

ZONING BOARD OF APPEALS

Minutes

Thursday, October 27, 2022

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

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

Members absent:

Others present: Lauren Donovan – Recording Secretary, Doug Randall – Code Enforcement Officer

I. Roll Call

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

II. Call to Order

Mr. McCarthy 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. McCarthy assumed the motion and the minutes were approved by unanimous consent.

RESULT: Approval of September 22, 2022 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: install one 99 sq.' electronic message board sign on the west elevation of the existing marquee sign, and one 41 sq.' electronic message board sign on the east elevation of the existing marquee sign. The sign is located within the Central Commercial District / Business Improvement District

Address: *210-212 East Main Street*

Applicant: John Flannery, agent for owner

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

1. Review Application

Vice Chair, Leslie Moma, read the summary of the proposal. Mr. Randall informed the board that the Planning and Development Committee recommended approval of the project with the condition that sign might only change once per minute.

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 6:07 pm.

Mr. Flannery explained that the intention is to renovate the marquee and replace the reader board with a digital sign. City Church would like to maintain the integrity of the original marquee while updating the current technology. He provided the board with examples of similar signs created by the sign contractor. He noted that the images change more frequently than every 60 seconds.

Mr. Harris asked if it is possible to control the amount of time between changes. Mr. Flannery said the sign is software-based, something similar to designing a PowerPoint slide, and can be easily controlled.

Ms. Moma asked if the sign can only project or if it has the capability to broadcast, and Mr. Flannery said that the sign can show live feed.

Mr. Gillard responded that live shows are more movement than is permitted in a sign in the downtown district.

Mr. Randall pointed out that one of the variances is requesting the ability to show animation which changes more frequently than once every 60 seconds.

Mr. McCarthy asked Mr. Flannery to clarify the intention, and he answered that the church would like the ability to broadcast.

Ryan McDonald spoke on behalf of City Church. He said that the video capability is not intended for everyday use, but for special events. When asked about the ability of the marquee to support a digital board of that size, Mr. McDonald answered that an engineer has given assurance that the marquee is structurally sound.

Mr. McCarthy read a letter into the minutes from Teresa Doran, 3207 Pratt Road. She is opposed to the proposed changes because this sign would detract from the appearance of the downtown area.

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 6:17 pm.

The board members discussed the reasons for the recent changes in the sign code. The Comprehensive Plan update specifies the desired appearance that should remain consistent in the downtown area. Though digital signs are typical of today's technology and may be appropriate for some areas, a large, brightly lit, scrolling, flashing sign is not what the board would like to see on downtown Main Street.

Ms. Moma asked if the church has considered other signs that would fit in with the downtown esthetic, and Mr. Flannery said no.

Mr. McDonald referred to a traffic study performed by the DOT in 2014, which indicated that moving signs were not a leading cause of accidents. Mr. McCarthy noted that the study is outdated.

Mr. Russell and Ms. Moma agreed that allowing the proposal could be precedent setting for other businesses on Main Street.

3. Action by the Board

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

- Undesirable change in neighborhood character: yes
- Alternative cure sought: they could install a different sign
- Substantiality: yes, they want three variances
- Adverse effect or impact on neighborhood/community: yes, it will change the appearance of Main Street and could pose traffic hazards
- Self-created: to an extent because it needs to be repaired or replaced, but what they are proposing constitutes a change

Variance #1 (sign not permitted in C3)

MOTION: Mr. McCarthy moved to approve the variance to allow the electronic message board with the stipulation that it remain static and can only change 1 time every 24 hours. The motion was seconded by Mr. Harris, and on roll call, was approved 3-2-0.

Votes in favor: 3 (Jeff Gillard, Nick Harris, Dave McCarthy)

Votes opposed: 2 (Leslie Moma, Jim Russell)

Votes abstained: 0

RESULT: Area Variance approved with above condition.

Variance #3 (animation)

MOTION: Mr. McCarthy moved to deny the variance. The motion was seconded by Ms. Moma, and on roll call, was approved 4-1-0.

Votes in favor: 4 (Nick Harris, Dave McCarthy, Leslie Moma, Jim Russell)

Votes opposed: 1 (Jeff Gillard)

Votes abstained: 0

RESULT: Area Variance denied.

Variance #2 (to move or change more than every 10 second)

MOTION: Mr. McCarthy moved to deny the variance. The motion was seconded by Mr. Harris, and on roll call, was approved 5-0.

RESULT: Area Variance denied.

- B. Area Variance: replace the existing internally illuminated freestanding sign face panel with a new internally illuminated face panel identifying the new business, Quicklee's, and a tenant. The sign face will have a white background with blue letters and graphic. Also proposed are two canopy signs over the gas pump island. Each of these internally illuminated signs are proposed to have a white background and blue, white, and black letters and graphic

Address: 204 Oak Street

Applicant: Lou Terragnoli, agent for Quicklee's

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

1. Review Application

Ms. Moma 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 6:48 pm.

Mr. Terragnoli said that the monument sign and canopy sign that the business is requesting have lighter backgrounds than the code allows. In order for Quicklee's to maintain unity of their brand across their 30 locations, they are asking for relief from the sign requirements

There were 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 5-0.

RESULT: Public hearing closed at 6:51 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. 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 5-0.

RESULT: Area Variance approved.

- C. Use Variance: gut and renovate an existing building that includes a partial first floor residential use. Approximately 582 sq.' of a 1,500 sq.' dwelling unit exists on the first floor rear half of this building. The residential use has been vacant for more than a year and has lost is nonconforming use

Address: 327 Ellicott Street
Applicant: Bradley Trzcieski, owner

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

1. Review Application

Ms. Moma read the summary of the proposal. Mr. McCarthy reported that the Planning and Development Committee reviewed the proposal and recommended approval on the basis that the situation had already been in existence.

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 6:56 pm.

Mr. Trzcieski said that his intention is to renovate the building, with commercial use in the front, and living space in the rear and upstairs.

There were 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 5-0.

RESULT: Public hearing closed at 6:57 pm.

Mr. Russell asked about parking. Mr. Randall noted that parking provisions have already been accounted for in the code.

Ms. Moma asked about how many other mixed-use properties exist in the immediate area. Mr. Randall informed her that there are two others next door, which are similar in use to what Mr. Trzcieski has proposed.

Mr. McCarthy asked about the plans for the basement, which must meet compliance requirements for properties located in the flood plain. Mr. Randall explained that, as per the architect's plans, the mechanicals will be removed from the basement and the basement will be filled in.

Mr. McCarthy 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:
- Essential character of neighborhood: no, there are other mixed-use properties in the area
- Self-created: no, it was previously approved as mixed-use

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. McCarthy moved to approve a negative declaration of SEQR; the motion was seconded by Mr. Gillard, and on roll call, was approved 5-0.

RESULT: Negative declaration of SEQR

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. 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. McCarthy moved to approve a negative declaration of SEQR; the motion was seconded by Mr. Gillard, and on roll call, was approved 5-0.

RESULT: Negative declaration of SEQR

4. Action by the Board

MOTION: Mr. Harris moved to approve the application with four months to obtain the permit. The motion was seconded by Mr. Russell, and on roll call, was approved 5-0. Russell moved to deny the variance based on the property's lack of compliance with the applicable BMC laws:

RESULT: Use Variance approved.

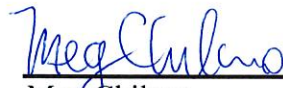
VII. Approval of 2023 Meeting Dates

Mr. Gillard moved to approve the 2023 meeting dates; all voted in favor.

VIII. Setting of Next Meeting: December 22, 2022

IX. Adjournment

Mr. McCarthy adjourned the meeting at 7:08 pm.



Meg Chilano

Recording Secretary