

ZONING BOARD OF APPEALS

Thursday, August 23, 2018

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 July 26, 2018 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

13 Porter Ave.

Gerald Freeman, agent for owner

Area Variance:

Conversion of a former four-family dwelling into a two-family dwelling with two off street parking spaces in an existing building that occupies most of this parcel

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

- VII. Setting of Next Meeting: September 27, 2018
- VIII. Adjournment

ZONING BOARD OF APPEALS
Draft Minutes
Thursday, July 26, 2018
6:00 pm
Council Board Room
One Batavia City Centre, Batavia, NY

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

Members absent: Leslie Moma (Alt.)

Others present: Meg Chilano – Recording Secretary, 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 6:00 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 June 28, 2018 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 32' of 8' tall fence parallel to a portion of the north property line

Address: *51 Prospect Ave.*

Applicant: Paula Sullivan, 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. Mr. McCarthy reported that the Genesee County Planning Board recommended approval 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 5-0.

RESULT: Public hearing opened at 6:04 pm.

Ms. Sullivan said that they wish to place a section of fence along the area where they sit outside in order to provide some privacy from the neighbor. A 6' tall fence is insufficient to serve as privacy because of the way the rear yard slopes away from the house.

There was no one else 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. Cox, and on roll call, was approved 5-0.

RESULT: Public hearing closed at 6:06 pm.

Mr. Russell said that normally he is not in favor of fences taller than 6', however in this case, a fence of that height would be useless. The other board members agreed.

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: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, it's just the way the yard goes downhill

MOTION: Mr. Russell moved to approve the variance, with a 60-day time limit to obtain the permit. The motion was seconded by Mr. Cox, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance.

B. Area Variance: placement of an above ground swimming pool on this property in a side yard (north side) of this corner lot property

Address: *9 Hillside Dr.*

Applicant: Robert Kuszlyk, 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 Mr. Harris, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:08 pm.

Mr. Kuszlyk explained that his pool is located directly behind the house on the corner. He pointed out that the neighbor directly behind him on the other corner has the same situation with her pool, which does not affect the rest of the neighborhood. The clerk reported that this neighbor had called regarding the proposal and said that she had no objection to the pool since she has the same situation in her yard.

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

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 6:09 pm.

At this point, Mr. Cox asked that the issue of corner properties be placed on the agenda for the next ZBA meeting. He and the other board members would like to know the process for recommending to City Council a change in the Batavia Municipal Code regarding corner properties.

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: no
- Self-created: no, it's a corner property

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

RESULT: Area Variance approved.

- C. On July 27, 2017 the ZBA granted two area variances: one to exceed the maximum number of stories from four to five; and one to exceed the maximum height in feet from 45 to 60. The ZBA placed a condition on their approval that the building permit be issued for this building within twelve months. A permit has not yet been granted. The developer, Samuel Savarino, has asked for a time extension of the previously granted area variance.

Address: 40-52 Ellicott St. (aka Ellicott Station)
Applicant: Samuel Savarino, developer

Actions: 1. Review application
2. Discussion and action by the board

1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal.

2. Discussion and Action by the Board

Mr. Russell wanted to table the application because he believed the notice was too short. Mr. Cox said the permit should have been obtained prior to this time. Ms. Kerr-Rosenbeck commented that if the ZBA approved the proposal the year before, there should be no reason not to extend it. Mr. Randall noted that there were a number of circumstances beyond the contractor's control that contributed to the delay in obtaining the permit. Mr. McCarthy noted that he works on these kinds of projects frequently and there are many circumstances that lead to delays.

MOTION: Mr. Russell moved to table the application; the motion was seconded by Mr. Cox, and on roll call, was disapproved 2-3.

Votes in favor: 2 (Bill Cox, Jim Russell)

Votes opposed: 3 (Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy)

Votes abstained: 0

RESULT: Application not tabled.

MOTION: Mr. Harris moved to extend the time table to obtain the permit by 6 months; the motion was seconded by Mr. McCarthy. Mr. Savarino asked to speak. He explained that the review process has taken longer than anticipated. Also, additional time is needed to work out the details of the agreement over the storm sewer which was discovered beneath the building site. Roll was called, and the petition for additional time was approved 5-0.

RESULT: Six additional months granted to obtain permit.

VII. New Business: none

VIII. Setting of Next Meeting: August 23, 2018

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:20 pm; Mr. Harris seconded. All voted in favor.

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

From: Doug Randall, Code Enforcement Officer

Date: 7/23/18

Re: **13 Porter Ave.**
Tax Parcel No. 84.042-2-30

Zoning Use District: R-3

The applicant, Gerald Freeman, has filed an application to convert a former 4 family dwelling into a 2 family dwelling with 2 off street parking spaces in an existing building that occupies most of this parcel.

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 parkway, throughway, expressway, 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 regarding variance applications that involve parking.

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 Sec. 190-39 A (2)(a) 2 off street parking spaces are required per dwelling unit.**

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) INFORMATIONBoard(s) Zoning Board of AppealsAddress One Batavia City CentreCity, State, Zip Batavia, NY 14020Phone (585) 345 - 6347 Ext. _____**2. APPLICANT INFORMATION**Name Gerald FreemanAddress 15 South Spruce St.City, State, Zip Batavia, NY 14020Phone (716) 912 - 7665 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 13 Porter Ave.B. Nearest intersecting road East Main StC. Tax Map Parcel Number 84.040-2-30

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 190-39 A(2)(a)C. Please describe the nature of this request Approval to create 2 fam dwelling with 2 off street parking spaces**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**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 REFERRALS NOTICE OF FINAL ACTION

GCDP Referral ID **C-07-BAT-8-18**

Review Date **8/9/2018**

Municipality
Board Name
Applicant's Name

BATAVIA, C.
ZONING BOARD OF APPEALS
Gerald Freeman

Referral Type
Variance(s)
Description:

Area Variance(s)
Area Variance to convert a four-family home into a two-family home.
Off-street Parking Spaces
Minimum required: 4
Proposed: 2

Location
Zoning District


13 Porter Ave., Batavia
Residential (R-3) District

PLANNING BOARD DECISION

APPROVAL

EXPLANATION:

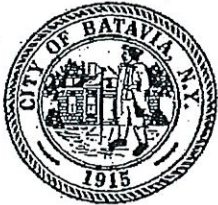
The variance for should pose no significant county-wide or inter-community impact.


Director

August 9, 2018

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
APPLICATION TO THE ZONING BOARD OF APPEALS

Application No.: _____

Hearing Date/Time: _____

APPLICANT: Gerald Freeman
Name _____
Street Address 15 South Spruce St. E-Mail Address _____
City Batavia State NY Phone (716) 912-7665 Fax _____
Zip 14020

STATUS: ☐ Owner ☐ Agent for Owner ☐ Contractor

OWNER: _____
Name _____ E-Mail Address _____
Street Address _____ Phone _____ Fax _____
City _____ State _____ Zip _____

LOCATION OF PROPERTY: 13 Porter Ave.

DETAILED DESCRIPTION OF REQUEST: Approval to create 2 apt unit building with only 2 parking spaces in existing bldg. that occupies a large portion of the parcel. Note, this bldg. was a 4 unit apt. bldg. prior to losing non-conforming status for vacancy.

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.

Gerald Freeman Date 7/9/2018
Applicant's Signature _____

Owner's Signature _____ Date _____

To be Filled out by Zoning Officer

TAX PARCEL: 84.040-2-30 ZONING DISTRICT: R-3 FLOOD PLAIN: C

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

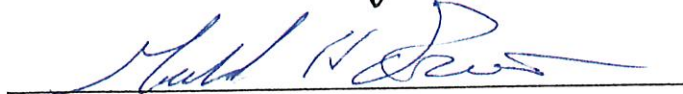
Provision(s) of the Zoning Ordinance Appealed: Bma 190-39 A(2)(a) 2 off street parking spaces are required, per dwelling unit.

Criteria to Support Area Variance

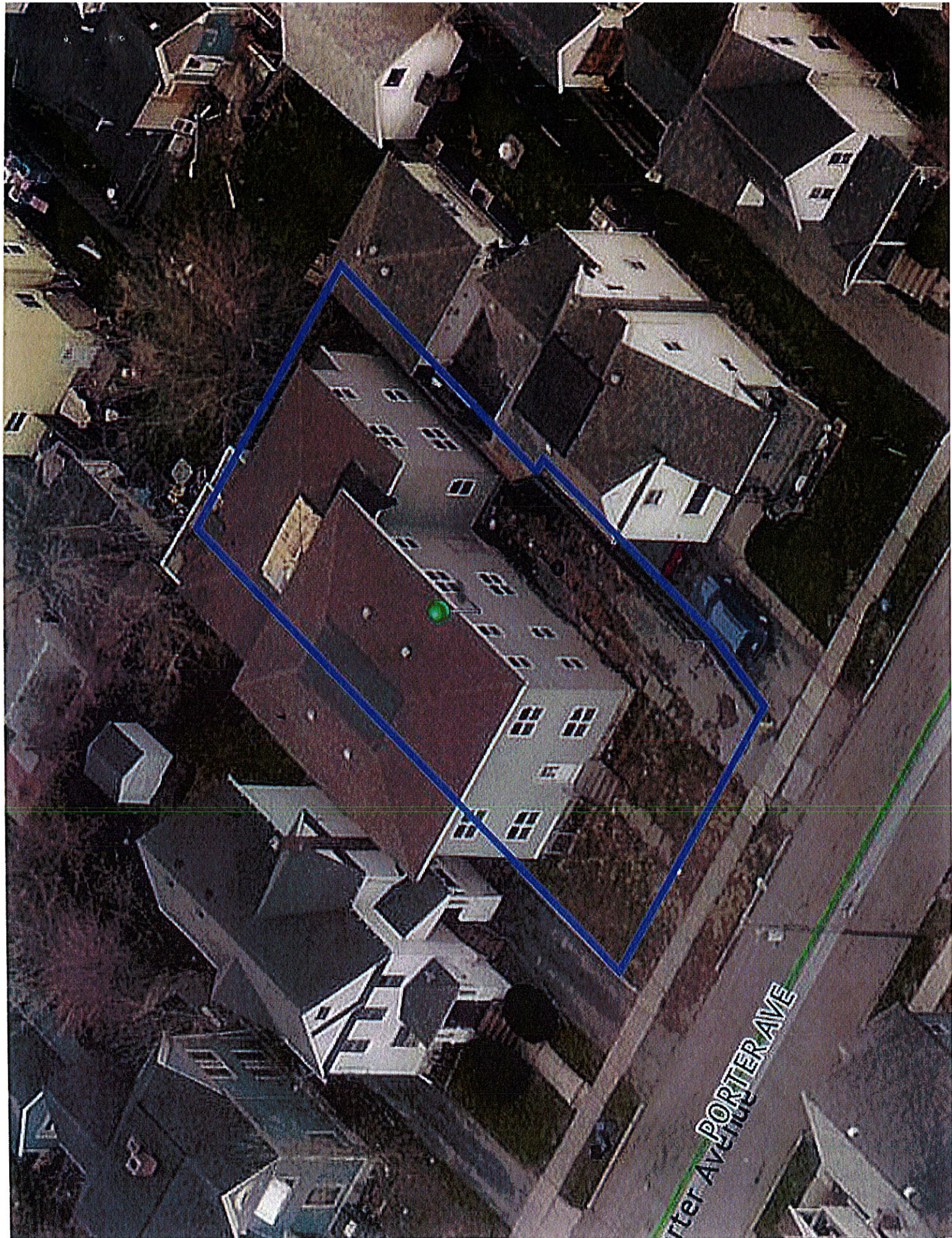
In making its determination, the zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, moral, aesthetics and welfare of the neighborhood or community. The Zoning Board of Appeals shall consider 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 - Reduces the number of occupants from 4 units to 2.
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 - no room to add for parking.
3. **Substantiality.** The requested area variance is not substantial. No - Existing Condition
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 - Existing Condition
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 self created - Existing bldg. was a 4 unit apt. bldg. with parking for 2 vehicles. The lot is small and unable to fit more parking spaces without utilizing the front yard.


Applicant's Signature

7/9/2018
Date



PORTER AVE