

ZONING BOARD OF APPEALS

Draft Minutes

Thursday, April 28, 2016

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Lee Hyatt, Deborah Kerr-Rosenbeck, Sandra Licata, Paul McCarthy*

Members absent: Nicholas Harris (Alt.), Emma Morrill

Others present: Meg Chilano – Clerk, Doug Randall – Code Enforcement Officer

I. Roll Call

Roll call of the members was conducted. Four members were present and Chairman McCarthy declared a quorum.

II. Call to Order

Mr. McCarthy called the meeting to order at 6:04 pm.

III. Pledge of Allegiance

IV. Approval of Minutes

MOTION: Ms. Kerr-Rosenbeck moved to approve the minutes as written; the motion was seconded by Mr. McCarthy, and on roll call, was approved 4-0.

RESULT: Approval of March 24, 2016 minutes.

V. Zoning Board of Appeals statement

Mr. McCarthy explained the role of the Zoning Board of Appeals and the procedures it follows.

VI. Variance Requests

- A. Area Variance: Placement of a 6' tall wooden fence parallel to the north property line within 15' of the front property line

Address: *11 South Spruce Street*

Applicant: Curt Stechenfinger, owner

- Actions:
1. Review application
 2. Public hearing and discussion
 3. Action by the board

1. Review Application

Dr. Licata, acting as Vice Chair, read the proposal summary for the board. Mr. McCarthy reported that the Genesee County Planning Board recommended approval of this variance.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:09 pm.

Mr. McCarthy asked the applicant if he wished to speak about the project. Mr. Stechenfinger explained that he and his wife take in foster children and they wish to have a 6' fence for the safety of the children. He said that they wish to prevent someone (possibly a parent) from reaching over the fence to pull a child up and over the fence. Mr. Stechenfinger told the board that there is a "predator" living across the street from whom he wishes to protect the children.

Vicky Berry, 13 South Spruce Street, spoke against the project. She said that the fence will obstruct her view.

Mr. Hyatt asked Mr. Stechenfinger how many foster children they have at any one time and he responded 2-3.

Mr. Hyatt asked Mr. Stechenfinger where he intends to park if the fence is installed across the driveway. Mr. Stechenfinger answered that the fence will have a gate and he will park in the driveway.

Mr. McCarthy read a letter from John Armstead, 1 Morse Place, into the minutes. Mr. Armstead opposed the fence because he does not like the view.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:17 pm.

Ms. Kerr-Rosenbeck asked about the purpose behind the regulation which says, "Fences and hedges in a Residential District shall not exceed three feet above ground level when located within fifteen feet of the street by boundary line." Mr. Randall explained that there is no indication in the Code of the reasoning behind the regulation, but he assumed that the reason concerns issues of safety.

Mr. McCarthy said that he would not expect safety problems since there is no through traffic on this street. Ms. Kerr-Rosenbeck agreed and pointed out that no neighbors had raised questions of safety.

Dr. Licata asked Mr. Stechenfinger if he thought someone would be able to reach a child over the fence if the fence were 4' in height. He responded that it would depend on the height of the child.

Dr. Licata asked if he would be opposed to a shorter fence and Mr. Stechenfinger said he was not sure 4' would be high enough.

Mr. Hyatt asked if Mr. Stechenfinger wanted to hide his yard and he replied that he just wants to keep the children safe. Mr. Hyatt clarified that Mr. Stechenfinger wants the fence in order to protect the children, not for privacy.

Mr. Hyatt asked how many houses are on the street. Mr. Stechenfinger said there are two others. Mr. Hyatt asked if his is the last house and Mr. Stechenfinger said there is a house on the corner past his. Mr. Randall referred the board to the aerial photo included in the application.

3. Action by the Board

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: discussion of possible change to shorter fence
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. Hyatt moved to approve the variance for the placement of the 6' tall fence. There was no second.

MOTION: Ms. Kerr-Rosenbeck moved to approve the variance for the placement of a 4' tall fence with 60 days to obtain the permit. The motion was seconded by Mr. McCarthy, and on roll call, was tied 2-2.

Votes in favor: 2 (Deborah Kerr-Rosenbeck, Paul McCarthy)

Votes opposed: 2 (Lee Hyatt, Sandra Licata)

Votes abstained: 0

RESULT: Tie vote.

MOTION: Dr. Licata moved to approve the variance for the placement of a 5' tall fence with 60 days to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance with the condition that the fence is 5' in height

- B. Area Variance: Construction of a 7' x 20' pressure treated wood frame deck between the dwelling and detached garage. Portions of the deck will be located within the front and side yard clear spaces

Address: 23 Madison Avenue

Applicant: Adam Figlow, owner

- Actions:
1. Review application
 2. Public hearing and discussion
 3. Action by the board

1. Review Application

Dr. Licata read the summary of the proposal.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:33 pm.

Mr. Figlow explained that his porch, which is composed of block and stone, is falling apart. He said that he would like the new porch to extend away from the house enough to allow for a small sitting area.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:35 pm.

Ms. Kerr-Rosenbeck said she believes that the variance request is reasonable.

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

3. Action by the Board

MOTION: Dr. Licata moved to approve the application with 60 days to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance

- C. Area Variance: Construction of a pressure treated wood frame deck in the rear yard within the rear yard clear space

Address: 5 Verona Avenue

Applicant: Jeff Shelnut, contractor for the owner

- Actions:
1. Review application
 2. Public hearing and discussion
 3. Action by the board

1. Review Application

Dr. Licata read the summary of the proposal. Mr. McCarthy reported that the Genesee County Planning Board recommended approval.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:38 pm.

Mr. Shelnut said his client's porch is falling apart and he wishes to replace it with a bigger L-shaped deck.

Mr. McCarthy noted that the deck will be even with the house on one side.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:40 pm.

3. Action by the Board

Mr. McCarthy went through the list of supporting criteria for the variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Ms. Kerr-Rosenbeck moved to approve the application with 60 days to obtain the permit. The motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance

VII. New Business: none

VIII. Setting of Next Meeting: May 26, 2016

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:43 pm; Dr. Licata seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Clerk