

# **ZONING BOARD OF APPEALS**

**Thursday, June 30, 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 May 26, 2015 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

*59 Lyon Street*  
Randy White, owner

Area Variance: Addition of a driveway to the southeast portion of this property by placing pavers and loose stone to form a 16' wide x 60' long area for parking. This would be in addition to the existing 12' wide asphalt driveway in the northeast portion of this property

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

- VII. New Business
- VIII. Setting of Next Meeting: July 28, 2016
- IX. Adjournment

# **ZONING BOARD OF APPEALS**

## ***Draft Minutes***

**Thursday, May 26, 2016**

**6:00 pm**

**Council Board Room**

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

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

Members absent: Emma Morrill

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

### **I. Roll Call**

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

### **II. Call to Order**

Mr. McCarthy called the meeting to order at 6:02 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. Hyatt, and on roll call, was approved 5-0.

**RESULT:** Approval of April 28, 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 privacy fence 12.25' west of the east property line on this corner lot parcel

Address: 124 East Avenue

Applicant: James Pacino, 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 Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:07 pm.**

Mr. Pacino told the board that he wanted to put the fence even with his house and noted that by placing it in this position, the meter and wires would be avoided. He also pointed out that the fence would not obstruct the view of the street or the corner lot.

**MOTION:** Mr. McCarthy moved to close the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

**RESULT: Public hearing closed at 6:11 pm.**

Ms. Kerr-Rosenbeck and Mr. Harris agreed that the fence would not obstruct vision in any way.

Mr. McCarthy asked if the purpose of the fence is for privacy and Mr. Pacino explained the he has small grandchildren he would like to keep safe inside the fence.

There was no one else present who wished to speak and no calls or correspondence

## **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 variance as requested with 60 days to obtain the permit. The motion was seconded by Dr. Licata, and on roll call, was approved 5-0.

**RESULT: Approval of Area Variance**

B.                   Area Variance: Placement of a 6' tall vinyl privacy fence parallel to the west property line within 15' of the front property line

Address:       *10 LaCrosse Avenue*

Applicant:     Richard and Betty Ahl, owners

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 Mr. Harris, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:12 pm.**

Mrs. Ahl stated that the fence was already in place 48 years ago when she and her husband purchased the property. She said that 23 years ago they were granted a variance to install a new fence. The fence is deteriorating and now needs to be replaced. Mr. and Mrs. Ahl would like to replace the existing fence with a vinyl one.

Dr. Licata asked about the height of the fence. Mrs. Ahl said that they would like the new fence to be as maintenance free as possible and vinyl fences only come in 6' high panels.

Mr. Hyatt asked if the neighbor has experienced difficulty when backing out of his driveway. Mrs. Ahl answered that the fence is back far enough that it does not obstruct the view.

Mr. McCarthy reported that the Genesee County Planning Board took no action on the variance request.

There was no one else present who wished to speak and no calls or correspondence.

**MOTION:** Mr. McCarthy moved to close the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 5-0.

**RESULT: Public hearing closed at 6:17 pm.**

Mr. Hyatt asked about amount of distance between the pavement and the fence. Mrs. Ahl answered that it is 15' from the pavement to the fence. Mrs. Ahl noted that when the last variance was granted the board set the condition that the fence must be 15' back from the pavement.

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; there is already a fence in the same place
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

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

**MOTION:** Mr. McCarthy moved to approve the variance with 60 days to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

**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: 2 Madison Avenue

Applicant: Donald H. Morris, agent 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 Dr. Licata, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:22 pm.**

Mr. Morris was unable to attend the meeting. Mrs. Morris explained that the resident of the property needs a ramp in order to come home from the nursing home; she has a broken leg and must use a walker.

There was no one else present who wished to speak and no calls or correspondence

**MOTION:** Mr. McCarthy moved to close the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

**RESULT: Public hearing closed at 6:24 pm.**

**3. Action by the Board**

Mr. McCarthy pointed out that the ramp extends quite a distance into the yard but noted that the slope must comply with ADA regulations. He observed that according to the application, the ramp will not be attached to the house.

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:** Dr. Licata moved to approve the variance as written with 60 days to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

**RESULT: Approval of Area Variance**

**VII. New Business: none**

**VIII. Setting of Next Meeting: June 30, 2016**

**IX. Adjournment**

Mr. McCarthy moved to adjourn the meeting at 6:31 pm; Dr. Licata seconded. All voted in favor.

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Meg Chilano  
Bureau of Inspection Clerk



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

GCDP Referral ID C-13-BAT-6-16

Review Date 6/16/2016

Municipality  
Board Name  
Applicant's Name

BATAVIA, C.

ZONING BOARD OF APPEALS

Randy White

Referral Type  
Variance(s)

Area Variance(s)

Description:

Area Variance to add a second driveway to an existing single-family home.

Width of Driveway

Maximum allowed: 25% of lot frontage (18.75 ft.)

Existing: 17% (12.5 ft.)

Proposed: 38.6% (29 ft.)

Location  
Zoning District

59 N. Lyon St., Batavia

Residential (R-1A) District

**PLANNING BOARD DECISION**

**APPROVAL WITH MODIFICATION(S)**

**EXPLANATION:**

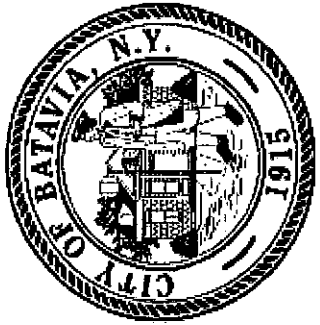
The required modification is that the applicant merge the two parcels into one. Given that a neighboring property also has two driveways in the manner proposed, with the required modification the proposed driveway should pose no significant county-wide or inter-community impact.

Director

June 16, 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.



*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:            Genesee County Planning  
                Planning and Development Committee  
                Zoning Board of Appeals

From:        Doug Randall, Code Enforcement Officer

Date:        5/25/16

Re:         59 Lyon St.  
              Tax Parcel No. 84.006-3-3

Zoning Use District: R-1A

The applicant, Randy White (owner), has applied for a permit to add a driveway to the southeast portion of this property by placing pavers and loose stone to form a 16' wide x 60' long area for parking. This would be in addition to the existing 12' wide asphalt driveway in the northeast portion of this property.

**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) (13).

**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.

**City Planning and Development Committee-** Pursuant to section 190-49 C. of the zoning ordinance, the Planning and Development Committee shall review and make recommendations to the ZBA for applications that include parking variances.

**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. 190-39 E (1) The width of driveways shall not exceed 25% of the lot frontage.**

	<u>Permitted</u>	<u>Proposed</u>	<u>Difference</u>
Driveway width	18.75' (25%)	29' (38.6%)	10.25' (13.6%)



**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 AppealsAddress One Batavia City CentreCity, State, Zip Batavia, NY 14020Phone (585) 345 - 6347 Ext. \_\_\_\_\_Name Randy WhiteAddress 59 Lyon St.City, State, Zip Batavia, NY 14020Phone (585) 409 - 5655 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 59 Lyon St.B. Nearest intersecting road Richmond Ave.C. Tax Map Parcel Number 84.006-3-3

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 190-39 E(1)**C. Please describe the nature of this request Approval to place an additional driveway on this property in excess of the total driveway width permitted.**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 RandallTitle Code Enf. OfficerPhone (585) 345 - 6327

Ext. \_\_\_\_\_

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



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

Application No.: \_\_\_\_\_  
Hearing Date/Time: \_\_\_\_\_

**APPLICANT:** Randy White N/A  
Name 59 N. Lyon St. E-Mail Address N/A  
Batavia NY Phone 409-5655 Fax N/A  
City State 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:** 59 Lyon St., Batavia

**DETAILED DESCRIPTION OF REQUEST:** Add driveway (stone) to  
South East Corner of my lot.  
Size will be 16' wide by 66' long.

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.

Randy White 5/17/16  
Applicant's Signature Date  
Randy White 5/17/16  
Owner's Signature Date

**TAX PARCEL:** 84.006-3-3 **To be Filled out by Zoning Officer** R-1A. **FLOOD PLAIN:** No  
**ZONING DISTRICT:** R-1A.  
**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 190-39 E (1) driveway width shall  
not exceed 25% of the lot width.

## 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 it will not create these issues.

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. There are no other cures.

3. **Substantiality.** The requested area variance is not substantial. No it is not.

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 it will not.

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

Date

5/17/16





Permit No. \_\_\_\_\_  
Date: \_\_\_\_\_

**DRIVEWAY AND PARKING SPACE PERMIT**  
\$10 fee – Please attach Survey / Illustration

**APPLICANT:**

Randy White

Name \_\_\_\_\_ E-mail Address \_\_\_\_\_  
59 N Lyon St 585-409-5655  
Street Address \_\_\_\_\_ Phone \_\_\_\_\_

Batavia NY 14020  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

☒ Owner \_\_\_\_\_ Agent for Owner \_\_\_\_\_ Contractor \_\_\_\_\_

**OWNER:**

Same as Above  
Name \_\_\_\_\_ E-mail Address \_\_\_\_\_

Street Address \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

ADDRESS OF PROPERTY: 59 N Lyon St Batavia NY 14020

**DIMENSIONS OF EXISTING DRIVEWAY:**

Width N/A Length N/A

**DIMENSIONS OF NEW DRIVEWAY / ADDITION:**

Width 16'6" Length 66'

SURFACE MATERIAL: Existing N/A Proposed Stone / Pavers

Randy White  
Applicant's Signature \_\_\_\_\_ Date 5/17/16

Randy White  
Owner's Signature \_\_\_\_\_ Date 5/17/16

To be filled out by Zoning Enforcement Officer

TAX PARCEL: \_\_\_\_\_ ZONING DISTRICT: \_\_\_\_\_ SURVEY: \_\_\_\_\_

DIMENSIONS OF LOT: Lot Frontage 75' Front Yard 75'

PERCENTAGE OF LOT FRONTAGE: 38.6% SURFACE MATERIAL: Stone

APPROVED: \_\_\_\_\_ AREA VARIANCE: ☒ GRADE PLAN: \_\_\_\_\_

ISSUING OFFICER: \_\_\_\_\_ DATE: \_\_\_\_\_

18.75' Permitted  
- 29' Proposed.  
10.25' Over  
2BA Reg.

12.5' Existing driveway.  
+ 16.5' New/Additional driveway.  
29' Total = 38.6%

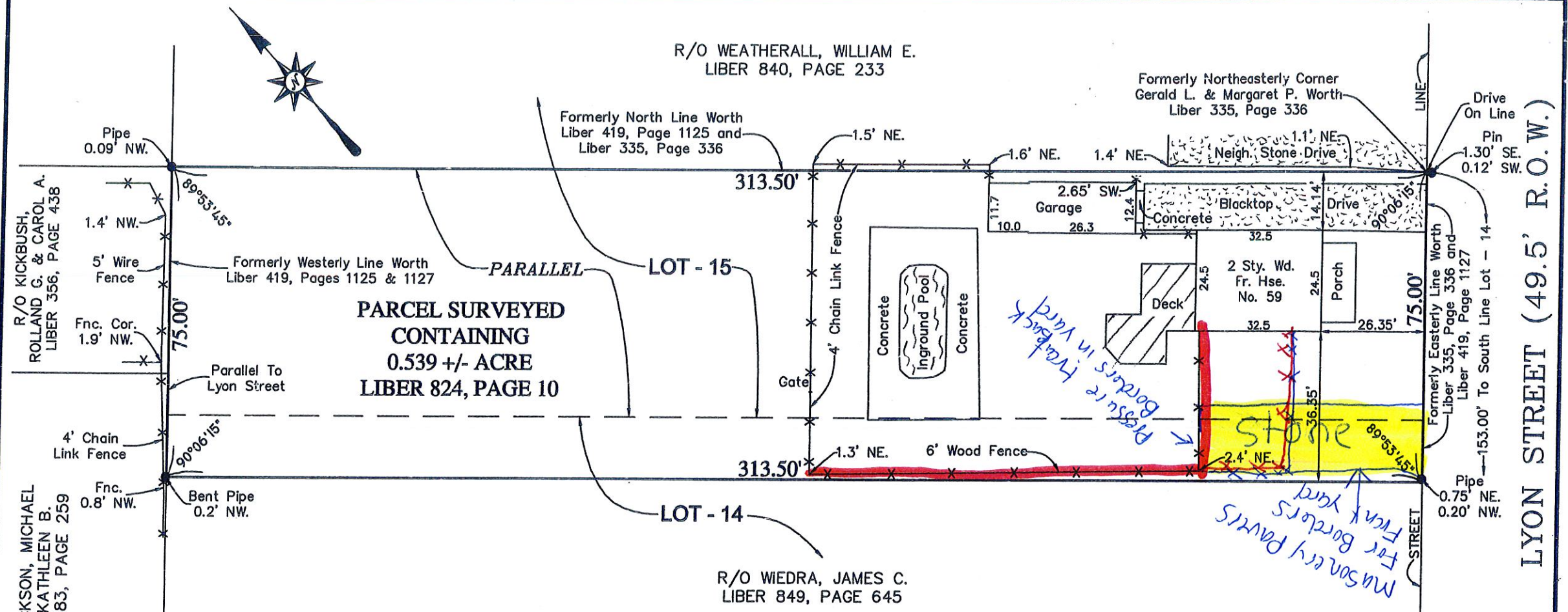


N LYON ST

59







LEGEND  
● EXISTING IRON STAKE

REFERENCE  
HEMAN POMEROY SUBDIVISION FILED  
AT BOOK 1 OF MAPS, PAGE 2

**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

**"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."

BOUNDARY SURVEY SHOWING THE PARCEL  
TO BE CONVEYED BEING PART OF ORIGINAL  
VILLAGE LOT 8, DISTINGUISHED AS PART OF  
SUBDIVISION LOTS 14 AND 15 OF THE  
HEMAN POMEROY SUBDIVISION. SITUATE IN  
THE CITY OF BATAVIA, COUNTY OF GENESEE  
AND STATE OF NEW YORK

MARCH 16, 2009 SCALE 1" = 30'  
JOB NO. 09-39

DATE                      N.Y.S.R.L.S. No. 50249