on a motion duly made and seconded.

The property is occupied as a 4-family, and is rented to singles and families. The tax identification number is 068.20-3-24, and the property code classification - - “411”.

The owner presented evidence and the records of the Village indicated as follows:

- 1. A Certificate of Occupancy #229 from the Village issued on July 31, 1973 which states that “[t]he occupancy for which this certificate is issued is “four family dwelling.”
- 2. An inspection report dating from the 70's apparently made at the time of the issuance of the Certificate of Occupancy #229, referenced in “1” above,

indicating 4-apartments;

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3. Permit application records of the Village in 12/72 indicating construction of apartments in the property;
4. Deed copies to Richard M. Miller, from Shirley H. Richardson, and from Kenneth W. Moore III, to Shirley H. Richardson, both in August of 1987, with copies of filed State of New York - State Board of Equalization and Assessment Real Property Transfer Reports, stating in the "Property Use Table" that the property is used for "Apartment", and multiple residential.
5. A Village of Brockport Certificate of Occupancy #164, dated August 7, 1987, for the property stating that "The occupancy for which this certificate is issued is '411'";
6. An inspection report for the property from the then Building Inspector/Zoning Officer of the Village of Brockport (William H. Weber) dated 11/4/92, indicating 4-apartment use;
7. An inspection report dated 6/22/01 from the Village of Brockport, indicating 4-apartment use;
8. A Village of Brockport inspection report dated 10/22/03 for the property indicating 4 apartment use;

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

**FINDING OF FACT AND CONCLUSIONS OF LAW**

1. The property at 34 South Ave. ("the property") has been used as a 4-family since 1973;
2. The use of the property as a 4-family has been uninterrupted;
3. The current assessment (and the historic assessment) of the property is a "411", an assessment classification consistent with the historic 4-apartment use and occupancy;
4. There is no construction or other expansion intended, and there will be no enlargement or intensification of the present 4-apartment use of the property;
5. The 4-apartment 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) which occurred in Local Law #1, filed with the office of the Secretary of State on May 14, 1984.
6. The 4-apartment use appears to have been "legal" under the provisions of codes on the books in '72-'73, when the use began;
7. Based on the evidence presented, the property is a lawful pre-existing nonconforming 4-apartment use which may be "continued" under section 58-20(1) of the Zoning Code of the Village of Brockport;
8. 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.
9. This approval for the continuance of a nonconforming use is conditioned upon the owner meeting all requirements as set forth in the Inspection report from the Village of Brockport, dated January 22, 2003;
10. 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 continuing  
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compliance inspections by the Building Inspector (without requirements of administrative search warrants);

The Decision as above was unanimously approved by the ZBA on this 6<sup>th</sup> day of October, 2003. Chair and members signed it and it is on file.

**254 Main Street**

→ Member Maziarz moved, member Switzer seconded, unanimously carried denying the application of Richard Miller for 254 Main Street to continue the property as a 2-family nonconforming use.

**DECISION**

**VILLAGE OF BROCKPORT ZONING BOARD OF APPEALS**

The Zoning Board of Appeals (“ZBA”) met on September 22, 2003 to hear the application of Richard Miller, the owner of premises at 254 Main St., to continue the property as a 2-family nonconforming use (commercial rental/not owner occupied). Chairperson Jennifer Skoog-Harvey, and Members Irene Manitsas, Carrie Maziarz, John Bush, and Charles N. Switzer, the full board, were all present. Mr. Miller presented his application and a Public Hearing was held on proper notice. After hearing the applicant, and interested parties during the public hearing, the Board on a motion duly made, seconded, and unanimously carried, indicated that the matter would be taken under advisement with the determination and decision to be made some four weeks hence at the Board’s next regularly scheduled meeting - October 27, 2003.

The application is made as part of the inspection and issuance process for a certificate of occupancy; there is pending litigation in the Sweden Town Court concerning alleged illegal conversion to two family use, and issues concerning failure to procure building permits, and to initiate the certificate of occupancy procedures. 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.

Also applicable is section 58-20(5) of the Village of Brockport Zoning Code, which provides that

Whenever a nonconforming use has been discontinued for a period of nine (9) months, such nonconforming use shall not thereafter be reestablished, and future use shall be in conformity with the provisions of this ordinance.

**PENDING LITIGATION**

1. A Notice of Violation, dated November 15, 2002, was served, posted, and mailed by certified mail to Mr. Miller (“defendant”) as required by the Brockport code. Copy in Village file.

2. The Notice of Violation was sworn to by Scott Zarnstorff, the Code Enforcement Officer, and Building Inspector of the Village of Brockport, and identified the property in question as 254 Main Street, Brockport, NY 14420, Tax Id # 068.68-3-8, Code: "210" - a single Family house, owned by Richard Miller.

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3. The Notice of Violation stated that the property was inspected on November 6, 2002; **that the Building Inspector found that there was construction underway to convert the single family residence into a two or more family residence; and that there has been no variance to change the use of the property to a two family, nor was there any building permit for the construction.** [emphasis added]

4. The Notice of Violation then stated the sections of law violated:

**Construction without a building permit:**

New York State Fire Prevention and Uniform Building Code, section 382 of Executive Law, and 19 NYCRR Part 444.3(b), construction without a building permit;

Section 58-8 A (2) Village of Brockport Code - - "Application" (requiring permit for remodeling or new construction, and prohibiting use and occupancy without permit; "No building, structure or land shall be used or occupied and no building, structure or part thereof shall be erected, moved, altered or placed unless in conformity with the regulations for the district in which it is located and until a permit therefore shall have been issued in accordance with the provisions of this ordinance");

Violations of New York State Fire Prevention and Uniform Building Code, section 382[2] of the Executive Law, and 19 NYCRR Part 444.3(b) include a possible fine of \$1,000. for every day the violation(s) is/are not abated or remedied, and a possible jail sentence not exceeding one year after due notice from the municipality, of violation;

**Alteration of the Use of Property without a variance or change of zone**

**Alteration of Use of Property without new Certificate of Occupancy**

Section 36-11 G (2) of Brockport Code - - Change of Occupancy to two or more family - - in case of an existing building, no change of occupancy classification under the Building Code, Housing Code, Zoning Ordinance, Chapter 19 of the Code of the Village of Brockport or other applicable law, ordinance or rule, shall be made unless it is found by the Bureau or Division enforcing or administering that law, ordinance or rule, to comply therewith, and the Building shall not be occupied until a new certificate of occupancy is issued.

Section 36-11 B of Brockport code - - No Certificate of Occupancy - - Building hereafter altered - - No building hereafter enlarged or extended, or so altered, in whole or in part, so as to change its classification, and no building hereafter altered for which a certificate of occupancy has not heretofore been issued, shall be occupied or used, in whole or in part, until a certificate of occupancy shall have been issued by the Building Inspector.

Section 58-24 B - "No land shall be occupied and no building or structure previously existing or hereafter erected, altered or extended, or upon transfer of title to a new owner, shall be used or changed in use until a certificate of occupancy is issued by the Building Inspector. A certificate of occupancy shall not be required for transfer of title to a new owner of a single-family dwelling. The Building Inspector shall issue a certificate of occupancy in the same classification as previously issued unless otherwise directed by the Planning Board."

5. The Remediation required was set forth in the Notice of Violation - The **following corrective measures shall be taken no later than November 25, 2002** - applications for Planning Board and/or Zoning Board of Appeals approvals for change of use from single family to multi-family; applications for building permits; applications for certificate of occupancy; stop work at premises until all approvals and permits and certificates are issued; no occupancy of premises until all approvals and permits and certificates are issued. [emphasis added]
6. Larry Vaughn, the Assistant Building Inspector, inspected the property on January 10, 2003, and found that the construction was continuing to convert the property to multi family use, without a building permit, or any change of use approvals from the Planning Board and/or Zoning Board of Appeals of the Village of Brockport.

7. The Building Inspector, Scott Zarnstorff, issued an Appearance Ticket on January 22, 2003, to Richard Miller, citing him with the charge of "Failure to obtain required building permits, failure to obtain prior required approvals for a change of use, certificates of occupancy, inspections and continued defiance of a stop work order issued November 15, 2002 for a conversion of a single family rental residence to a two (2) family rental property." The Appearance Ticket also stated the sections of law violated, which were the same sections that had been included in the Notice of

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Violation (above).

8. The Information and Supporting Deposition (copy in Village file), sworn to by the Building Inspector, Scott Zarnstorff, filed in support of the Appearance Ticket detailed the facts supporting the charges as follow:

- A. Defendant, Richard Miller purchased the property from the Mansler Estate on October 8, 2002. A copy of the recorded deed is in the Village file.
  - B. The Building Inspector inspected this property on November 6, 2002, and found that there was construction underway to convert the single-family residence into a two or more family residence.
  - C. The Building Inspector verified that there had been no building permit issues, nor had there been any application to the Planning Board or Zoning Board of Appeals for approval of a change of use for 254 Main St. from single family to two or more use.
  - D. The Building Inspector on November 15, 2002, caused to be served on Mr. Miller, mailed to him by certified mail, and posted at his property a Notice of Violations and Penalties, and Notice of Possible Closure and Shut Down of Property with Removal of all Occupants, a copy of which is in the Village file.
- 1. The Notice directed that the following corrective measures be taken no later than November 25, 2002 - applications for Planning Board and/or Zoning Board of Appeals approvals for change of use from single family to multi-family; applications for building permits; applications for certificate of occupancy.
  - 2. The Notice also directed defendant Miller to stop work at premises until all approvals and permits and certificates are issued; no occupancy of premises until all approvals and permits and certificates are issued.
  - 3. The Building Inspector caused an investigator for the Village to interview the next-door neighbors of the property at 254 Main St., Jack Glickman and Jacqueline Davis. They swore an affidavit that they resided at 14 Adams St. since 1979, and that they knew of their personal knowledge that the property at 254 Main St. had been occupied for single-family use for some 20 years before the purchase by Mr. Miller. A copy of the Glickman/Davis affidavit is in the Village file.
  - 4. The Building Inspector located the auction notices for the sale of the subject property by Harris Wilcox for the Mansler Estate in October of 2002 (when Mr. Miller purchased it), and found that the property had been offered as a "single". Advertising and notice of sale is in Village file.
  - 5. The Affidavit of the Assistant Building Inspector, Larry Vaughn, sworn to January 24<sup>th</sup>, 2003, is also attached to the deposition. Mr. Vaughn states that he visited the site on January 10, 2003, and observed Fred Montag, Mr. Miller's contractor, continuing the conversion work on the property to a multiple, in violation of the stop work order. Mr. Vaughn's affidavit includes two sets of inspection notes, the first on January 10, 2003, when he observed Fred Montag continuing the conversion work; the second on January 13, 2003, when he had a conversation with Mr. Miller, during which Mr. Miller made no mention of Montag being a trespasser, or not having authority to do the work.
  - 6. The deposition concluded with a summary of the provisions of the Brockport code, and NYS statutes, violated:
    - 1. New York State Fire Prevention and Uniform Building Code, section 382 of Executive Law, and 19 NYCRR Part 444.3(b), construction without a building permit;

2. Section 58-8 A (2) Village of Brockport Code - - "Application" (requiring permit for remodeling or new construction, and prohibiting use and occupancy without permit; "No building, structure or land shall be used or occupied and no building, structure or part thereof shall be erected, moved, altered or placed unless in conformity with the regulations for the district in which it is located and until a permit therefore shall have been issued in accordance with the provisions of this ordinance");

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3. Violations of New York State Fire Prevention and Uniform Building Code, section 382[2] of the Executive Law, and 19 NYCRR Part 444.3(b) include a possible fine of \$1,000. for every day the violation(s) is/are not abated or remedied, and a possible jail sentence not exceeding one year after due notice from the municipality, of violation;
4. Alteration of the Use of Property without a variance or change of zone and Alteration of Use of Property without new Certificate of Occupancy: Section 36-11 G (2) of Brockport Code - - Change of Occupancy to two or more family - - in case of an existing building, no change of occupancy classification under the Building Code, Housing Code, Zoning Ordinance, Chapter 19 of the Code of the Village of Brockport or other applicable law, ordinance or rule, shall be made unless it is found by the Bureau or Division enforcing or administering that law, ordinance or rule, to comply therewith, and the Building shall not be occupied until a new certificate of occupancy is issued.
5. Section 36-11 B of Brockport code - - No Certificate of Occupancy - - Building hereafter altered - - No building hereafter enlarged or extended, or so altered, in whole or in part, so as to change its classification, and no building hereafter altered for which a certificate of occupancy has not heretofore been issued, shall be occupied or used, in whole or in part, until a certificate of occupancy shall have been issued by the Building Inspector.
6. Section 58-24 B - "No land shall be occupied and no building or structure previously existing or hereafter erected, altered or extended, or upon transfer of title to a new owner, shall be used or changed in use until a certificate of occupancy is issued by the Building Inspector. A certificate of occupancy shall not be required for transfer of title to a new owner of a single-family dwelling. The Building Inspector shall issue a certificate of occupancy in the same classification as previously issued unless otherwise directed by the Planning Board."

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**Village Code Provisions at Issue have been held to be Constitutional:**

Mr. Miller made a motion in Town Court to dismiss the charges against him. Judge Cody rendered a Decision on June 30, 2003 which "denies the Defendant's Motion to Dismiss on the grounds that the Information/Appearance ticket is defective"; further, the Court denied Mr. Miller's motion to dismiss based on alleged unconstitutionality of the Village Code provisions at issue, stating "there is no substantive argument advanced by the Defendant to advance this theory. So, the Court will not expound eloquently on this topic, except to say that there is nothing unconstitutional in a municipality requiring commercial landowners to comply with validly approved codes of conduct in order to promote good order and safety for all of its citizens."

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**PROOF FROM ZBA HEARING INCLUDING COMMENTS  
APPLICANT'S SUBMISSIONS, COURT RECORDS, AND  
VILLAGE RECORDS**

**Factors Supporting Finding that Property is a Single**

1. Ruth Mansler owned the property before Mr. Miller acquired it;
2. Mr. Miller acquired the property from the Estate of Ruth Mansler by deed on October 8, 2002; the deed is recorded in the office of the Monroe County Clerk in liber 9688 of Deeds, page 129; tax account #068.680-0003-008;

3. A Mortgage dated on 10/8/02 from Mr. Miller to John J. Petronio, states (in hand writing) that property is a single; there was no denial (or explanation) at the public hearing from Mr. Miller concerning the "single" statement on the mortgage document;
4. The property carries a "210" assessment designation; and has carried that designation since 1994;
5. The Assessment card "2001" shows "210", and states in Notes: "One meter (disconnected other 1), one furnace, one hot water tank, 8 or 9 years ago converted back

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- to 210;
6. The old assessment card shows "2 family", in 1970;
  7. Ruth Mansler letter requesting that Assessment be changed to "210"; Bill Weber letter acknowledging Ruth Mansler letter re "210" classification; specifically, on June 29, 1994, Ruth Mansler wrote "Bill Weber, Village Assessor" concerning 260 & 254 Main St., and stated "this letter is to serve as a request for the 1995 tax role (sic. "roll"), that the above referenced property be listed as a single family unit"; on June 30, 1994, Bill Weber replied "Per your request in your letter of June 29, 1994 regarding property at 254 Main St. in the Village of Brockport, this property code will be changed to 210/single family and will be reflected in the 1995 tax roll for the village."
  8. The Affidavit from Jack Glickman/Jacqueline Davis, sworn to 1/24/03 (part of pending Town of Sweden Court proceedings), states that they lived at 14 Adam St. in 1979; that 254 Main was occupied by "old woman" downstairs, and by single woman with 2-children upstairs; that after 1979, the house was vacant until taken over as single by a man and his wife, and one child; that family moved out of 254 Main - 8 or 9 years ago, and a young couple moved in. They occupied the property with their 2-children until the house was sold to Mr. Miller.
  9. The Affidavit of Anthony Sorce, sworn to 1/27/03 (part of pending Town of Sweden Court proceedings) states that he and his wife lived at 254 Main St. from May of '87; at that time there were 2-apartments; Sorce and his wife rented the upstairs apartment; Dave and Vicki Scheckler rented the downstairs apartment; in Spring of '92, Schecklers moved out and Sorce and his wife and 2-children rented the entire house; the landlord from May of '87 to August of '02 was Ruth Mansler; Sorce and his family moved out in August of '02, and from that time as far as he knows, there was no replacement tenant.
  10. The Auction notices in '02 designated the property as a "single" when Mr. Miller purchased the property;

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**Factors Supporting Finding that Property is a Double**

1. Attorney Mark Klafehn affirmation of 10/8/02 stated that when Ruth Mansler (and Frederick H. Eisenberg) purchased the property, it consisted of a house with 2-apartments; the occupancy by 2-tenants was open, notorious and well known to be a double with the usual kitchens and bathrooms needed for two families; Ruth Mansler during her entire ownership maintained the property as a two family dwelling and made no alterations or changes which would limit the number of families, nor did she consent or participate in any zoning changes;
2. Mr. Miller and Fred Montag testified at the public hearing: that Dorie Sorce and Tony Sorce took in foster children and needed a "single" classification in order to take in children and/or qualify for subsidies; they enlisted Mrs. Mansler's assistance in contacting the Village so that the property could be listed as a "210"; Mrs. Mansler contacted Bill Weber who was the assessor at that time; apparently, the source of Fred Montag's knowledge, as well as Mr. Miller's concerning the Sorce' taking in foster children and requiring the "210" classification in order to do so, was Bill Weber; Bill Weber did not attend or speak at the hearing, and nothing has come in since from Bill Weber;

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**ANALYSIS AND FINDINGS OF FACT**

1. In order to achieve the status of a protected pre-existing non-conforming use, the

property as a “double” would have had to have been “legal” as a double under the ordinances that pre-dated the abolition of multiple residential uses with the repealer in 1984 of the “T-Districts” in the Village; the evidence of legality of use under the old ordinance(s) focused on the use as a double, but did not include any analysis of the then existing applicable code provisions; even if the property was historically a “double” - and protected as such at the time as a pre-existing non-conforming use, the Glickman and Sorce affidavits, as well as the Mansler letter concerning the “210” classification support a determination that the property became a single by use;

2. Ruth Mansler owned the property before Mr. Miller acquired it;

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3. Mr. Miller acquired the property from the Estate of Ruth Mansler by deed on October 8, 2002; the deed is recorded in the office of the Monroe County Clerk in Liber 9688 of Deeds, page 129; tax account #068.680-0003-008;
4. A Mortgage dated on 10/8/02 from Mr. Miller to John J. Petronio, states (in hand writing) that property is a single; a copy of the mortgage was obtained from the Clerk’s website, and the notation “single” is in the recorded copy; there was no denial (or explanation) at the public hearing from Mr. Miller concerning the “single” statement on the mortgage document;
5. The property carries a “210” assessment designation; and has carried that designation since 1994;
6. The Assessment card “2001” shows “210”, and states in Notes: “One meter (disconnected other 1), one furnace, one hot water tank, 8 or 9 years ago converted back to 210;
7. The old assessment card shows “2 family”, in 1970;
8. On June 29, 1994, Ruth Mansler wrote “Bill Weber, Village Assessor” concerning 260 & 254 Main St., and stated “this letter is to serve as a request for the 1995 tax role (sic. “roll”), that the above referenced property be listed as a single family unit”; on June 30, 1994, Bill Weber replied “Per your request in your letter of June 29, 1994 regarding property at 254 Main St. in the Village of Brockport, this property code will be changed to 210/single family and will be reflected in the 1995 tax roll for the village.”
9. William Weber, the Village assessor in 1994, was not called as a witness by the applicant;
10. The Anthony Sorce affidavit contradicts the Fred Montag testimony in that there is no reference in the Sorce affidavit to the foster children or requirement that the property be carried as a “210”, and Mrs. Mansler’s “cooperation” in achieving the re-classification;
11. The use of the property over the past decade as a single, and it’s vacancy for more than 9 months from January 1, 2002, to the present (all uncontradicted factually), conclusively negatives the argument for a double by reason of the discontinuance of the non-conforming use as a multiple [58-20(5) of Village Zoning Code], regardless of the history;
12. The Klafehn affirmation may be accurate historically, but does not have the specifics that both Glickman and Sorce swear to; moreover, even if the Klafehn affirmation is accurate historically, Mr. Miller nonetheless is not entitled to continue the alleged pre-existing non-conforming use as a double because of the more than 9-month discontinuance of that use (per the Village code);
13. Mr. Miller did indicate that the property use was “single” when he obtained his mortgage in ‘02; and the auction notices when he purchased designated the property a “single”;

**CONCLUSIONS OF LAW**

1. Lapse ordinances [58-20(5) of the Village code - 9 month discontinuance of nonconforming use] are proper exercises of the police powers of municipalities;
2. The Courts have upheld lapse ordinances of 6 months. See, for example, **Darcy -Vs.- Zoning Board of Appeals of the City of Rochester**, 185 AD2d 624 (4<sup>th</sup> Dept.1992);
3. The actual discontinuance of use as a double far exceeded the 9 month requirement, and was at least 9 years (from Mansler request for “210” classification), and probably as much as 11 years (Sorce affidavit - his rental of whole house from ‘92 on);



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

Leslie Ann Morelli  
Village Clerk  
Village of Brockport

**Area Variance Criteria** – Member Switzer read the following:

AREA VARIANCE TEST New York State criteria:

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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.

**NEW BUSINESS**

**Application #1 regarding 33 Maxon Street**

**Applicant Presentation:**

Rob Carges of 33 Maxon Street explained that he needs a larger garage since they only have a one-car garage. He reviewed plans for a 3-car garage with a second story. He has a 100-year-old house whose basement and attic are not always good for the storage needs of a modern American family. Therefore, he would like to use the second story of the proposed garage for storage. He showed pictures of neighboring 2 story barns and garages showing that this would be in keeping with the area including the Newman house and the Young house. The house is quite large, so a garage of this size would not be out of proportion.

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

**Public Comment:** None

**Continued Board discussion on application:**

Member Maziarz asked if the loft (2<sup>nd</sup> story) area would be used for recreation purposes at all. R. Carges said no, simply storage. Member Maziarz asked if it would be heated. R. Carges said no. It would cost too much to heat it. There will be electric. Chair Skoog-Harvey asked if there would be any residential use. R. Carges said no. He has been there 24 years and plans to stay a lot longer and wants the luxury of not having to scrape snow and ice off their cars in the winter. Chair Skoog-Harvey questioned the metal shed on the west side. R. Carges said he would be disposing of the metal shed. R. Carges said he has gotten permission from Newman and Costello to trim the trees and roots that overhang his property.

Member Switzer asked if this complies with the code regarding amount of yard used. S. Zarnstorff said it doesn't infringe on it. Member Bush asked if there were any setback issues. S. Zarnstorff said no.

Chair Skoog-Harvey thanked R. Carges for the detailed drawings and visuals. They are very helpful.

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

⇒ Member Bush moved, Member Manitsas seconded, unanimously carried that the application be approved for an area variance to appeal Sections 58-8A5 & 58-9A8 of the Village Code to allow a building height of 20 feet instead of 15 feet for the construction of a garage at 33 Maxon Street for 3 autos instead of 2 autos. This garage is to be used for storage only. A building permit will be required.

**Application #2 regarding 60 Centennial Avenue**

**Applicant Presentation:**

Nancy Moredock and architect Ali Yapicioglu were in attendance and reviewed the application for a vestibule and front porch. It is a memorial for N. Moredock's mother. It will include redoing the driveway and designing and planting new front landscaping. The driveway is to be split with ribbons of bricks and a stream of pebbles.

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N. Moredock said she has spoken with most of her neighbors and has received very positive feedback. She submitted letters of support from two neighbors: Walter Uhrman of 52 Centennial Avenue and Susan Hopkins of 64 Centennial Avenue.

A. Yapicioglu said he is pleased to design the project to commemorate the life of the applicant's mother.

They will save the existing tree. The rock area will collect roof water and transfer it to the garden. There will also be a new tree planted in the front yard. He submitted aerial photographs that show that many of the neighboring properties have 25 foot or less setbacks rather than the 30 feet required. The one side setback would be 4 feet instead of the 10 feet required. However, the new porch will line up with the corner. They will use reclaimed floorings and ceiling, and wood posts and railings. The roof will be cantilevered and will hover over the cars. There will be no impact to the east side since there will be no post. N. Moredock said this would also disguise the fact that they turned the garage into part of the house.

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

**Public Comment:** None (except the two letters of support placed on file)

**Continued Board discussion on application:**

Member Switzer asked if the porch would be open. A. Yapicioglu said yes and it will have railing on 2 sides. Chair Skoog-Harvey commented that that it is a visually pleasing project.

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

⇒ Member Switzer moved, Member Manitsas seconded, unanimously carried that the application be approved for an area variance to appeal Sections 58-9F1 & 58-9F3 of the Village Code to allow a front setback of 25 feet instead of 30 feet and a west side setback of 4 feet instead of 10 feet for the construction of a vestibule and porch at 60 Centennial Avenue. A building permit will be required.

**Application #3 regarding 480 East Avenue – withdrawn by applicant.**

**Application #4 regarding 51 Spring Street**

**Applicant Presentation:**

Kevin Manna, Christine Manna and Barry Howard were in attendance. K. Manna said when he bought the property he thought it was a legal 3-family. It was changed to a 2-family. There were problems with some tenants and the Brockport Police Department got involved. Those trouble tenants are now gone.

He said he had no idea that it was considered non-conforming. It wasn't until they had some parking issues and came to S. Zarnstorff to discuss expanding the parking and demolishing the shed that he learned it was non-conforming. Since then he has fixed the siding, installed new gutters and new soffits and plans to take the east side addition down and then re-side it and put a stairway up in the rear.

Chair Skoog-Harvey asked if he could provide some history on the property. K. Manna said Realtor R. Schleede had it listed as a 3-family home with only 1 furnace. The closing documents showed it as a 2-3 family.

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

**Public Comment:**

Valerie Johnston of 55-57 Spring Street said she applauds the recent improvements made. She has lived on Spring Street for 20 years and has seen some landlords better than others. She is glad it went from a 3-family to a 2-family, but really wants to see the property maintained better, consistently. She provided pictures of the property prior to the quick fix up done just last week. She said the previous tenants were irresponsible and were removed by the SWAT team. She said the “new” owners have had it for a year and did nothing to improve it until last week. She said she hopes the improvements continue.

**Continued Board discussion on application:**

Member Maziarz referred to the County records regarding the transfer of the property. In 1999 it was noted to be a single family home. Then in 2001 it was noted to be a single family home. Then in 2002 it was noted to be a 2 or 3 family home. She asked the applicants if they were aware of the inconsistencies. K. Manna said they bought and mortgaged the property as a two-family home. They never could have afforded the mortgage as a single-family home.

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Chair Skoog-Harvey referred to information from Village records that showed it as a two-family back in 1964. However, the zoning was single-family homes. She said they are here this evening to extend the nonconforming use as a two-family home. S. Zarnstorff cannot issue a certificate of occupancy without this step. She asked if they had any other history on the property. K. Manna said he tried to contact an elderly past owner but was unsuccessful. Chair Skoog-Harvey said the ZBA would need more information regarding the use of the house throughout history. S. Zarnstorff told K. Manna it is up to the applicant to seek out long-term neighbors to get statements. Chair Skoog-Harvey asked if they had received a list of documents that might be helpful. K. Manna said they had.

Member Switzer commented that one 20-year resident just spoke under public comment. K. Manna said V. Johnston was correct. The Police Department had to intervene with the removal of the bad tenants. Member Bush asked how long they have owned the property. K. Manna said a couple years. Member Manitsas commented that the pictures provided by the neighbor look pretty sad. B. Howard said the siding was damaged in this past ice storm and the insurance claim took several months. That’s why it went so long unrepaired.

Deputy Village Attorney F. Aloï noted that on an equalization form dated December 11, 1985, the “1,2,3 family residential” was checked off. He suggested they research and gain knowledge around that era and provide it to the ZBA before the next meeting.

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

⇒ Member Bush moved, Member Maziarz seconded, unanimously carried that the application for a continuance of a non-conforming use as a 2-family residence be tabled. The ZBA requested more information by November 17<sup>th</sup> for continued review at the Monday, November 24<sup>th</sup> meeting.

**Application #5 regarding 68 Market Street**

**Applicant Presentation:**

Matthew and Melissa Fuino were in attendance to review their application for a special permit for retail sales and food service for a cyber café called Hackers Hot Spot to be located at 68 Market Street in two storefronts of the plaza at the corner of Market Street and Park Avenue. There would be simple food service and computers at each table setting totaling 24 or fewer seats. They will charge for Internet service and the food, coffee, tea. They will offer tutoring and classes as well as wireless access for notebook p.c.’s and p.d.a.’s. M. Fuino reviewed the business plan and floor plan.

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

**Public Comment:** None

**Continued Board discussion on application:**

Member Switzer commented that he does not see where it fits under 58-11A11 that refers to a social club. He can see why the application would need Planning Board review and approval for a change of use, but why ZBA? S. Zarnstorff said at first glance it appeared to fall under social / recreational as a permitted use with a special permit from the ZBA. M. Fuino said he knows there was a cyber café that sold ice cream called Cool Scoops on Main Street a few years back. S. Zarnstorff said the special permit process allows the board to identify impacts on the site and safety issues, etc.

Chair Skoog-Harvey asked the hours of operation. M. Fuino said probably 8am to 10pm, maybe later

on Friday evenings. Chair Skoog-Harvey asked if the parking was sufficient. M. Fuino said the rest of the plaza includes 2 small hair salons and a swimwear shop. He feels the parking in the lot and on the street will be adequate. There is also a municipal lot nearby and he expects some foot traffic. Chair Skoog-Harvey asked the number of employees. M. Fuino said up to 5 as needed.

Member Manitsas asked how they charge for computer use. M. Fuino said they researched similar establishments, including one in Toronto and will start at \$5 per hour. Member Bush commented that the business plan shows some lucrative projections. M. Fuino said he has revised it to be a little more realistic. M. Fuino shared that S. Winner suggested pulling in the seasonal canal traffic. They plan to do so.

F. Aloï reviewed the code and commented that in terms of the necessity of a special permit. A section states “any use similar in character...”. This application is on the cusp and could go either way. It is not beyond the scope or authority of the ZBA and can be treated as a special permit. There are no adverse consequences to treat it as such.

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

⇒ Member Maziarz moved, Member Bush seconded, unanimously carried that the application be approved for a special permit per Section 58-11A8 or 11 of the Village Code to allow a cyber café with computers and food service at 68 Market Street. Planning Board approval and a building permit will be required.

**Adjournment:**

➔ Member Manitsas moved, Member Maziarz seconded, unanimously carried that the meeting be adjourned at 8:10pm.

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Leslie Ann Morelli, Village Clerk