

# **ZONING BOARD OF APPEALS**

**Thursday, November 16, 2017**

*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 October 26, 2017 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

### **A. Request #1**

*1 Seneca Ave.*

Patrick McNutt, owner

Area Variances:

Placement of a 10' x 16' one story wood frame shed in the east side yard

Construction of a pressure treated wood frame deck within the required side yard clear space

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

### **B. Request #2**

*8 Dewey Ave.*

Eric Olson, owner

Area Variance:

Placement of a 10' tall fence parallel to the north (rear) property line

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

VII. Setting of Next Meeting: December 21, 2017

VIII. Adjournment

**ZONING BOARD OF APPEALS**  
***Draft Minutes***  
**Thursday, October 26, 2017**  
**6:00 pm**  
**Council Board Room**  
**One Batavia City Centre, Batavia, NY**

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

Members absent: Bill Cox

Others present: 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 6:00 pm.

**III. Pledge of Allegiance**

**IV. Approval of Minutes**

There were no corrections to the minutes. Mr. McCarthy assumed the motion and the minutes were approved by unanimous consent.

**RESULT: Approval of September 28, 2017 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 12' x 8' one story wood frame shed in the southwest corner (side yard) of this corner lot property

Address: 20 Sumner St.

Applicant: John Konarski, owner

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

**1. Review Application**

Acting Vice Chair Deborah Kerr-Rosenbeck 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. Russell, and on roll call, was approved 4-0.

**RESULT: Public hearing opened at 6:05 pm.**

The applicant, Mr. Konarski, explained that he would like to put up a shed for storage in order to make space in the garage for the car. He lives on a corner property and needs a variance before he can place the shed.

Mr. McCarthy read an email from Councilperson Rosemary Christian in support of the proposal.

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

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

## 3. Action by the Board

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: there isn't one
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, it is a corner lot

**MOTION:** Mr. Russell moved to approve the variance as submitted; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

**RESULT: Approval of Area Variance.**

B.                    Area Variance: placement of a 31.5 sq.' pole sign on this property in the northeast portion of this parcel located within the I-1 Industrial District

Address:        *602-604 East Main St.*

Applicant:     Nick Cannizzo, sign contractor

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

### 1. Review Application

Ms. Kerr-Rosenbeck Harris read the summary of the proposal. Mr. Harris noted that the Genesee County Planning Board recommended disapproval of the request. It is their belief that since the sign code was recently rewritten, approval of this request would set an unwanted precedent.

## 2. Public Hearing and Discussion

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

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

The applicant, Mr. Cannizzo, told the board that there are several factors in support of the request: this sign is smaller than the original sign, which measured 4' x 8'; as the site of the previous sign, this location already has power running to it; the area consists of grass, which is easier to excavate than an asphalt parking lot; and, there is a two-story residential structure located on the other side of the driveway.

He related that Mr. Randall had informed him that the property is split nearly down the middle as far as zoning is concerned, with one half of the property zoned C-2 and the other half zoned I-1. If the sign were to be placed on the same side as the residence, no variance would be necessary; however, Mr. Cannizzo did not think the residents would appreciate looking out of their window at the sign.

There was no one present who wished to speak, and no calls, letters, or email concerning the proposal.

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

**RESULT: Public hearing closed at 6:14 pm.**

**3. Action by the Board**

Mr. Harris said that he thought it would be cost prohibitive for the applicant to move the sign to the other side of the driveway and relocate the power.

Ms. Kerr-Rosenbeck said she did not have an issue with variance, especially considering there are only a few feet to the other side of the driveway. Mr. McCarthy agreed.

Mr. Russell said that moving the sign to the other side of the driveway could create a problem for the neighbor.

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: Mr. Russell pointed out there is an alternative but that it creates its own set of problems
- Substantiality: a little because of the size involved
- Adverse effect or impact on neighborhood/community: no
- Self-created: not really

**MOTION:** Mr. McCarthy moved to approve the variance, with a 30 day time limit 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: relocation of a 6' tall fence to an area restricted to 3' and placement of an 8' x 19' swim spa in the northeast side yard of this corner lot property

Address: 128 Ross St.  
Applicant: Patrick J. O'Brien, owner

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

### **1. Review Application**

Ms. Kerr-Rosenbeck 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 6:21pm.**

Mr. O'Brien stated that he would like to install a large hot tub to the rear of his property behind the house. Mr. O'Brien said that he would like to replace the 3' portion of the fence with a 6' tall fence, and move it back to make it even with the 6' portion of the fence in what would be considered the rear yard.

Ms. Kerr-Rosenbeck noted that the reason for the 3' height limit is line of sight and safety, especially for someone walking down the sidewalk. She expressed concern that raising the fence to 6' all the way down to the end of the driveway would obscure the line of sight when backing out of the driveway. She pointed out that the board has required previous applicants with similar requests to lower the height of a fence at the sidewalk in order to maintain a clear line of sight. Mr. Harris and Mr. McCarthy agreed.

Mr. Randall pointed out that a variance is not necessary for placement of a 3' tall fence, but rather, only to raise a fence beyond the 3' limit in height. Also, Mr. O'Brien will not need a variance to repair the fence that is already in place.

Mr. Randall reported a phone call from an adjacent neighbor who is concerned about the height of the fence and visibility.

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

**RESULT: Public hearing closed at 6:24 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:** [Mr. O'Brien withdrew the request for an area variance for the fence.] Mr. Russell moved to approve the area variance for placement of the spa, with 60 days to obtain the permit, on the condition that the fence is repaired. The motion was seconded by Mr. McCarthy, and on roll call, was approved 4-0.

**RESULT: Approval of Area Variance.**

**VII. New Business: none**

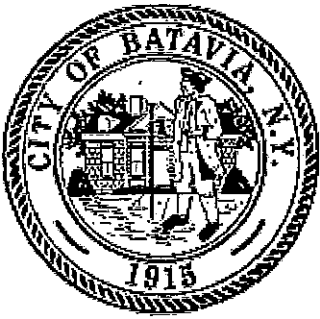
**VIII. Setting of Next Meeting: November 16, 2017**

**IX. Adjournment**

Mr. McCarthy moved to adjourn the meeting at 6:27 pm; Mr. Russell seconded. All voted in favor.

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Meg Chilano  
Bureau of Inspection Secretary



*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: Zoning Board of Appeals  
From: Doug Randall, Code Enforcement Officer  
Date: 10/17/17  
Re: **1 Seneca Ave.**  
Tax Parcel No. 84.034-3-54

Zoning Use District: R-2

The applicant, Patrick McNutt (owner), is requesting two area variances for projects on this corner lot parcel. An application has been submitted to place a 10' x 16' one story wood frame shed in the east side yard and to construct a pressure treated wood frame deck within the required side 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:**

**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 190-35 D. Accessory buildings are not permitted to occupy spaces other than a rear yard.

2) BMC 190-29 A. and Schedule 1

	<u>Required</u>	<u>Proposed</u>	<u>Difference</u>
Side yard clear space	8'	6.28'	1.72'



CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

Application No.: \_\_\_\_\_

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

APPLICANT: Patrick M. McNutt patmcnutt62@gmail.com  
Name E-Mail Address  
1 Seneca Ave (585) 331-2231  
Street Address Phone  
Batavia NY 14020  
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: 1 Seneca Ave Batavia NY 14020

DETAILED DESCRIPTION OF REQUEST:

- ① Place shed on property
- ② Replace back deck

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.

Patrick M. McNutt  
Applicant's Signature

10/11/17  
Date

Patrick M. McNutt  
Owner's Signature

10/11/17  
Date

To be Filled out by Zoning Officer

TAX PARCEL: 84.034-3-54 ZONING DISTRICT: R-2 FLOOD PLAIN: C

TYPE OF APPEAL: ☒ Area Variance ②  
☐ 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: ① Shed - 190-35 D. Accessory bldg. may not occupy any yard other than a rear yard. ② Deck - 190-29 A and Sched. 1 no construction is permitted in the side yard clear space.



## 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.

Re placing porch & placing shed will  
not create undesirable change in neighborhood

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.

due to being a corner lot  
There is no "backyard" for shed

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

NOT substantial

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.

This will not have an adverse  
effect on environmental or physical of community

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.

This is due to the size and  
location of lot

  
Applicant's Signature

10/11/17  
Date

DATE: 10/11/17APPLICANT NAME & PHONE: Patrick M. McNeill**Project Location and Information**

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

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

Address of Project: 1 Seneca Ave Batavia NY 14020Owner & Address: 1 Seneca Ave Batavia NY 14020Phone: (585) 331-2231**Project Type/Describe Work**Estimated cost of work: \$4,000.00Start date: 10/11/17

Describe project:

Replace Back Porch + Place Pre Built  
shed in place of old garage**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: \_\_\_\_\_



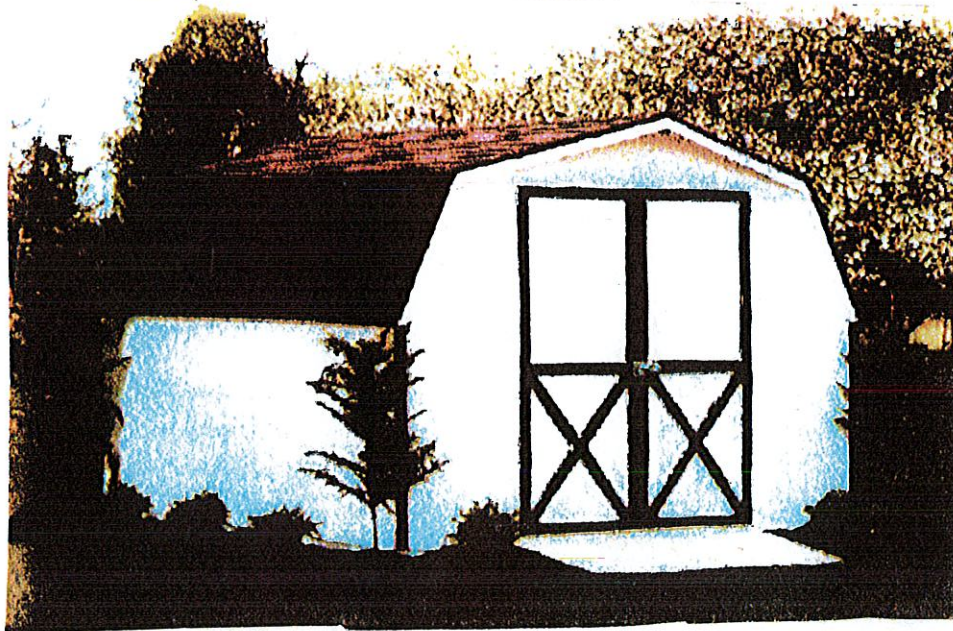
10x16  
Empire

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Outlet**.LLC

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- GRILLS • SMOKERS

**PICK-UP DELIVER INSTALL**

CUSTOMER SIGNATURE XO [Signature]

Propane: Installation does NOT include connecting into propane tank. Gas line must be run by propane company. We will only stub to outside wall \_\_\_\_\_  
Customers must notify code enforcement officer to prior installation of any fuel burning appliance purchased here for compliance with NYS uniform fire code.  
Vent free units are not to be used as the only heat source. All guidelines have been explained to me. \_\_\_\_\_



POST 3' Inground

(5) 4x4 PT

2x6 PT

(7) 4x4 PT

(6) 1" x 1" x 1" PT

(30) 5/4x6 PT Deck boards

(10) 2x4 PT for Railing

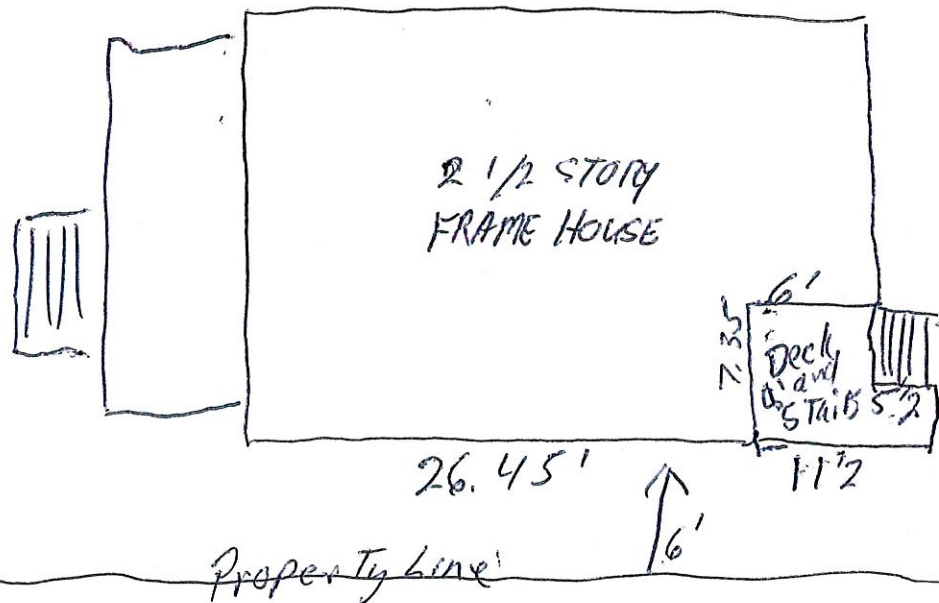
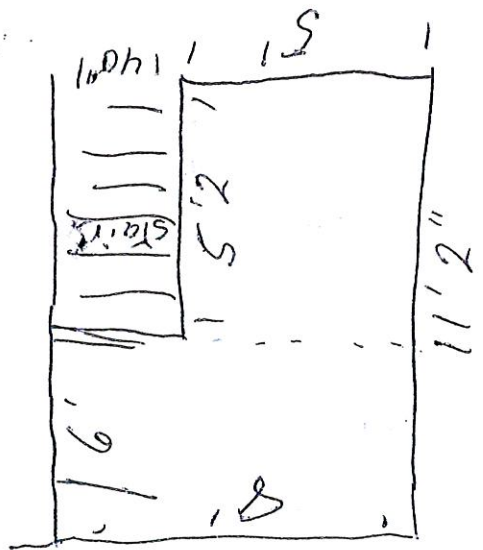
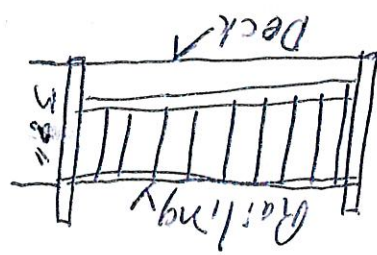
Approx.

Cost \$600.00

Post for Railing

Balaster to Railing

3 1/2" Between Balasters





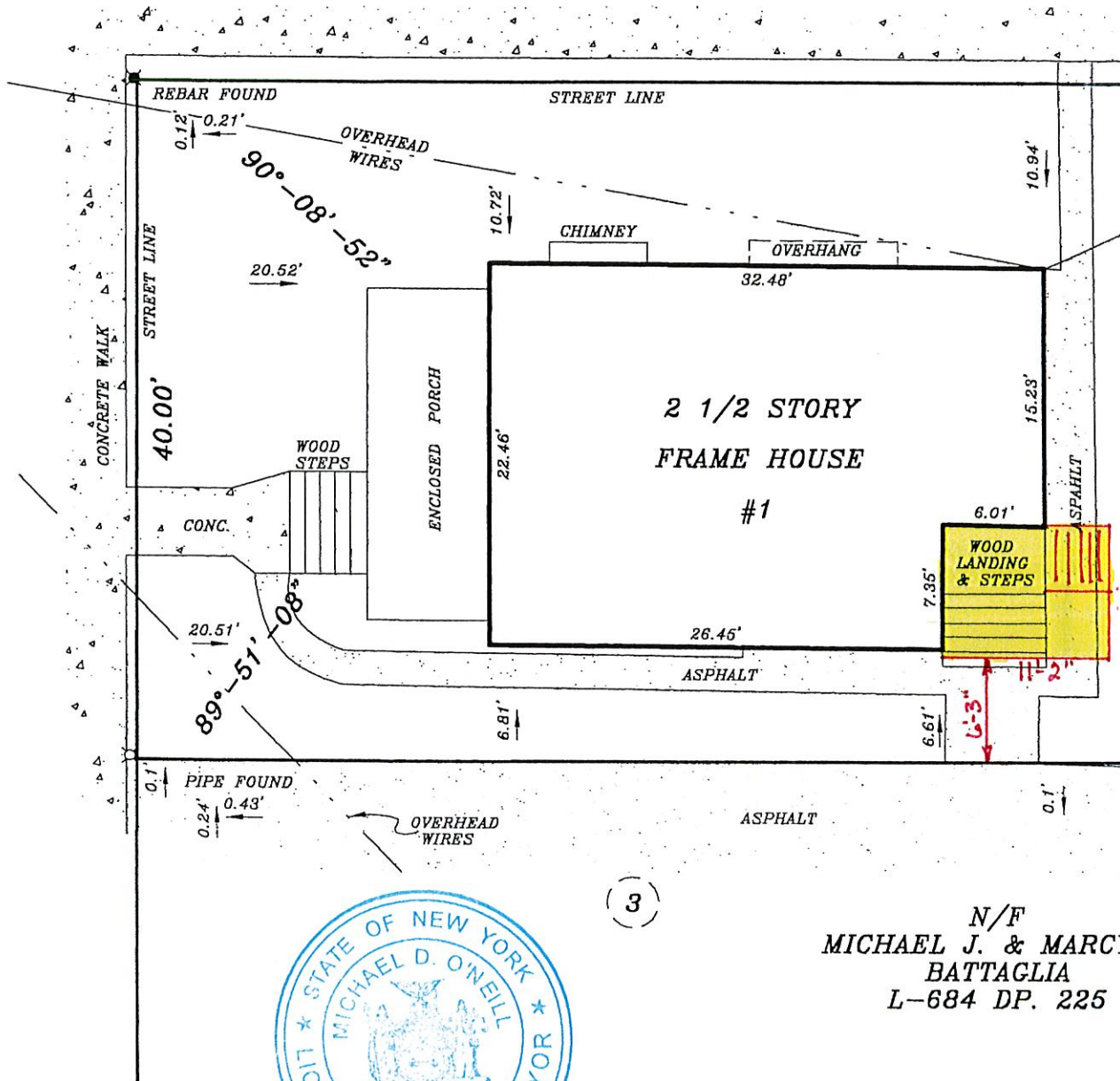






SENECA AVENUE  
(WIDTH VARIES)

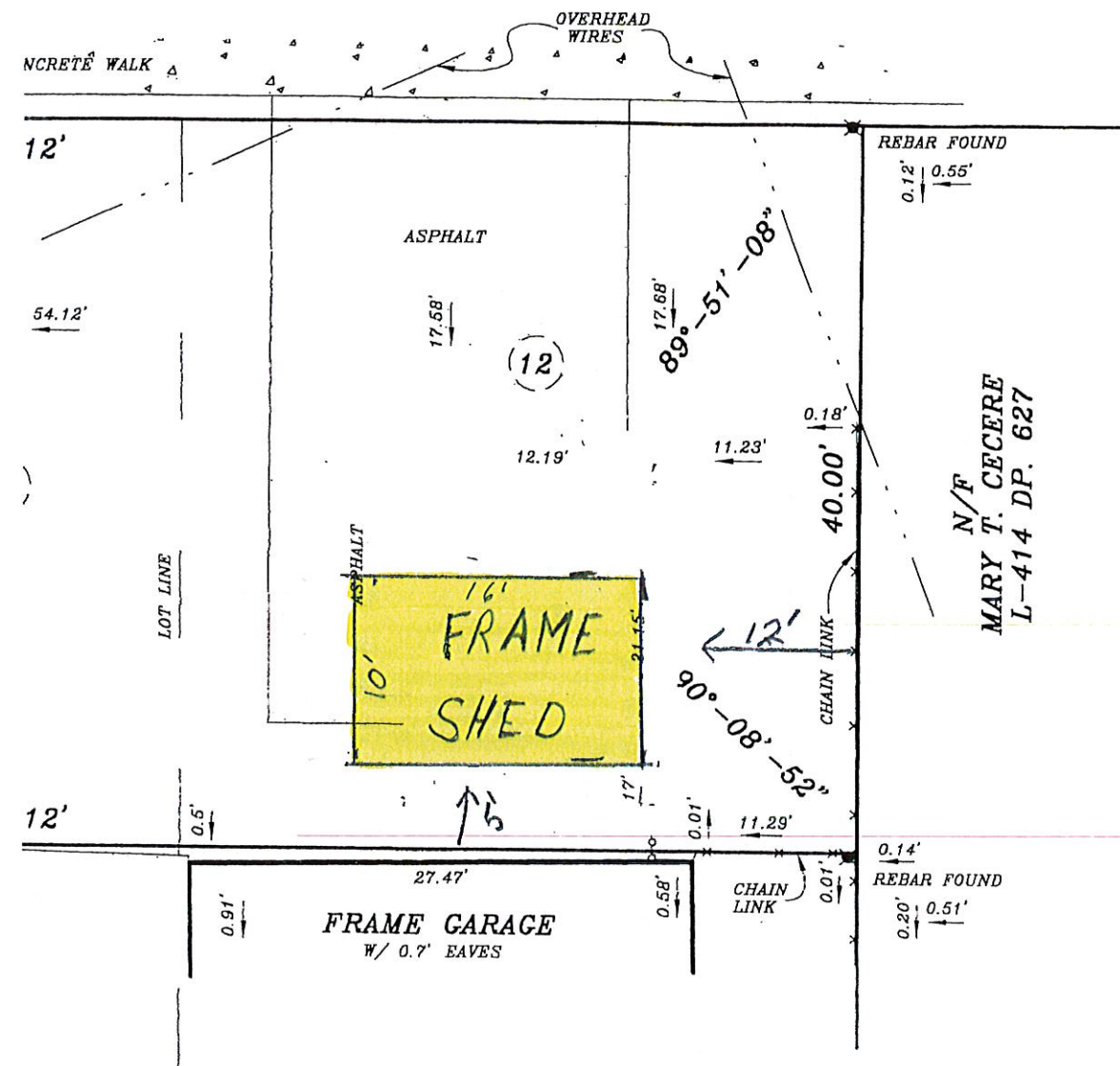
NORTH (66.0' WIDE)



REFERENCES:

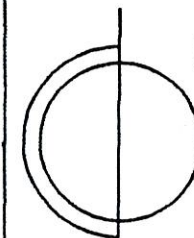
MAP BY R.A. WENTWORTH, DATED JUNE 12, 1911, FILED IN THE GENESEE COUNTY CLERK'S OFFICE IN BOOK 2, PAGE 51, MAP #105.  
MAP BY DAVID E. E. MIX, DATED 1877, FILED IN THE GENESEE COUNTY CLERK'S OFFICE IN BOOK 1, PAGE 8, MAP #13.  
LIBER 713 OF DEEDS, PAGE 242.

STREET



WE, DENLUCK-O'NEILL, P.C., CERTIFY TO HARRIS, BEACH & WILCOX, LLP THAT THIS MAP WAS PREPARED FROM NOTES OF AN INSTRUMENT SURVEY COMPLETED OCTOBER 14, 1998.

*Michael D. O'Neill*  
MICHAEL D. O'NEILL, P.L.S. #049662



DENLUCK-O'NEILL, P.C.

LAND SURVEYORS-PLANNERS  
BOUNDARY CONSULTANTS

5 SOUTH FITZHUGH STREET  
ROCHESTER, N.Y.  
14614

PHONE (716) 325-7520 FAX 325-1708  
E-MAIL ONSURV@AOL.COM

MAP OF A SURVEY

LOT 1, MAHANEY SNELL SUBDIVISION  
& PART OF LOT 12, C. F. BISSELL'S SUBDIVISION

VILLAGE OF BATAVIA

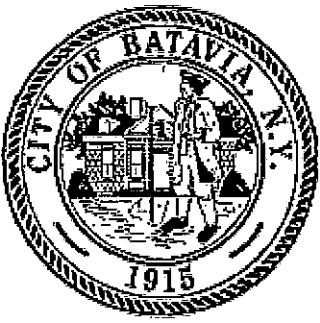
GENESEE COUNTY, NEW YORK

CLIENT HARRIS, BEACH & WILCOX, LLP

SCALE  
1" = 10'

DATE  
10/15/98

PROJECT NO.  
98-0942



*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: Zoning Board of Appeals  
From: Doug Randall, Code Enforcement Officer  
Date: 10/31/17  
Re: 8 Dewey Ave.  
Tax Parcel No. 84.009-2-14

Zoning Use District: R-2

The applicant, Eric Olson (owner), has filed an application to place a 10' tall fence parallel to the north (rear) 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) (13).

**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

- 1) BMC 190-33 D. Fences located in residential districts shall not exceed 6' in height above ground.





CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

Application No.: \_\_\_\_\_

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

APPLICANT: OLSON, ERIC CU OLSENMINZA@YAHOO.COM

Name E-Mail Address

8 DEWEY AVE

Street Address

BATAVIA NY 585-356-1791

City State Zip

STATUS: ☒ Owner ☐ Agent for Owner ☐ Contractor

OWNER: SAME

Name E-Mail Address

Street Address

City State Zip

LOCATION OF PROPERTY: 8 DEWEY AVE

DETAILED DESCRIPTION OF REQUEST: INSTALL 60' FENCE AT REAR OF PROPERTY  
TO RECOVER PRIVACY AFTER LOSING 60' TALL PINE TREES  
TO INSECT INFESTATION. FENCE WOULD BE AT OR ABOUT 10'  
HIGH TO BLOCK THE VIEW OF 195 SOUTH MAIN ST.

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.

Applicant's Signature

Eric W. Olson

Owner's Signature

Date

10.26.17

Date

To be Filled out by Zoning Officer

TAX PARCEL: 34.009-2-14 ZONING DISTRICT: R-2 FLOOD PLAIN: C

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. Fences in Residential  
districts shall not exceed 6' above ground level.

## 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.

WILL NOT PRESENT UNDESIRABLE CHANGE

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 IS NO ALTERNATIVE CURE

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

IT IS NOT SUBSTANTIAL

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.

THERE WOULD BE NO ADVERSE EFFECT OR IMPACT

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.

NOT THE RESULT OF ANY ACTION BY ME

E. W. Brown  
Applicant's Signature

10.26.17  
Date



DATE: 10-26-17APPLICANT NAME & PHONE: ERIC W. OLSON - 585-356-1791**Project Location and Information**

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

Address of Project: 8 DEWEY AVEOwner & Address: ERIC OLSONPhone: 585-356-1791**Project Type/Describe Work**Estimated cost of work: 3,000 Start date: \_\_\_\_\_

Describe project:

PRIVACY FENCE (10')**Contractor Information – Insurance certificates (liability & workers comp) required being on file****GENERAL**Name/Address: H&S FENCEPhone: 716-474-0165**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: \_\_\_\_\_





VIEW FROM BACK YARD

