

ZONING BOARD OF APPEALS
Official Minutes
Thursday, September 22, 2022
6:00 pm
Council Board Room
One Batavia City Centre, Batavia, NY

Members present: *Jeff Gillard, Nick Harris, Leslie Moma, Jim Russell*

Members absent: Dave McCarthy

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

I. Roll Call

Roll call of the members was conducted. Four members were present and Acting Chair Nick Harris declared a quorum.

II. Call to Order

Mr. Harris called the meeting to order at 6:01 pm.

III. Pledge of Allegiance

IV. Approval of Minutes

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

RESULT: Approval of August 25, 2022 minutes.

V. Zoning Board of Appeals statement

Mr. Harris explained the role of the Zoning Board of Appeals and the procedures it follows.

VI. Variance Requests

- A. Area Variance: place one 18' wide asphalt driveway on the south side and one 18' wide asphalt driveway on the north side of this parcel

Address: *11 Orleans Avenue*

Applicant: Fred Mruczek, owner

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

1. Review Application

Acting Vice Chair, Jim Russell, read the summary of the proposal. Mr. Randall informed the board that at the August 16, 2022 meeting of the Planning and Development Committee, approval of the project was recommended.

2. Public Hearing and Discussion

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

RESULT: Public hearing opened at 6:05 pm.

Mr. Mruczek told the board that he would like to accommodate each of the units with a two-car driveway. He noted that this setup is similar to other properties in the neighborhood and the increase in width is not substantial.

There were no calls, letters, or email concerning the proposal.

MOTION: Mr. Harris 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 6:07 pm.

3. Action by the Board

Mr. Harris 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. Russell moved to approve the variance with the understanding that the applicant will apply asphalt within one year, with 60 days to obtain the permit. The motion was seconded by Mr. Harris, and on roll call, was approved 4-0.

RESULT: Area Variance approved.

B. Area Variance: widen an existing 21' wide asphalt driveway by placing 8' of asphalt to the south side of the existing driveway

Address: 20 Gateway Drive

Applicant: Joan Maniace, owner

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

1. Review Application

Mr. Russell read the summary of the proposal.

2. Public Hearing and Discussion

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

RESULT: Public hearing opened at 6:11 pm.

Mrs. Maniace explained that her mother is suffering from dementia, and she and her siblings have gathered to care for her. With three people using the driveway, one of whom is frequently on call and comes home with a National Fuel truck, there is a lack of space for all of them to park.

Ms. Moma asked where the property line is located, and Mrs. Maniace said that there is an empty lot on the other side of the property.

Mr. Harris asked if Mrs. Maniace owns the empty lot, and she answered no.

Mr. Randall reported that the proposed addition would be located 3' from the property line.

Mr. Gillard asked about the location of the fire hydrant, and Mrs. Maniace responded that it is down the road.

There were no calls, letters, or email concerning the proposal.

MOTION: Mr. Harris 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 6:12 pm.

3. Action by the Board

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

RESULT: Area Variance approved.

- C. Area Variance: demolish a portion of the dwelling and construct a two-story addition within the front yard clear space

Address: *149 Jackson Street*

Applicant: Michael Pastore, owner

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

1. Review Application

Mr. Russell read the summary of the proposal.

2. Public Hearing and Discussion

MOTION: Mr. Harris 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 6:16 pm.

Mr. Pastore noted that the proposal had been approved the previous November, however, because of the amount of time taken by the architect and engineer to draw the plans, the permit expired. The project is now ready to move forward.

There were no calls, letters, or email concerning the proposal.

MOTION: Mr. Harris 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 6:17 pm.

Mr. Harris 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

3. Action by the Board

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

RESULT: Area Variance approved.

- D. Area Variance: remove an existing two-story front entry porch and construct a wood-frame landing and stairs with canopy at the front entrance of this dwelling

Address: 14 Olyn Avenue
Applicant: Frank Loncz, owner

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

1. Review Application

Mr. Russell read the summary of the proposal.

2. Public Hearing and Discussion

MOTION: Mr. Harris 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 6:20 pm.

Mr. Loncz explained that the porch has been boarded up because of the vandalism to the windows. The porch is not being used, and he would like to remove the porch and improve the appearance of the property.

Ms. Moma asked how many units are in the building, and if the front will be repaired and improved. Mr. Loncz said that there are three units, and the front will be the entrance for all three.

There were no calls, letters, or email concerning the proposal.

MOTION: Mr. Harris 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 6:21 pm.

3. Action by the Board

Mr. Harris 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. Moma moved to approve the proposal with 60 days to obtain the permit; the motion was seconded by Mr. Harris, and on roll call, was approved 4-0.

RESULT: Application approved.

- E. Area Variance: construct a 10' x 8' enclosed entry porch on the front elevation of this dwelling. A portion of the new porch will be located within the required front yard clear space

Address: 54 Vernon Avenue
Applicant: Jennifer Turner, owner

- Actions:
1. Remove application from table and review
 2. Public hearing
 3. Action by the board

1. Remove application from table and review

MOTION: Mr. Harris moved to remove the application for the table; the motion was seconded by Mr. Russell, and on roll call, was approved 4-0.

RESULT: Application removed from table.

Mr. Russell read the summary of the proposal.

2. Public Hearing and Discussion

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

RESULT: Public hearing opened at 6:25 pm.

Mr. Turner reminded the board that the application had been tabled at the previous meeting because the gas line needed to be moved. He said that National Fuel moved the gas line 4' to the left, and the project is ready to go forward.

There were no calls, letters, or email concerning the proposal.

MOTION: Mr. Harris 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 6:26 pm.

3. Action by the Board

Mr. Harris 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, it's a corner lot

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

RESULT: Area Variance approved.

F. Use Variance: permit the continuation of two unapproved dwelling units within this multiple dwelling building

Address: *113 Bank Street*

Applicant: Michael Lullo, agent for the owner

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

1. Review Application

Mr. Russell read the summary of the proposal. Mr. Harris reported that the Planning and Development Committee reviewed the proposal and recommended disapproval on the basis that the applicant had already added more units; therefore, the situation was self-created.

2. Public Hearing and Discussion

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

RESULT: Public hearing opened at 6:30 pm.

Mr. Lullo read his bona fides to the board, along with a statement about the background of the property and the reasons for the variance request. [See attached].

There were no calls, letters, or email concerning the proposal.

MOTION: Mr. Harris 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 6:37 pm.

Mr. Randall pointed out that there is no flexibility in a Use Variance. All of the criteria must be met.

Mr. Harris went through the list of supporting criteria for the variance and the board members agreed on the following responses:

- Reasonable return: a hardship does not exist in this case because the property is realizing a profit even though the applicant does not accept that the profit is large enough. Mr. Russell noted that the board must be cautious with setting precedents. In future, anyone who believed they were not making enough money on the number of units in their buildings could expect the board to grant variances
- Unique hardship: no, a hardship would exist if the property was losing money
- Essential character of neighborhood: the other rental properties in the neighborhood contain two or three units, not five or seven
- Self-created: yes, the additional units were put in even though the owner knew that it was an illegal use of the property

Mr. Lullo argued that there is already a precedence in operation because it was known by various inspectors that the property was non-compliant but it was still allowed to exist.

Mr. Randall responded that it was not known that the property was non-compliant because neither the Inspection Department nor the Fire Department has any records to indicate that they have performed inspections inside the dwelling units.

Mr. Russell said that it is not the responsibility of the board to examine the owner's past history with the Inspections Departments. He stated that though it may not have been realized previously that the property does not comply with the Batavia Municipal Code, now that the

non-compliance is clearly understood, they can no longer proceed as though they were ignorant. The board members agreed that the building does not comply with the zoning laws of the City, and that approving the variance would be going against all of their own codes.

3. Action by the Board

MOTION: Mr. Russell moved to deny the variance based on the property's lack of compliance with the applicable BMC laws:

- 1) **BMC 190-36 A(1)** **Non-conforming uses shall not be enlarged, altered or changed in area, activity or contents during its continuance.**
- 2) **BMC 190-36 D(1)** **Non-conforming uses may not be extended. Extensions include an increase in any item that will result in larger parking requirements per 190-39 [BMC 190-39 A(2)(b), 1.5 spaces per dwelling unit is required].**
- 3) **BMC 190-36 C(2)** **Any portion of a structure that is non-conforming shall not be renovated or structurally altered for a nonconforming use.**
- 4) **BMC 190-9 A** **Multiple dwellings (three or more dwelling units) are not permitted principal uses within the R-2 residential use district.**

The motion was seconded by Mr. Gillard, and on roll call, was approved 4-0.

RESULT: Use Variance denied.

G. Use Variance: permit the continuation of two unapproved dwelling units within this multiple dwelling building

Address: *117 Bank Street*

Applicant: Michael Lullo, agent for the owner

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

1. Review Application

Mr. Russell read the summary of the proposal. Mr. Harris reported that the Planning and Development Committee reviewed the proposal and once again recommended disapproval on the basis that despite denial of the original application for a Use Variance, the applicant had added more units; therefore, the situation was self-created.

2. Public Hearing and Discussion

MOTION: Mr. Harris 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 6:50 pm.

Mr. Lullo submitted a statement about the background of the property and the reasons for the variance request. [See attached].

There were no calls, letters, or email concerning the proposal.

MOTION: Mr. Harris 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 6:40 pm.

Mr. Lullo pointed out that though this proposal is similar to the previous one, there is a difference. In 2002, a proposal to increase the number of units was submitted to the ZBA. On that occasion, the denial focused on the parking plan. There was insufficient space to accommodate the increased number of parking places required. Since that time, the storage building at the rear of the property has been demolished in order to create a sufficient amount of space to accommodate more parking.

Mr. Russell observed that the parking was only one issue, and the fact remains that the building does not comply with the BMC. The board agreed.

Mr. Harris went through the list of supporting criteria for the variance and the board members agreed on the following responses:

- Reasonable return: a hardship does not exist in this case because the property is realizing a profit even though the applicant does not accept that the profit is large enough. Mr. Russell noted that the board must be cautious with setting precedents. In future, anyone who believed they were not making enough money on the number of units in their buildings could expect the board to grant variances
- Unique hardship: no, a hardship would exist if the property was losing money
- Essential character of neighborhood: the other rental properties in the neighborhood contain two or three units, not five or seven
- Self-created: yes, the additional units were put in even though the owner knew that it was an illegal use of the property

3. Action by the Board

MOTION: Mr. Gillard moved to deny the variance based on the property's lack of compliance with the applicable BMC laws. The motion was seconded by Ms. Moma, and on roll call, was approved 4-0.

RESULT: Use Variance denied.

VII. Setting of Next Meeting: October 27, 2022

VIII. Adjournment

Mr. Harris adjourned the meeting at 7:02 pm.



Meg Chilano

Recording Secretary