

Zoning: Residential

MINUTES OF MEETING HELD February 24, 2003 continued.....page

Lot size: .10
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.

Application #1 - Applicant Presentation:

Chair Skoog-Harvey asked the first applicant to describe the application for the public. Information such as when the property was purchased, a history of the tenancy of each unit and any other details that will paint the picture will be of help. Deputy Attorney Alois asked that they share how many occupants reside in each unit and if there were certificates of occupancy when purchased. He stressed the importance of any historic information they might have. Benton and Sarah Hart shared that they are lifelong residents of Brockport. They provided Chair Skoog-Harvey with a packet of information on each of the three properties.

B. Hart said they purchased 94 State Street in 1996. They reside on the first floor and have kept the second floor a rental. It is a 2-family home. There was a third apartment in the basement, but this was discontinued. They purchased 86 State Street, next door to 94, in 2000 from Willis Knapp. It was a four-family home and they have continued to operate it as such. Then they purchased 58 Park Avenue. This had been developed into a double in the 1970’s. S. Hart said they have the best of interests for all three properties. They keep them well maintained and want to continue to do their part to have some control over the beautification of the Village.

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

Public Hearing:

Chair Skoog Harvey asked that any member of the public wishing to comment either for or against the application identify their name and address for the record, limit their remarks to the application at hand, and limit their comments to 3 minutes so everyone who wishes to speak has the opportunity to do so.

Anthony Perry said he resides in Sweden but pays Village taxes – commented that the applicant is not adding to their properties, therefore, should not have to go through this process. He said their non-conforming uses should be continued. He said he spoke with Chair Skoog-Harvey earlier and asked that the ZBA research this section of the Code. He tried to research it and in his opinion and that of former Building Inspector Weber, that this section of the code does not apply here. T. Perry said in 1984 the zoning known as T for multiple dwellings was taken off the books and changed to all single family residential. The non-conforming uses were continued. Multiple-family dwellings did not need ZBA approval to continue their use. He said ZBA should kick in either when someone wants to expand the non-conforming use or if they lost the non-conforming use from fire or non-use for more than 9 months. He further stated that Building/Zoning Officer Zarnstorff made people apply under the guise of needing to renew their certificates of occupancy, charged them \$150 and some applicants didn’t even know what they were applying for. He said the ZBA should not allow whoever is pushing these issues to do so. They can’t just start a new process. T. Perry said he has no problem with requiring Certificates of Occupancy, but that shouldn’t turn into this new process. He said the ZBA does not have the authority to grant such a continuance. T. Perry said the Village Clerk nor General Code Publishers could come up with a copy of the old code wording prior to 1996. However, three members of the current Village Board were on the Board at the time the amendment to this section of the code was adopted. He said the ZBA is obligated to research the original intent of the local law.

Mary Pat Musselman of 90 State Street – said she lives in between the two Hart residences on State Street. She said they take very nice care of their properties. However, she said she believes the Harts have expanded their living quarters to the upstairs and that there have been no tenants at 94 State Street in the past two years. Therefore, by the Code, this should lose its non-conforming status as a double. F. Alois said they would ask the applicant to address this by providing proof.

John Brugger of Holley Street said he didn’t catch Tony Perry’s address for the record. T. Perry said repeated that he resides in Sweden, but owns property and pays taxes in Brockport.

Bill Weber of 333 Main Street – referred to Section 36-11 H 1 and 2 “Renewal of certificate of occupancy”. He said this addresses multiple dwellings needing a c of o every 3 years. However, he said it does not refer to 58-20A1. He said that section deals with the extension of use beyond the physical footprint of the building. Therefore, these applications are not required.

Linda Borrayo of 155 Utica Street – said she is against this process and feels the \$150 application fee is unjust.

Henry Conradt of Churchville – said he owns property in Brockport and wondered if all multiple-dwelling properties will need to go through this and how often.

MINUTES OF MEETING HELD February 24, 2003 continued.....page 3

S. Zarnstorff said if the property is deemed non-conforming and the ZBA grants the continuance, the approval will run with the life of the property.

Karl Zimmer of 29 Fair Street – asked if the properties are pre-existing, non-conforming, why was this never done in the past.

F. Aloï said the provision of law has been there for a long time. He said he could not answer why it was or was not enforced in the past.

Tony Perry asked if they researched the law back to 1960. F. Aloï said yes and the language was the same. It would have been an issue in 1960 and is an issue now. It was just never addressed. T. Perry said the Village couldn't take away a properties use. It exists.

Bill Weber said the \$150 application fee is for an area variance. These applications are not for area variances. By definition, an area variance is dimensional in nature, such as extending the footprint or encroaching on setbacks.

Rich Miller of 52 State Street – questioned that this code really went back that far and suggested that if there are errors in the code or corrections to be made, the Village should do that. If it aint broke, don't fix it.

Jeremy Dunn of Ithaca – said he owns rental property here and had considered purchasing more, but is not so sure now. He said it is not the fault of the property owner if the past Building/Zoning Officer and Village Administration did not enforce this section of the Code. He said in some cases c of o's were given out in the past and designated the number of units. If this was not the case, the c of o's should not have been issued. He said he does not think it was a case of lack of enforcement as much as it was interpretation. He said property owners have finances at risk with these properties and shouldn't pay the price for government instability.

No further public comment on this application.

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

⇒ Member Manitsas moved, Member Switzer seconded, unanimously carried that the application be tabled until the next meeting, March 24th. Further written information or public comment will be accepted until then.

Application #2 – Applicant Presentation:

Laurel Stritzel said she owns 44 Smith Street. She distributed a packet of information to the Board. Included was a letter from her father, Richard Gross, the former owner who built this and a couple of other homes in the area in the early 1970's as doubles. In the early 1980's he gave a home to each of his children under a land contract. They have always been under the impression they were in compliance. They have always adhered to the occupancy code of family plus no more than 2 unrelated.

They thought it meant no college students. She said she is honestly not sure why she is here, although Scott Zarnstorff has been helpful in trying to explain it to her.

F. Aloï asked if the homes were built as doubles and if they were all configured the same way. L. Stritzel said yes and added that one unit is upstairs and one unit is downstairs. She said she has never had a lease downstairs and the upstairs has been family.

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

Public Hearing:

Tony Perry stressed again that the Village look into the intent of the code. This process began with a certificate of occupancy inspection letter. None of the applicants thought they were out of compliance. None of the applicants requested this. He further stated that the occupancy issue of 3 unrelated people is still in litigation, not set in law, and does not pertain to non-conforming uses. F. Aloï said that the law has been on the books since 1995. The provision of no more than 3 unrelated occupants was challenged and upheld by Supreme Court and the Appellate Division. How the pending litigation comes out will be left to the courts.

Rich Miller said he watched these properties being built many years ago. They were duplexes from the get go. Whether or not the property owner lives there or not should not have any bearing on it.

No further public comment on this application.

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

MINUTES OF MEETING HELD February 24, 2003 continued.....page 4

⇒ Member Manitsas moved, Member Switzer seconded, unanimously carried that the application be tabled until the next meeting, March 24th. Further written information or public comment will be accepted until then.

Application #3 – Applicant Presentation:

Robert Altman shared that he bought 26 Brockway Place from a former Brockport Fire Chief in 1975. His mother-in-law lived in Rochester and needed looking after, so it was made into a duplex. Willis Knapp was the official who granted approval. His mother-in-law was downstairs and his son and daughter-in-law were upstairs. They always adhered to the occupancy code of not more than 3 unrelated. His mother-in-law has since died and his wife has lost her eyesight after 47 years of teaching. He would like to be able to continue to use the house as a duplex. Brockway Place is a short, quiet street that doesn't go anywhere. He said they have always done what was needed to conform within the law. He said his son used to be a lawyer and is now a head judge for worker's compensation in Rochester, Buffalo and Syracuse.

S. Zarnstorff said R. Altman recalled going before the ZBA in the early 1970's. R. Altman said that is correct and all was okay as long as they adhered to the not more than 3 unrelated rule.

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

Public Hearing:

Tony Perry again stated that this section does not apply and that the 1996 and prior versions should be researched.

Bill Weber asked if the Board would enter into the record any information that is gathered outside the public hearing. F. Aloï said they would welcome anything relevant and are looking for as much information as they can get. B. Weber encouraged the Board to research the facts, look into old Planning Board and ZBA files and make an informed decision. B. Weber further asked if the two members that are not in attendance tonight can vote on these matters at the next meeting. F. Aloï said yes and said they will be provided with all of the same information.

Linda Borrayo again stated that this process and the fee are unjust.

Rich Miller said it was zoned T multiple as a two family, whether or not it is owner occupied.

Attorney Louis _____ was asked by Tony Perry to review this section of the code. He said he differs slightly with Attorney Aloï. The 1/1/60 ordinance announced that non-conforming uses might be continued. The critical secondary language was that a certificate of occupancy may be extended within limits. The 1960 code was more permissive than the 1996 code. He questioned the need for these applications and this process. He said he does not know what this process is trying to do. It is inconsistent with case law on non-conforming and is not constitutionally appropriate. It does not appear that there was any period where the uses were discontinued. Putting people through this rigmarole is inconsistent with both statutes. It is unclear as to why people are being subjected to a process they did not voluntarily submit to. He doubts the Board could terminate or discontinue the uses.

F. Aloï asked the attorney if he would consider submitting his position in writing. He said he would be happy to. F. Aloï stated that these applicants are not arbitrarily being asked to run the gauntlet. These have come in during the context of first time or renewal certificates of occupancy. S. Zarnstorff agreed. F. Aloï said there is a menu of issues that a Building/Zoning Officer looks at when considering a c of o including building code, occupancy, fire safety, legal uses, etc. The Village reads it as a validation process. It sounds like some in the audience read it as an addition to a structure.

T. Perry said there are sections in the code that establish how a c of o is issued. They have nothing to do with Section 58-20A1. T. Perry said he has had conversations with the Mayor and the Building/Zoning Officer that openly acknowledge the uses, zoning, and tax records are all over the place. He said that's not the property owners' problem.

F. Aloï said the NYS Court of Appeals defines a non-conforming use as detrimental to a zoning scheme, reasonable restriction and eventual elimination. He said the Village is trying to be fair to the property owners and the Village as a whole. Property values and neighborhood amenities are at risk. There is

no intent to restrict out residential landlords. F. Alois said they are trying to accommodate property owners who find themselves in a situation at the time of c of o. He referred to 1989 NY 2nd 4-11.

T. Perry asked if all non-conforming uses in the Village would be put through this. He said he has heard that number to be in excess of 400. He questioned if this is a moneymaking ploy and if they will have to be renewed every 3 years.

Laura Emerson of Holley Street thanked the Board and support staff for their professionalism and considering these issues.

MINUTES OF MEETING HELD February 24, 2003 continued.....page 5

No further public comment on this application.

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

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Chair Skoog-Harvey distributed a checklist of 26 items of information for consideration of applications concerning non-conforming uses. Member Switzer read the list.

NEXT MEETING: Monday, March 24, 2003 at 7:00pm

Adjournment:

→ Member Manitsas moved, Member Switzer seconded, unanimously carried that the meeting be adjourned at 8:25pm.

Leslie Ann Morelli, Village Clerk