

# ZONING BOARD OF APPEALS

Thursday, April 28, 2016

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

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## AGENDA

- I. Roll Call
- II. Call to order
- III. Pledge of Allegiance
- IV. Approval of March 24, 2015 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

**A. Request #1**

*11 South Spruce Street*

Curt Stechenfinger, owner

Area Variance:

Placement of a 6' tall wooden fence parallel to the north property line within 15' of the front property line

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

**B. Request #2**

*23 Madison Avenue*

Adam Figlow, owner

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

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

**C. Request #3**

*5 Verona Avenue*

Jeff Shelnut, contractor for the owner

Area Variance:

Construction of a pressure treated wood frame deck in the rear yard within the rear yard clear space

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

VII. New Business: approval of the 2016 meeting schedule

VIII. Setting of Next Meeting: May 26, 2016

IX. Adjournment

# **ZONING BOARD OF APPEALS**

## ***Draft Minutes***

**Thursday, March 24, 2016**

**6:00 pm**

**Council Board Room**

**One Batavia City Centre, Batavia, NY**

Members present: *Deborah Kerr-Rosenbeck, Sandra Licata, Paul McCarthy, Emma Morrill*

Others present: Meg Chilano – Clerk, Ron Panek – Code Enforcement Office, Rosemary Christian - Councilwoman

### **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 6:03 pm.

### **III. Pledge of Allegiance**

### **IV. Approval of Minutes**

**MOTION:** Dr. Licata moved to approve the minutes as written; the motion was seconded by Ms. Morrill, and on roll call, was approved 3-0-1.

Votes in favor: 3 (Sandra Licata, Paul McCarthy, Emma Morrill)

Votes opposed: 0

Votes abstained: 1 (Deborah Kerr-Rosenbeck)

**RESULT: Approval of November 19, 2015 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 10' x 12' one story wood frame utility shed in the side (east) yard of this corner lot

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 6:08 pm.**

Mr. McCarthy asked the applicant if he wished to speak about the project. Mr. Stechenfinger declined.

Jerry Freeman, 15 South Spruce Street, spoke against the project. Mr. Freeman brought photographs to show the board. However, as Mr. Panek explained, the photographs depict a fence which will be the subject of a future variance and does not pertain to the current proposal.

Mr. Freeman said that the shed will block his view and that he believes it needs to be placed 15' from the corner, which is not where Mr. Stechenfinger has requested to place it. Mr. Panek stated that the shed needs to be placed 5' from all property lines. Mr. Stechenfinger pointed out that he has conformed to those requirements.

Dr. Licata asked how wide the property is between the fence and the end of the property. Mr. Panek referred the board to the survey of the property contained in the packet.

Mr. McCarthy asked how tall the shed is. Mr. Stechenfinger answered that it is about 7' tall. Mr. McCarthy said that he believes the main issue with the view upon backing out will be the fence and not the shed.

Mr. McCarthy determined that there was no correspondence or calls from neighbors.

**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 6:15 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; not much room on the lot
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

**MOTION:** Mr. McCarthy moved to approve the application with 60 days to obtain the permit. The motion was seconded by Ms. Morrill, and on roll call, was approved 4-0.

**RESULT: Approval of Area Variance**



- B. Area Variance: Construction of a wooden fence around the perimeter of the rear yard with the framing members of the fence facing the neighboring properties

Address: *153 Harvester Avenue*

Applicant: Patricia Diaz, 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. She also read the recommendation of the Genesee County Planning Board to approve the proposal with the modification that the applicant obtain a letter of consent from the neighbor to the south.

### 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 6:17 pm.**

Ms. Diaz explained that she was unaware that the Batavia Municipal Coded specifies that the finished side of a fence must face the adjacent neighbors. She said she thought that she only needed approval from her neighbors, which she indicated that she did have, in order to install the fence with the finished side facing inward.

The board spoke with Mark Rich, owner of 155 Harvester, via telephone. He stated that he did not object to the finished side facing inward.

**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 6:25 pm.**

### 3. Action by the Board

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

**RESULT: Approval of Area Variance**

- C. Use Variance: Creation of 12 one- and/or two-bedroom dwelling units on the first floor of this existing commercial building located within the Central Commercial District

Address: *41-43 Liberty Street Rear and 45 Liberty Street Rear*

Applicant: Victor Gautieri, agent for Ellicott Square Plaza, LLC

- 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. She also read the recommendation from the Genesee County Planning Board to disapprove the proposal for the following reason:

Under the criteria set forth in NYS City Law, this proposal does not appear to meet the thresholds for the granting of a use variance. The hardship appears to be self-created as the parcel was purchased by the applicant's family in 1978 after the 1962 Zoning Law was in place. At least since the 1962 law, the property has been zoned in such a way that does not allow for residential uses. Under the law, the applicant must meet all four use variance tests in order for the Zoning Board of Appeals to grant the use variance. Possible inappropriate application of use variances may be precedent setting and pose significant impacts upon the development policies/processes of the City.

Mr. McCarthy reported that the City of Batavia Planning and Development Committee also recommended disapproval. The PDC stated that their reasons are because City Code prohibits residential uses in a C-3 district, and approval of this project would set an undesirable precedent.

## **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 6:30 pm.**

Victor Gautieri spoke on behalf of the project. Mr. Gautieri said that he has not been able to rent any portions of the facility, which have been recently vacated. He said that the property has proven to be undesirable as office and retail space and that he has been told that the property is difficult to find because it is located too far back from the street.

Mr. Gautieri told the board that the property is creating a deficit of \$125,000 per year, and that according to his calculations, if the project were completed a profit of about \$33,000 per year could be expected.

Mr. Gautieri said that constructing apartments on the second floor would require elevators, stairwells, and structural changes that are not economically feasible.

Ms. Kerr-Rosenbeck asked if Mr. Gautieri's project consists of subsidized housing. He replied that he is planning on market rate apartments.

Ms. Kerr-Rosenbeck asked if Mr. Gautieri is looking for incentives or tax abatement. He answered that under the law they are allowed certain tax abatements that are applicable to anyone. Mr. Gautieri referred to two particular programs.

Ms. Kerr-Rosenbeck asked if Mr. Gautieri would be looking for HUD approvals and he responded that there would be no subsidized housing of any kind.

Ms. Morrill asked for how long the property has been vacant. Mr. Gautieri said that of the units which are vacant, the vacancies occurred over a period of time beginning about five years ago. One unit was vacated as recently as three months ago.

Mr. Vito Gautieri noted that they have advertised the availability of space but have received no response. He added that he realizes they created the situation but that they have no control over it because of the location.

Rose Mary Christian, Councilwoman for the Sixth Ward, stated that she realizes the Code does not allow for this type of project, but that she has no objection to the project itself. She said that some of the neighbors have spoken to her in support of the project.

Dr. Licata asked Councilwoman Christian her opinion of the Planning and Development Committee's recommendation that approval could set an unwelcome precedent. Councilwoman Christian responded that she could not speak for the PDC, not having been a part of their decision-making process.

Ms. Morrill asked about the process of changing a zoning district and Mr. McCarthy pointed out that re-zoning is not the responsibility of the ZBA. Mr. Panek explained that when the zoning of a parcel is changed, generally speaking, it changes to whatever zone the parcel is adjacent to. Mr. Panek said that a parcel in the middle of a commercial district would typically not be changed to a residential zone because it would be considered spot zoning.

Ms. Chilano reported a call from David Fasano, of Papa Pasquale's Italian Eatery, stating that he has no objection to the project.

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

**RESULT: Public hearing closed at 6:45 pm.**

Ms. Kerr-Rosenbeck said that she didn't think approval of the variance would set a precedent.

Ms. Morrill asked for an explanation of how the building would be converted into apartments. Mr. Gautieri answered that the footprint of the building would stay the same; all changes would be internal.

Ms. Morrill pointed out that there quite a number of vacant apartments throughout Batavia and asked why Mr. Gautieri believed his apartments would not also remain vacant. He responded that studies show there is a need for apartments in downtown Batavia. Ms. Morrill stated that the studies refer to high end apartments. Mr. Gautieri said he believed that

there was a study by LaBella showing the need for apartments at various economic levels and that indicators show that they will have no trouble renting the apartments.

Councilwoman Christian said that Savarino will be developing the Della Penna property along Ellicott Street, and that there will be a lot of development spurred by the STAMP project and a need for apartments.

Ms. Kerr-Rosenbeck commented that if Mr. Gautieri cannot make money on the property, he could stop paying his taxes and let the property go to ruin. Ms. Morrill stated that that is not the board's issue.

Mr. McCarthy and Ms. Morrill affirmed that they do not like the idea of residential construction in a commercial zone and the possibility for setting a precedent. Mr. McCarthy said that such an action could conceivably result in a worst case scenario with residences on downtown Main Street or in the Mall.

Mr. McCarthy asked if there was any more discussion; there was none.

### **3. Action by the Board**

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

- Reasonable Return: property is losing money
- Unique Hardship: located away from the street
- Essential Character of the Neighborhood: the essential character of the neighborhood is commercial
- Not Self-Created: circumstance of the economy

**MOTION:** Mr. McCarthy moved to deny the application; the motion was seconded by Dr. Licata, and on roll call, was approved 3-1-0.

Votes in favor: 3 (Sandra Licata Paul McCarthy, Emma Morrill)

Votes opposed: 1 (Deborah Kerr-Rosenbeck)

Votes abstained: 0

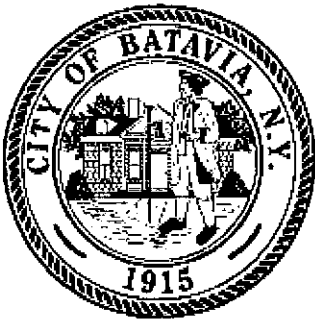
**RESULT: Disapproval of Use Variance**

### **VII. New Business: none**

### **VIII. Setting of Next Meeting: April 28, 2016**

### **IX. Adjournment**

Mr. McCarthy moved to adjourn the meeting at 6:57 pm; Dr. Licata seconded. All voted in favor.



*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020 (585)-345-6345 (585)-345-1385 (fax)

To: Genesee County Planning  
Zoning Board of Appeals

From: Doug Randall, Code Enforcement Officer

Date: 4/1/16

Re: 11 South Spruce St.  
Tax Parcel No.

Zoning Use District: R-3

The applicant, Curt Stechenfinger (owner), has filed an application to place a 6' tall wooden fence parallel to the north property line within 15' of the front property line.

**Note:** This is a type II action as defined by Environmental Conservation Law and is not subject to review under SEQR 6 NYCRR Part 617.5 (c) (10).

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of the right of way of a state road or highway.

**Zoning Board of Appeals-** Pursuant to BMC Sec. 190-49 of the zoning ordinance, the ZBA shall review and act on required variances.

Required variances- Area

- 1) **BMC 190-33 D.** Fences located in residential districts shall not exceed 3' in height above ground when located within 15' of a property line abutting a street.

**SEND OR DELIVER TO:**  
GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) 344-2580 Ext. 5467

**DEPARTMENT USE ONLY:**  
GCDP Referral # \_\_\_\_\_



**\* GENESEE COUNTY \*  
PLANNING BOARD REFERRAL**

Required According to:  
**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**  
(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**

Board(s) Zoning Board of Appeals

Address One Batavia City Centre

City, State, Zip Batavia, NY 14020

Phone (585) 345 - 6347 Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**

Name Curt Stechenfinger

Address 11 South Spruce St.

City, State, Zip Batavia, NY 14020

Phone (716) 868 - 7741 Ext. \_\_\_\_\_ Email \_\_\_\_\_

MUNICIPALITY: ☒ City ☐ Town ☐ Village of Batavia

**3. TYPE OF REFERRAL:** (Check all applicable items)

- ☒ Area Variance  
☐ Use Variance  
☐ Special Use Permit  
☐ Site Plan Review

- ☐ Zoning Map Change  
☐ Zoning Text Amendments  
☐ Comprehensive Plan/Update  
☐ Other: \_\_\_\_\_

- Subdivision Proposal  
☐ Preliminary  
☐ Final

**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**

A. Full Address 11 South Spruce

B. Nearest intersecting road Morse Pl.

C. Tax Map Parcel Number 84.060-1-9

D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_

E. Present zoning district(s) R-3

**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?

☒ NO ☐ YES If yes, give date and action taken \_\_\_\_\_

B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law  
BMC 190-33 D.

C. Please describe the nature of this request Approval to place a 6' tall wooden fence along the north property line within 15' of the front property line.

**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral

- ☒ Local application  
☒ Site plan  
☐ Subdivision plot plans  
☐ SEQR forms

- ☐ Zoning text/map amendments  
☐ Location map or tax maps  
☐ Elevation drawings  
☐ Agricultural data statement

- ☐ New or updated comprehensive plan  
☒ Photos  
☒ Other: Cover letter

If possible, please provide a reduced version or digital copy of any supporting documentation larger than 11 x 17.  
Email to [planning@co.genesee.ny.us](mailto:planning@co.genesee.ny.us)

**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)

Name Douglas Randall Title Code Enf. Officer Phone (585) 345 - 6327 Ext. \_\_\_\_\_

Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020 Email drrandall@batavianewyork.com



**GENESEE COUNTY PLANNING BOARD  
ZONING REFERRALS NOTICE OF FINAL  
ACTION**

GCDP Referral ID **C-07-BAT-4-16**  
Review Date **4/14/2016**

Municipality  
Board Name  
Applicant's Name

**BATAVIA, C.**  
**ZONING BOARD OF APPEALS**  
**Curt Stechenfinger**

Referral Type  
Variance(s)  
Description:

**Area Variance(s)**  
**Area Variance to place a 6 ft. fence for a single-family home.**  
**Fence height in front yards within 15 ft. of property line**  
**Maximum allowed: 3 ft.**  
**Proposed: 6 ft.**

Location  
Zoning District

**11 South Spruce St., Batavia**  
**Residential (R-3) District**

**PLANNING BOARD DECISION**

**APPROVAL**

**EXPLANATION:**

The height of the proposed fence should pose no significant county-wide or inter-community impact. The height should not pose visibility issues for drivers.

Director

April 14, 2016

Date

If the County Planning Board disapproved the proposal, or recommends modifications, the referring agency shall NOT act contrary to the recommendations except by a vote of a majority plus one of all the members and after the adoption of a resolution setting forth the reasons for such contrary action. Within 30 days after the final action the referring agency shall file a report of final action with the County Planning Board. An action taken form is provided for this purpose and may be obtained from the Genesee County Planning Department.



C-07-BAT-4-16







CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

Application No.: 16-05  
Hearing Date/Time: \_\_\_\_\_

APPLICANT: Curt Stechenfinger  
Name \_\_\_\_\_ E-Mail Address \_\_\_\_\_  
Street Address 11 South Spruce St Phone 716-868-7741  
City Batavia State N.Y. Fax 14020  
Zip \_\_\_\_\_

STATUS: ☒ Owner \_\_\_\_\_ Agent for Owner \_\_\_\_\_ Contractor \_\_\_\_\_

OWNER: Same as above.  
Name \_\_\_\_\_ E-Mail Address \_\_\_\_\_  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

LOCATION OF PROPERTY: \_\_\_\_\_

DETAILED DESCRIPTION OF REQUEST: Would like a 6ft Fence around back side street property to protect children that are put into our care.

Applicant must be present at the hearing date. Failure to do so will result in the application being discarded. It is the responsibility of the applicant to present evidence sufficient to satisfy the Zoning Board of Appeals that the benefit of the applicant does not outweigh the health, safety, morals, aesthetics and general welfare of the community or neighborhood.

Curt Stechenfinger 3/25/16  
Applicant's Signature Date

Owner's Signature \_\_\_\_\_ Date \_\_\_\_\_

To be Filled out by Zoning Officer

TAX PARCEL: 84.060-1-9 ZONING DISTRICT: R-3 FLOOD PLAIN: \_\_\_\_\_

TYPE OF APPEAL: ☒ Area Variance ☐ Use Variance ☐ Interpretation ☐ Decision of Planning Committee  
FEE: ☒ \$50 (One or Two Family Use) ☐ \$100 (All other Uses)

Provision(s) of the Zoning Ordinance Appealed: BMC 190-33 D MAR 29 2016

Fences located in residential districts shall not exceed 3' above grade when located within 15' of the street line.

DATE: 3/25/16APPLICANT NAME & PHONE: Curt Stechenfinger 716-868-7741**Project Location and Information**

Permit #: \_\_\_\_\_

Fee: \_\_\_\_\_

Address of Project: 11 South Spruce Street

Owner &amp; Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**Project Type/Describe Work**

Estimated cost of work: \_\_\_\_\_

Start date: \_\_\_\_\_

Describe project:

Put up 6' Fence around yard**Contractor Information** – Insurance certificates (liability & workers comp) required being on file**GENERAL**

Name/Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**PLUMBING** (City of Batavia Licensed Plumber Required)

Name/Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**HEATING**

Name/Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**ELECTRICAL** (Third Party Electrical Inspection Required)

Name/Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**FOR OFFICE USE ONLY**

Zoning District: \_\_\_\_\_ Flood Zone: \_\_\_\_\_ Corner Lot: \_\_\_\_\_ Historic District/Landmark: \_\_\_\_\_

Zoning Review: \_\_\_\_\_ Variance Required: \_\_\_\_\_ Site Plan Review: \_\_\_\_\_ Other: \_\_\_\_\_

National Grid Sign Off (Pools): \_\_\_\_\_

Lot Size: \_\_\_\_\_

Existing Use: \_\_\_\_\_

NYS Building Code Occupancy Class: \_\_\_\_\_

Proposed Use: \_\_\_\_\_

NYS Building Code Occupancy Class: \_\_\_\_\_

## Criteria to Support Area Variance

In making its determination, the zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, moral, aesthetics and welfare of the neighborhood or community. The Zoning Board of Appeals shall consider the following test, as per §81-b of the General City Law when making its determination:

Explain **how** the proposal conforms to EACH of the following requirements:

1. **Undesirable Change in neighborhood Character.** The granting of the variance will not produce an undesirable change in the neighborhood or a detriment to nearby properties.

NO

2. **Alternative Cure Sought.** There are no other means feasible for the applicant to pursue that would result in the difficulty being avoided or remedied, other than the granting of the area variance.

NO

3. **Substantiality.** The requested area variance is not substantial.

NO

4. **Adverse Effect or Impact.** The requested variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or community.

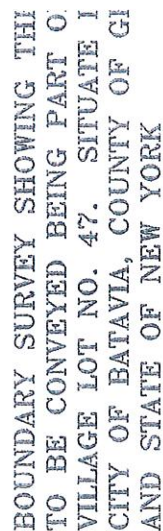
NO

5. **Not Self-Created.** The alleged difficulty existed at the time of the enactment of the provision or was created by natural force or governmental action, and was not the result of any action by the owner or the predecessors in title.

NO

Ant Stechenfinger  
Applicant's Signature

3/25/16  
Date



NOVEMBER 13, 2014 SCALE  
JOB NO. 14-339

RESURVEYED &amp; REVISED - - SEPTEMBER 2, 2015

09/02/95 *Accepted*  
DATE N.Y.S.P.R.I.S. I

"UNAUTHORIZED ALTERATION OR ADDITIONS TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 17209, SUB-DIVISION 2. OF THE NEW YORK STATE EDUCATION LAW."

ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S EMBOSSED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES."

CERTIFICATIONS INDICATED HEREON SIGNIFY THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODE OF PRACTICE FOR LAND SURVEYORS ADOPTED BY THE NEW YORK STATE SURVEYORS' ASSOCIATION. THE SURVEYOR HAS SAID CERTIFICATION SHALL RUN ONLY TO THE PERSON FOR WHOM THE SURVEY IS PREPARED, AND ON HIS/HER BEHALF TO THE TITLE COMPANY, IF ANY, AND TO THE AGENCIES AND INDIVIDUALS OF WHOM THE SURVEYOR HAS RECEIVED THE ORDER FOR THE SURVEY. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS."

LEGEND  
 ● EXISTING IRON STAKE

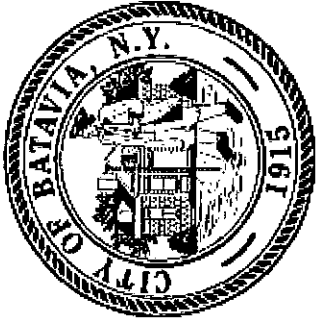
REFERENCE  
LIBER 755 OF DEEDS, PAGE 325





USGS The National Map: National Boundaries Dataset, 3D Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset U.S. Census Bureau  
TIGERLine





*City of Batavia*  
**Department of Public Works**  
**Bureau of Inspections**  

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One Batavia City Center, Batavia, New York 14020    (585)-345-6345    (585)-345-1385 (fax)

To:            Zoning Board of Appeals

From:        Doug Randall, Code Enforcement Officer

Date:         4/1/16

Re:            **23 Madison Ave.**  
                Tax Parcel No. 84.046-1-4

Zoning Use District: R-2

The applicant, Adam Figlow (owner) has filed an application to place 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.

**Note: This is a type II action as defined by Environmental Conservation Law and is not subject to review under SEQR 6 NYCRR Part 617.5 (c) (10).**

**Review and Approval Procedures:**

**Zoning Board of Appeals-** Pursuant to BMC Sec. 190-49 of the zoning ordinance, the ZBA shall review and act on required variances.

| Required variances- | Area       | BMC Sec. 190-29 A. and Schedule I |                 |                   |
|---------------------|------------|-----------------------------------|-----------------|-------------------|
|                     |            | <u>Required</u>                   | <u>Proposed</u> | <u>Difference</u> |
|                     | Front yard | 20'                               | 14.21'          | 5.79'             |
|                     | Side yard  | 8'                                | 6.08'           | 1.92'             |



**CITY OF BATAVIA**  
**APPLICATION TO THE ZONING BOARD OF APPEALS**

APR 14 2016

Application No.: 16-06

Hearing Date/Time: \_\_\_\_\_

APPLICANT: Adam Figlow ATFiglow@yahoo.com

Name Adam Figlow E-Mail Address ATFiglow@yahoo.com  
Street Address 23 Madison Ave Phone (585) 813-5774  
City Batavia State New York Zip 14020

STATUS: ☒ Owner \_\_\_\_\_ Agent for Owner \_\_\_\_\_ Contractor \_\_\_\_\_

OWNER: Adam Figlow ATFiglow@yahoo.com  
Name Adam Figlow E-Mail Address ATFiglow@yahoo.com  
Street Address 23 Madison Ave Phone (585) 813-5774  
City Batavia State New York Zip 14020

LOCATION OF PROPERTY: Corner of Adams and Madison Ave

DETAILED DESCRIPTION OF REQUEST: Replace side Porch and Rebuild  
new Porch

Applicant must be present at the hearing date. Failure to do so will result in the application being discarded. It is the responsibility of the applicant to present evidence sufficient to satisfy the Zoning Board of Appeals that the benefit of the applicant does not outweigh the health, safety, morals, aesthetics and general welfare of the community or neighborhood.

Adam Figlow 3/31/16  
Applicant's Signature Date

Adam Figlow 3/31/16  
Owner's Signature Date

To be Filled out by Zoning Officer

TAX PARCEL: 84.046-1-4 ZONING DISTRICT: R-2 FLOOD PLAIN: AE

TYPE OF APPEAL: ☒ Area Variance FEE: ☒ \$50 (One or Two Family Use)  
☐ Use Variance ☐ \$100 (All other Uses)  
☐ Interpretation  
☐ Decision of Planning Committee

Provision(s) of the Zoning Ordinance Appealed: BMC 190-29 A. and Sched. I  
Frontyard setback is 20'; Sideyard Set back is 8'.

## Criteria to Support Area Variance

In making its determination, the zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, moral, aesthetics and welfare of the neighborhood or community. The Zoning Board of Appeals shall consider the following test, as per §81-b of the General City Law when making its determination:

Explain how the proposal conforms to EACH of the following requirements:

1. **Undesirable Change in neighborhood Character.** The granting of the variance will not produce an undesirable change in the neighborhood or a detriment to nearby properties.

NO -

2. **Alternative Cure Sought.** There are no other means feasible for the applicant to pursue that would result in the difficulty being avoided or remedied, other than the granting of the area variance.

Porch is Facing Apartment Unsafe And would like to enlarge so family could enjoy sitting outside.

3. **Substantiality.** The requested area variance is not substantial. NO -

4. **Adverse Effect or Impact.** The requested variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or community.

NO -

5. **Not Self-Created.** The alleged difficulty existed at the time of the enactment of the provision or was created by natural force or governmental action, and was not the result of any action by the owner or the predecessors in title. NO -



Applicant's Signature

3/31/14

Date



DATE: 3/30/14APPLICANT NAME & PHONE: (585) 813 5774Project Location and Information

Permit #: \_\_\_\_\_ Fee: \_\_\_\_\_

Address of Project: 23 Madison AveOwner & Address: 23 Madison AvePhone: (585) 813 5774Project Type/Describe WorkEstimated cost of work: \$1200 Start date: ASAP

Describe project:

Replacing Side Porch And ReBuilding new wooden PorchContractor Information – Insurance certificates (liability & workers comp) required being on fileGENERALName/Address: 23 Madison AvePhone: (585) 813 5774PLUMBING (City of Batavia Licensed Plumber Required)

Name/Address: \_\_\_\_\_

Phone: \_\_\_\_\_

HEATING

Name/Address: \_\_\_\_\_

Phone: \_\_\_\_\_

ELECTRICAL (Third Party Electrical Inspection Required)

Name/Address: \_\_\_\_\_

Phone: \_\_\_\_\_

FOR OFFICE USE ONLY

Zoning District: \_\_\_\_\_ Flood Zone: \_\_\_\_\_ Corner Lot: \_\_\_\_\_ Historic District/Landmark: \_\_\_\_\_

Zoning Review: \_\_\_\_\_ Variance Required: \_\_\_\_\_ Site Plan Review: \_\_\_\_\_ Other: \_\_\_\_\_

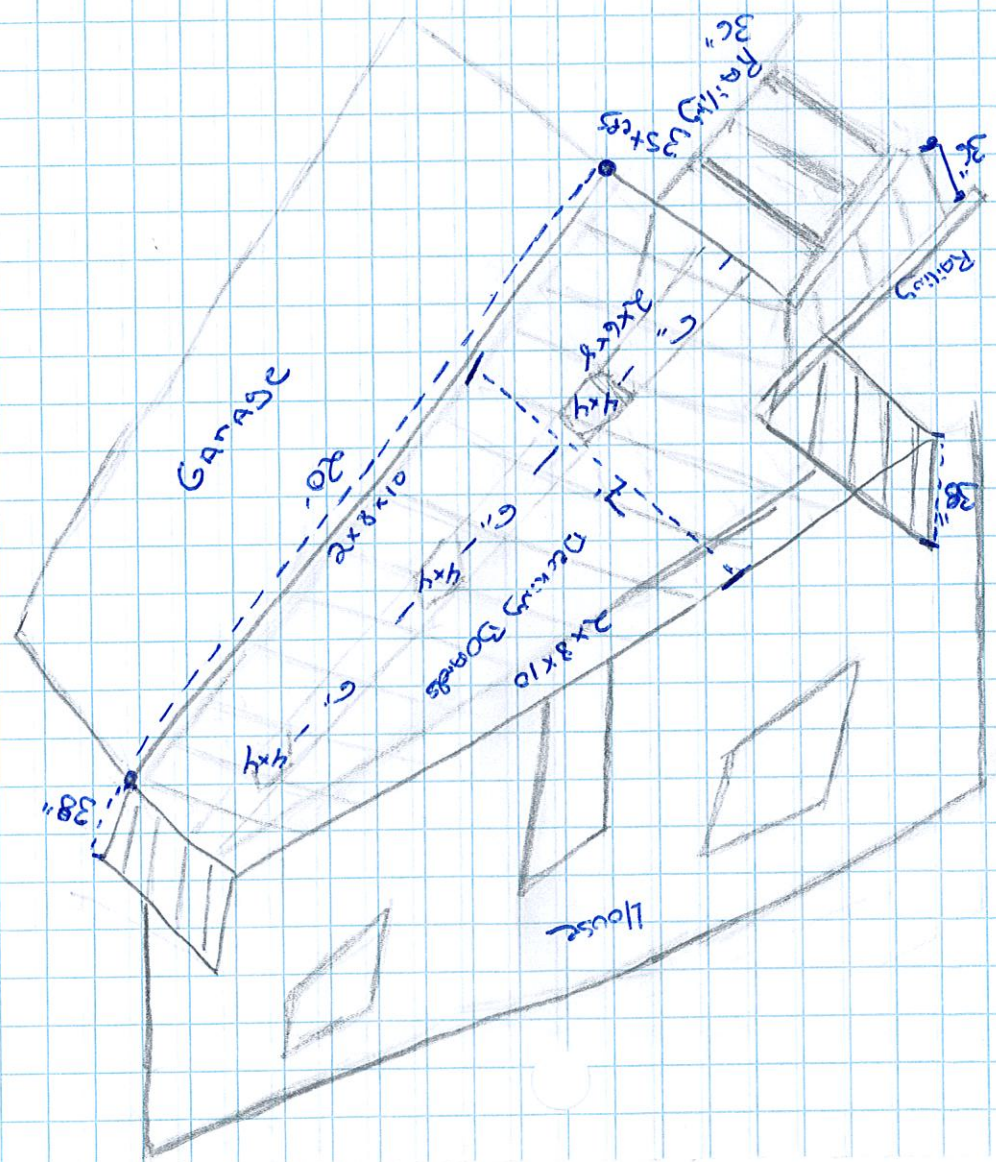
National Grid Sign Off (Pools): \_\_\_\_\_ Lot Size: \_\_\_\_\_

Existing Use: \_\_\_\_\_

NYS Building Code Occupancy Class: \_\_\_\_\_

Proposed Use: \_\_\_\_\_

NYS Building Code Occupancy Class: \_\_\_\_\_



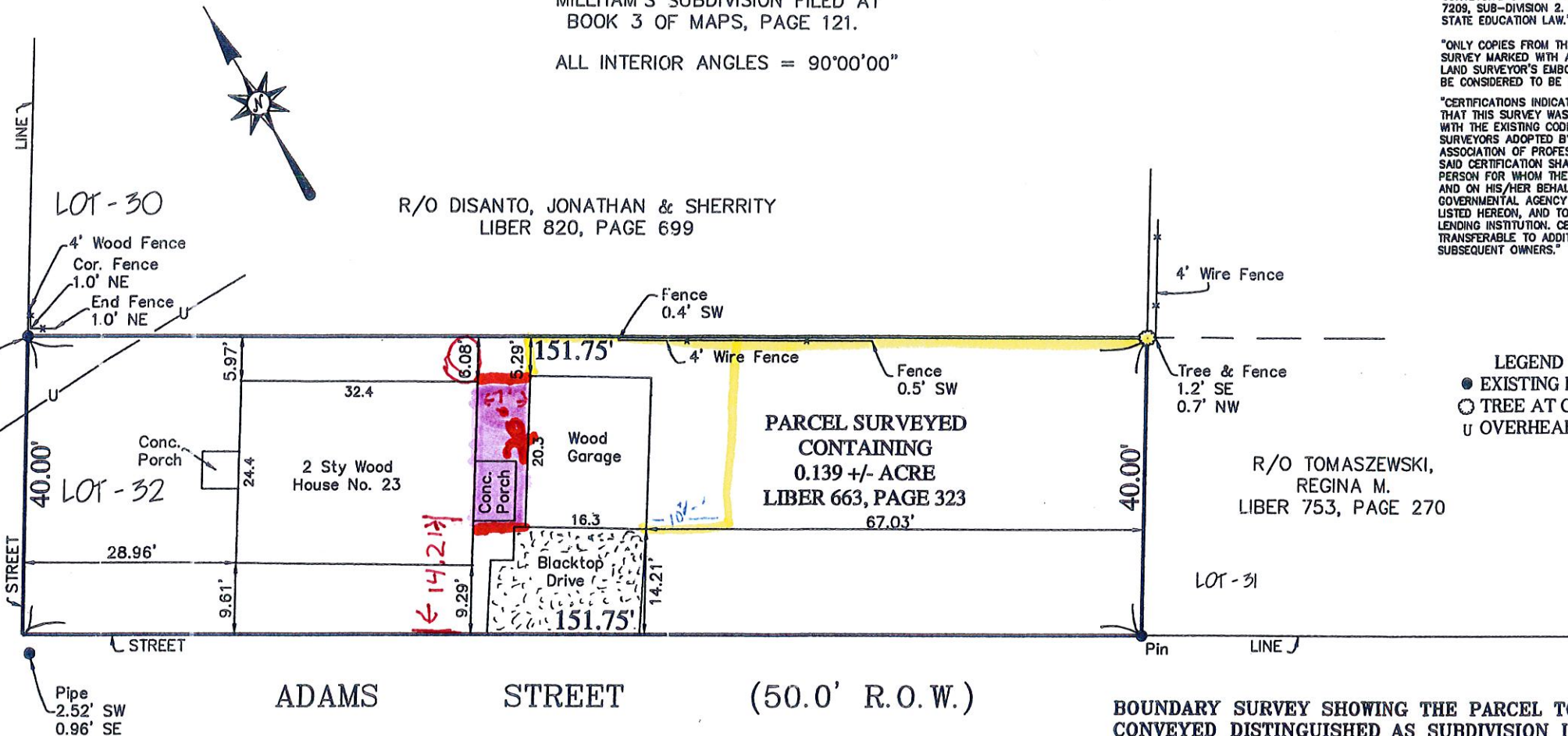




USGS The National Map, National Boundaries Dataset, 3D Elevation  
Program, Geographic Names Information System, National  
Hydrography Dataset, National Land Cover Dataset, National  
Statistics Dataset, and National Transportation Dataset, U.S. Census  
Bureau - TIGER/Line



MADISON AVENUE (50.0' R.O.W.)



REFERENCES:  
MILEHAM'S SUBDIVISION FILED AT  
BOOK 3 OF MAPS, PAGE 121.  
ALL INTERIOR ANGLES = 90°00'00"

"UNAUTHORIZED ALTERATION OR ADDITIONS  
TO A SURVEY MAP BEARING A LICENSED LAND  
SURVEYOR'S SEAL IS A VIOLATION OF SECTION  
7209, SUB-DIVISION 2, OF THE NEW YORK  
STATE EDUCATION LAW."

"ONLY COPIES FROM THE ORIGINAL OF THIS  
SURVEY MARKED WITH AN ORIGINAL OF THE  
LAND SURVEYOR'S EMBOSSED SEAL SHALL  
BE CONSIDERED TO BE VALID TRUE COPIES."

"CERTIFICATIONS INDICATED HEREON SIGNIFY  
THAT THIS SURVEY WAS PREPARED IN ACCORDANCE  
WITH THE EXISTING CODE OF PRACTICE FOR LAND  
SURVEYORS ADOPTED BY THE NEW YORK STATE  
ASSOCIATION OF PROFESSIONAL LAND SURVEYORS.  
SAID CERTIFICATION SHALL RUN ONLY TO THE  
PERSON FOR WHOM THE SURVEY IS PREPARED,  
AND ON HIS/HER BEHALF TO THE TITLE COMPANY,  
GOVERNMENTAL AGENCY AND LENDING INSTITUTION  
LISTED HEREON, AND TO THE ASSIGNEES OF THE  
LENDING INSTITUTION. CERTIFICATION ARE NOT  
TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR  
SUBSEQUENT OWNERS."

LEGEND  
● EXISTING IRON PIN/PIPE  
○ TREE AT CORNER  
U OVERHEAD UTILITY LINE

BOUNDARY SURVEY SHOWING THE PARCEL TO BE  
CONVEYED DISTINGUISHED AS SUBDIVISION LOT NO.  
32 AND BEING PART OF VILLAGE LOTS 61,62 AND 63  
OF THE MILEHAM'S SUBDIVISION. SITUATE IN THE CITY  
OF BATAVIA, COUNTY OF GENESEE AND STATE OF  
NEW YORK.

DAVID S. LAMENDOLA  
GREGORY W. TOWNSEND  
Licensed Land Surveyors  
435 East Main Street  
Batavia, New York 14020  
Phone (585) 344-1331  
Fax (585) 343-2691

I, GREGORY W. TOWNSEND CERTIFY TO:  
- CHRISTINE M. LONG. AND CHRISTOPHER A. LONG;  
- M&T BANK, ITS SUCCESSORS AND/OR ASSIGNS;  
- TITLE INSURANCE COMPANY INSURING THE MORTGAGE;  
- THE WILLIAMS LAW FIRM, LLP.;

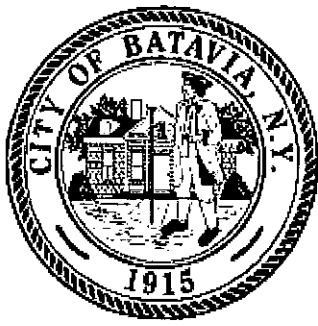
JANUARY 14, 2008

JOB NO. 08-11

SCALE 1" = 20'

DATE

N.Y.S.R.L.S. NO. 50249



*City of Batavia*  
*Department of Public Works*  
***Bureau of Inspections***

One Batavia City Center, Batavia, New York 14020

(585)-345-6345

(585)-345-1385 (fax)

To: Genesee County Planning  
Zoning Board of Appeals

From: Doug Randall, Code Enforcement Officer

Date: 4/4/16

Re: **5 Verona Ave.**  
Tax Parcel No. 84.006-2-45.1

Zoning Use District: R-1A

The applicant, Jeff Shelnut (contractor for owner), has filed an application to place a pressure treated wood frame deck in the rear yard within the rear yard clear space.

**Note: This is a type II action as defined by Environmental Conservation Law and is not subject to review under SEQR 6 NYCRR Part 617.5 (c) (10).**

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of **the right of way of a state road highway (Route 98).**

**Zoning Board of Appeals-** Pursuant to BMC Sec. 190-49 of the zoning ordinance, the ZBA shall review and act on required variances.

Required variances- Area BMC Sec. 190-29 A. and Schedule I

|                       | <u>Required</u> | <u>Proposed</u> | <u>Difference</u> |
|-----------------------|-----------------|-----------------|-------------------|
| Rear yard clear space | 35'             | 17.7'           | 17.3'             |

SEND OR DELIVER TO:  
GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) 344-2580 Ext. 5467

DEPARTMENT USE ONLY:  
GCDP Referral # \_\_\_\_\_



**\* GENESEE COUNTY \***  
**PLANNING BOARD REFERRAL**

Required According to:  
**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**  
(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**

Board(s) Zoning Board of Appeals  
Address One Batavia City Centre  
City, State, Zip Batavia, NY 14020  
Phone (585) 345 - 6347 Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**

Name Jeff Shelnut  
Address 3242 Broadway  
City, State, Zip Alexander, NY 14005  
Phone (585) 356 - 3601 Ext. \_\_\_\_\_ Email \_\_\_\_\_

MUNICIPALITY: ☒ City ☐ Town ☐ Village of Batavia

**3. TYPE OF REFERRAL:** (Check all applicable items)

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Area Variance | <input type="checkbox"/> Zoning Map Change         | <input type="checkbox"/> Subdivision Proposal |
| <input type="checkbox"/> Use Variance             | <input type="checkbox"/> Zoning Text Amendments    | <input type="checkbox"/> Preliminary          |
| <input type="checkbox"/> Special Use Permit       | <input type="checkbox"/> Comprehensive Plan/Update | <input type="checkbox"/> Final                |
| <input type="checkbox"/> Site Plan Review         | <input type="checkbox"/> Other: _____              |   |

**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**

A. Full Address 5 Verona Ave.  
B. Nearest intersecting road Richmond Ave.  
C. Tax Map Parcel Number 84.006-2-45.1  
D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_  
E. Present zoning district(s) R-1A

**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?  
☒ NO ☐ YES If yes, give date and action taken \_\_\_\_\_  
B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law  
BMC 190-29 A and Schedule I  
C. Please describe the nature of this request Approval to construct a wood frame deck in the rear yard of this property within the rear yard clear space.

**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Local application | <input type="checkbox"/> Zoning text/map amendments  | <input type="checkbox"/> New or updated comprehensive plan     |
| <input checked="" type="checkbox"/> Site plan         | <input type="checkbox"/> Location map or tax maps    | <input type="checkbox"/> Photos                                |
| <input type="checkbox"/> Subdivision plot plans       | <input type="checkbox"/> Elevation drawings          | <input checked="" type="checkbox"/> Other: <u>cover letter</u> |
| <input type="checkbox"/> SEQR forms                   | <input type="checkbox"/> Agricultural data statement |  |

If possible, please provide a reduced version or digital copy of any supporting documentation larger than 11 x 17.  
Email to [planning@co.genesee.ny.us](mailto:planning@co.genesee.ny.us)

**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)

Name Douglas Randall Title Code Enf. Officer Phone (585) 345 - 6327 Ext. \_\_\_\_\_  
Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020 Email drandall@batavianewyork.com



**GENESEE COUNTY PLANNING BOARD  
ZONING REFERRALS NOTICE OF FINAL  
ACTION**

GCDP Referral ID **C-09-BAT-4-16**

Review Date **4/14/2016**

Municipality

**BATAVIA, C.**

Board Name

**ZONING BOARD OF APPEALS**

Applicant's Name

**Jeff Shelnut**

Referral Type

Variance(s)

**Area Variance(s)**

Description:

**Area Variance to construct a deck for a single-family residence.**

**Rear Yard Setback**

**Minimum required: 35 ft.**

**Existing garage: 1.5 ft.**

**Proposed deck: 17.7 ft.**

Location

**5 Verona Ave., Batavia**

Zoning District

**Residential (R-2) District**

**PLANNING BOARD DECISION**

**APPROVAL**

**EXPLANATION:**

Given that the existing garage is significantly closer to the property line than the proposed deck. The variance should pose no significant county-wide or inter-community impact.

Director

April 14, 2016

Date

If the County Planning Board disapproved the proposal, or recommends modifications, the referring agency shall NOT act contrary to the recommendations except by a vote of a majority plus one of all the members and after the adoption of a resolution setting forth the reasons for such contrary action. Within 30 days after the final action the referring agency shall file a report of final action with the County Planning Board. An action taken form is provided for this purpose and may be obtained from the Genesee County Planning Department.



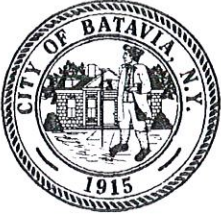
C-09-BAT-4-16



04/04/2013

© 2013 Pictometry





CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

PAID  
APR 14 2016

CITY OF BATAVIA  
CLERK-TREASURER

Application No.: 16-08

Hearing Date/Time: \_\_\_\_\_

APPLICANT: JEFF SHERNUT

Name \_\_\_\_\_ E-Mail Address \_\_\_\_\_  
3242 BROADWAY 358 3601  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
ALEXANDER N.Y. 14005  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

STATUS: \_\_\_\_\_ Owner ☒ Agent for Owner \_\_\_\_\_ Contractor

OWNER: JIM DE LONG

Name \_\_\_\_\_ E-Mail Address \_\_\_\_\_  
5 VERONA 770 286 0370  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_  
BATAVIA N.Y. 14020  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

LOCATION OF PROPERTY: 5 VERONA

DETAILED DESCRIPTION OF REQUEST: BUILD A DECK 10' OFF THE  
BACK OF HOUSE AND THERE IS ONLY 30'  
TO PROPERTY LINE

Applicant must be present at the hearing date. Failure to do so will result in the application being discarded. It is the responsibility of the applicant to present evidence sufficient to satisfy the Zoning Board of Appeals that the benefit of the applicant does not outweigh the health, safety, morals, aesthetics and general welfare of the community or neighborhood.

[Signature]  
Applicant's Signature

3/22/16  
Date

Owner's Signature

Date

To be Filled out by Zoning Officer

TAX PARCEL: 84.006-2-45.1 ZONING DISTRICT: R-1A FLOOD PLAIN: NO

TYPE OF APPEAL: ☒ Area Variance  
☐ Use Variance  
☐ Interpretation  
☐ Decision of Planning Committee

FEE: ☒ \$50 (One or Two Family Use)  
☐ \$100 (All other Uses)

Provision(s) of the Zoning Ordinance Appealed: BMC 190-29 A. and Schedule 1 -  
Min. Rear yard clear space shall be 35'

## Criteria to Support Area Variance

In making its determination, the zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, moral, aesthetics and welfare of the neighborhood or community. The Zoning Board of Appeals shall consider the following test, as per §81-b of the General City Law when making its determination:

Explain how the proposal conforms to EACH of the following requirements:

1. **Undesirable Change in neighborhood Character.** The granting of the variance will not produce an undesirable change in the neighborhood or a detriment to nearby properties.

NO

2. **Alternative Cure Sought.** There are no other means feasible for the applicant to pursue that would result in the difficulty being avoided or remedied, other than the granting of the area variance. NO

3. **Substantiality.** The requested area variance is not substantial. NO

4. **Adverse Effect or Impact.** The requested variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or community.

NO

5. **Not Self-Created.** The alleged difficulty existed at the time of the enactment of the provision or was created by natural force or governmental action, and was not the result of any action by the owner or the predecessors in title. NO

  
Applicant's Signature

3/22/16  
Date

DATE: 3/22/16APPLICANT NAME & PHONE: JEFF SHENKUT 358 3601**Project Location and Information**

Permit #: \_\_\_\_\_ Fee: \_\_\_\_\_

Address of Project: 5 VERONAOwner & Address: JIM DELONG 5 VERONAPhone: 770 286 0370**Project Type/Describe Work**Estimated cost of work: 4,000 Start date: \_\_\_\_\_

Describe project:

BUILD A DECK ON BACK OF HOUSE**Contractor Information** – Insurance certificates (liability & workers comp) required being on file**GENERAL**Name/Address: NEW LOOKPhone: 358 3601**PLUMBING** (City of Batavia Licensed Plumber Required)Name/Address: N/A

Phone: \_\_\_\_\_

**HEATING**Name/Address: N/A

Phone: \_\_\_\_\_

**ELECTRICAL** (Third Party Electrical Inspection Required)Name/Address: N/A

Phone: \_\_\_\_\_

**FOR OFFICE USE ONLY**

Zoning District: \_\_\_\_\_ Flood Zone: \_\_\_\_\_ Corner Lot: \_\_\_\_\_ Historic District/Landmark: \_\_\_\_\_

Zoning Review: \_\_\_\_\_ Variance Required: \_\_\_\_\_ Site Plan Review: \_\_\_\_\_ Other: \_\_\_\_\_

National Grid Sign Off (Pools): \_\_\_\_\_ Lot Size: \_\_\_\_\_

Existing Use: \_\_\_\_\_ NYS Building Code Occupancy Class: \_\_\_\_\_

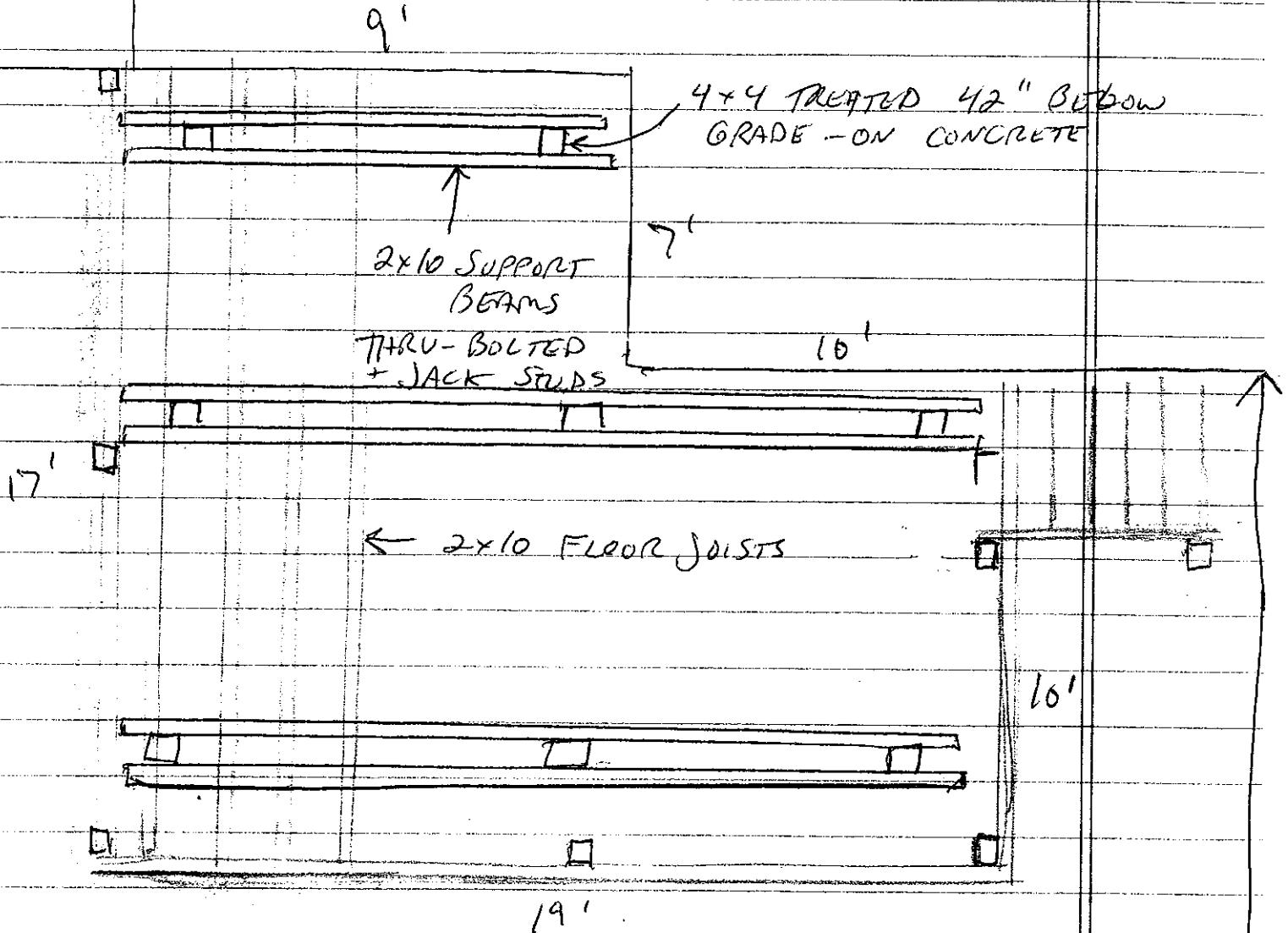
Proposed Use: \_\_\_\_\_ NYS Building Code Occupancy Class: \_\_\_\_\_

JEFF SHELNUT - NEW LOOK - 358 3601

JIM DELONG

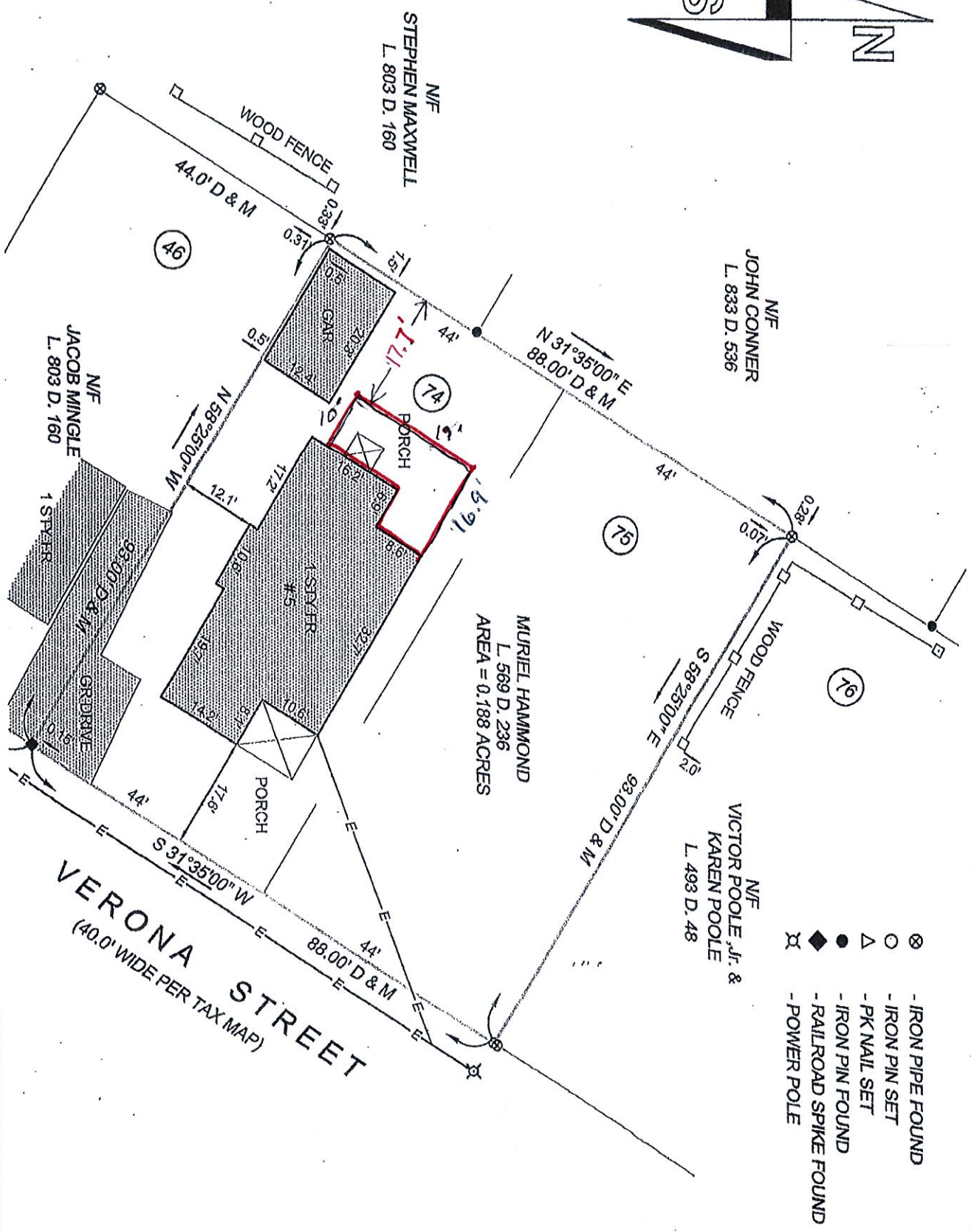
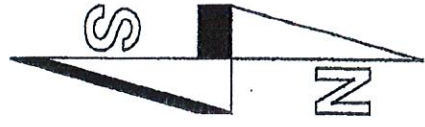
5 VERONA

300 Sq Ft decking  
2' above grade



TREX COMPOSITE DECKING  
WHITE VINYL RAILINGS

PROPERTY  
LINE ABOUT  
28'-30'



- ⊗ - IRON PIPE FOUND
- - IRON PIN SET
- △ - PK NAIL SET
- - IRON PIN FOUND
- ◆ - RAILROAD SPIKE FOUND
- ⌘ - POWER POLE

N/F  
STEPHEN MAXWELL  
L. 803 D. 160

N/F  
JOHN CONNER  
L. 833 D. 536

N/F  
JACOB MINGLE  
L. 803 D. 160

MURIEL HAMMOND  
L. 569 D. 236  
AREA = 0.188 ACRES

N/F  
VICTOR POOLE, JR. &  
KAREN POOLE  
L. 493 D. 48

VERONA STREET  
(40.0' WIDE PER TAX MAP)





USGS The National Map, National Boundaries Dataset, 3D Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; U.S. Census Bureau - TIGER/Line



2016  
Meeting Dates for  
Planning & Development Committee  
and  
Zoning Board of Appeals

Deadline for applications is the last Thursday of the month

**Planning & Development Committee**

|              |         |
|--------------|---------|
| January 19   | 6:00 PM |
| February 16  | 6:00 PM |
| March 15     | 6:00 PM |
| April 19     | 6:00 PM |
| May 17       | 6:00 PM |
| June 28      | 6:00 PM |
| July 19      | 6:00 PM |
| August 16    | 6:00 PM |
| September 20 | 6:00 PM |
| October 18   | 6:00 PM |
| November 15  | 6:00 PM |
| December 13  | 6:00 PM |

**Zoning Board of Appeals**

|              |         |
|--------------|---------|
| January 28   | 6:00 PM |
| February 25  | 6:00 PM |
| March 24     | 6:00 PM |
| April 28     | 6:00 PM |
| May 26       | 6:00 PM |
| June 30      | 6:00 PM |
| July 28      | 6:00 PM |
| August 25    | 6:00 PM |
| September 22 | 6:00 PM |
| October 27   | 6:00 PM |
| November 17  | 6:00 PM |
| December 15  | 6:00 PM |