

ZONING BOARD OF APPEALS

Monday, February 27, 2017

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

AGENDA

- I. Roll Call
- II. Call to order
- III. Pledge of Allegiance
- IV. Approval of January 26, 2017 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

Request

119 Swan St.

Robert Ziminski, owner

Area Variance:

Addition of a second driveway on the south side of this parcel. The proposed new stone driveway is to be 10' wide and 60' in length

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

- VII. Setting of Next Meeting: March 23, 2017

- VIII. Adjournment

ZONING BOARD OF APPEALS

Draft Minutes

Thursday, January 26, 2017

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Bill Cox, Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy, Jim Russell*

Others present: Meg Chilano – Clerk

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 5:55 pm.

III. Pledge of Allegiance

IV. Approval of Minutes

MOTION: Mr. McCarthy moved to approve the minutes as written; the motion was seconded by Mr. Harris, and on roll call, was approved 4-0-1.

Votes in favor: 4 (Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy, Jim Russell)

Votes opposed: 0

Votes abstained: 1 (Bill Cox)

RESULT: Approval of December 15, 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 21' round above ground swimming pool with deck in the southeast side yard on this corner lot parcel

Address: 23 Roosevelt Ave.

Applicant: David Culver, owner

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

1. Review Application

Acting Vice Chair Ms. Kerr-Rosenbeck read the summary of the proposal. Mr. McCarthy verified with the clerk 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 Mr. Cox, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:04 pm.

Mr. Culver's property is located on a corner. He explained that he owns two city lots that have been joined together and he wants to locate the pool in the center.

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

RESULT: Public hearing closed at 6:12 pm.

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: no other place to put the pool on a corner lot
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, it's a corner property

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.

B. Area Variance: Installation of a parking lot in the front yard of this church property

Address: 238 Vine St.

Applicant: Robert Greathouse, Trustee for Grace Baptist Church

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

1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal. Mr. McCarthy reported that the PDC recommended approval. Mr. McCarthy verified with the clerk 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 Mr. Cox, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:25 pm.

Mr. Greathouse explained that the church had expanded the parking in the rear as far as it could. The church continued to grow so it applied and was approved for an area variance to install this parking lot in the front in 2015. Shortly after that time, the church was approached by the owners of an adjacent property, which the church ultimately purchased. The church allowed the permit to expire while arrangements were made for the disposal of the house that had been purchased. The house underwent demolition and asbestos abatement was necessary. The church is now prepared to resume and complete the parking lot project.

Mr. Russell asked the reason why the parking cannot be extended any farther in the back. Mr. Greathouse replied that the area is a wetland.

Ms. Kerr-Rosenbeck asked if there were any calls or email concerning the proposal and the clerk answered there were none.

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

RESULT: Public hearing closed at 6:30 pm.

Mr. McCarthy stated that he would not be voting because he is the engineer for the project.

Mr. Cox asked about the average attendance on Sunday. Mr. Greathouse answered that there are approximately 375-400 attendees.

Mr. Cox asked about the amount of parking currently. Mr. Greathouse responded that there are about 150 spaces. The new parking lot will create about 50 new spaces, which will eliminate the approximately 20 cars that park on the street now. Mr. Greathouse noted that there is generally more than one person in a car.

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

- Undesirable change in neighborhood character: no, it will improve the situation
- Alternative cure sought: can't, with the wetlands in the back
- Substantiality: pretty substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: the attendance is increasing

3. SEQR

Mr. McCarthy asked if the board had reviewed part one of the SEQR application and they indicated they had. The board went through the questions for part two.

MOTION: Mr. Cox moved to approve a negative declaration of SEQR; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Negative declaration of SEQR

4. Action by the Board

MOTION: Mr. Russell moved to approve the variance, with 60 days to obtain the permit. The motion was seconded by Mr. Cox, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance.

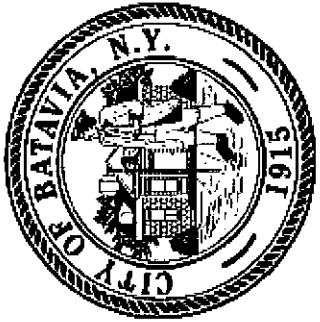
VII. New Business: none

VIII. Setting of Next Meeting: February 27, 2017

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:37 pm; Mr. Russell seconded. All voted in favor.

Meg Chilano
Bureau of Inspection Clerk



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
Planning and Development Committee
Zoning Board of Appeals

From: Doug Randall, Code Enforcement Officer

Date: 12/19/16

Re: 119 Swan St.
Tax Parcel No. 84.074-2-39

Zoning Use District: R-2

The applicant, Robert Ziminski (owner), has applied for a permit to add a second driveway on the south side of this parcel. The proposed new stone driveway is to be 10' wide and 60' in length.

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	12.37' (25%)	21.2' (43%)	8.83' (18%)

SEND OR DELIVER TO:

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



*** GENESEE COUNTY ***
PLANNING BOARD REFERRAL

DEPARTMENT USE ONLY:

GCDP 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) INFORMATIONBoard(s) Zoning Board of AppealsAddress One Batavia City CentreCity, State, Zip Batavia, NY 14020Phone (585) 345 - 6347 Ext. _____ Phone (585) 356 - 4214 Ext. _____ Email skiman8310@yahoo.com**2. APPLICANT INFORMATION**Name Robert ZiminskiAddress 119 Swan St.City, State, Zip Batavia, NY 14020MUNICIPALITY: ☒ **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 119 Swan St.B. Nearest intersecting road Ellicott St.C. Tax Map Parcel Number 84.074-2-39

D. Total area of the property _____

Area of property to be disturbed _____

E. Present zoning district(s) R-2**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 a second driveway on the south side of the front yard with a total driveway width in excess of 25% of the lot frontage.**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.genesec.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.: 16-19
Hearing Date/Time: _____

APPLICANT:

Name Robert Ziminski skinan8310@yahoo.com
E-Mail Address
119 S. Swan St. 585-356-4214
Street Address Phone
Batavia N.Y. 14020
City State Zip

STATUS: ✓ Owner _____ Agent for Owner _____ Contractor _____

OWNER: Same
Name E-Mail Address

Street Address Phone Fax
City State Zip

LOCATION OF PROPERTY: 119 S. Swan St.

DETAILED DESCRIPTION OF REQUEST: Want to Put a Second Driveway on south side of house. House is a 2 Family House and there is not enough room for parking. It is dangerous to park out back with Incline. Don't want parking in back of house. It is fenced off now.

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.

Robert Ziminski 12-13-16
Applicant's Signature Date

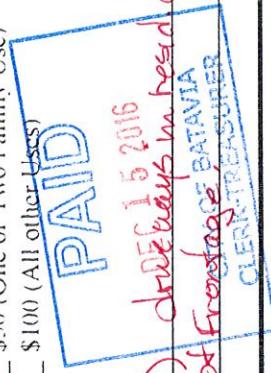
Owner's Signature _____ Date _____

To be Filled out by Zoning Officer

TAX PARCEL: 84.074-2-39 **ZONING DISTRICT:** R-2 **FLOOD PLAIN:** #4

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 (1) driveway in back of lot.
shall not exceed 25% of lot frontage.



Criteria to Support Area Variance

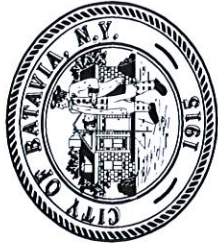
In making its determination, the zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, moral, aesthetics and welfare of the neighborhood or community. The Zoning Board of Appeals shall consider 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. The adjoining property has a driveway next to the one I want to add. Also across the street is 2 drive ways right next to each other.
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. There is not enough space for parking and we are not allowed to park on street after certain time. It's a 2 family house.
3. **Substantiality.** The requested area variance is not substantial. It is substantial and there is ample room for one. It's a 2 family house.
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. There is none at all
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 it was NOT.

Robert Zimhi
Applicant's Signature

12-13-16
Date



Permit No. _____
Date: _____

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

APPLICANT:

Robert Ziminski Skiman 8310@yahoo.com
Name E-mail Address

119 S. Swan St. 585-356-4214
Street Address Phone

Batavia N.Y. 14020
City State Zip

☒ Owner _____ Agent for Owner _____ Contractor _____

OWNER:

Same _____
Name E-mail Address

Street Address Phone

City State Zip

ADDRESS OF PROPERTY: 119 S. Swan St.

DIMENSIONS OF EXISTING DRIVEWAY: Width 11.2' Length _____

DIMENSIONS OF NEW DRIVEWAY / ADDITION: Width 10' Length 60'

SURFACE MATERIAL: Existing grass Proposed Gravel

Robert Ziminski
Applicant's Signature

12-12-16
Date

12.37' Permitted
21.2' Proposed
8.83' over
(18%)

Owner's Signature _____

Date _____

To be filled out by Zoning Enforcement Officer

TAX PARCEL: 84.074-2-39 **ZONING DISTRICT:** R-2 **SURVEY:** _____

DIMENSIONS OF LOT: Lot Frontage 49.5' Front Yard _____

PERCENTAGE OF LOT FRONTAGE: 43% proposed **SURFACE MATERIAL:** Stone

APPROVED: _____ **AREA VARIANCE:** _____ **GRADE PLAN:** _____

ISSUING OFFICER: _____ **DATE:** _____

S SWAN ST



(49.5' R.O.W.)

STREET

SWAN STREET

FORMERLY N.W. COR. HENRY & ELIZABETH L. TARBOX
LIBER 182, PAGE 229

R/O HELEN R. SIKORSKI
LIBER 600, PAGE 102

LEGEND
● EXISTING IRON STAKE
U OVERHEAD UTILITY LINE

REFERENCE
LIBER 443, PAGE 666.

NORTH

DRIVE 0.09'S

$N 80^{\circ} 43' 58'' W$

163.35'

0.27'E

END WIRE & BEGIN. CHAINLINK FENCE
0.64' N
0.14' W

OLD WIRE FENCE

R/O THE POLISH FALCONS
OF AMERICA NEST NO. 493, INC.
LIBER 318, PAGE 414

END FENCE
2.00' N
0.53' W

PARCEL SURVEYED
CONTAINING 0.186 ± ACRE
LIBER 690, PAGE 171

2 STY. WD. FR. HSE.
NO. 119

60'-0"

$S 80^{\circ} 43' 58'' E$

163.35'

NEIGH. DRIVE
0.50' S

BLACKTOP

DRIVE

0.33'S

NEIGH. GAR.

(FORMERLY JAMES S. STEWART & OTHERS LIBER 157, PAGE 391)

R/O SCOTT D. & MARY C. CASE
LIBER 626, PAGE 19

I DAVID S. LAMENDOLA CERTIFY TO:
HOMESTEAD FINANCIAL SERVICES, ITS
SUCCESSORS AND/OR ASSIGNS.
BANKER'S TITLE & ABSTRACT, LLC.
COMMONWEALTH LAND TITLE INSURANCE Co.

BOUNDARY SURVEY SHOWING THE
PARCEL TO BE CONVEYED BEING
PART OF VILLAGE LOT NO. 38.
SITUATE IN THE CITY OF
BATAVIA, COUNTY OF GENESEE
AND STATE OF NEW YORK.

JANUARY 30, 1997 SCALE 1" = 20'
JOB NO. 97-16

RESURVEYED & REVISED-- AUGUST 13, 2001.
REVISED Oct. 01 2001.

GREGORY W. TOWNSEND
DAVID S. LAMENDOLA
Licensed Land Surveyors
435 East Main St.
Batavia, NY 14020
(585) 344-1331

DATE NYS.R.L.S. NO. 49613



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

GCDP Referral ID **C-03-BAT-1-17**
Review Date **1/12/2017**

Municipality
Board Name
Applicant's Name

BATAVIA, C.
ZONING BOARD OF APPEALS
Robert Ziminski

Referral Type
Variance(s)
Description:

Area Variance(s)
Area Variance to place a second driveway for a two-family home.

Width of Driveway
Maximum allowed: 25% of lot frontage (12.37 ft.)
Existing: 22.6% (11.2 ft.)
Proposed: 43% (21.2 ft.)

Location
Zoning District

119 Swan St., Batavia
Residential (R-2) District

PLANNING BOARD DECISION

DISAPPROVAL

EXPLANATION:

The variance is substantial and may affect the character of the neighborhood as neighboring properties do not have two driveways. In addition, the driveway location could negatively impact and may result in the removal of a street tree. The applicant has the option of parking in the rear yard as do neighboring properties.

Director

January 12, 2017

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.