

ZONING BOARD OF APPEALS

Minutes

November 19, 2015

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Jeffrey Gillard, Lee Hyatt, Sandra Licata, Emma Morrill (Alt.)*

Members absent: William Hayes, Paul 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 Chairman Gillard declared a quorum.

II. Call to Order

Mr. Gillard called the meeting to order at 6:03 pm.

III. Pledge of Allegiance

IV. Approval of Minutes

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

Result: Approval of October 22, 2015 minutes.

V. Zoning Board of Appeals statement

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

VI. Variance Requests

The applicant, Kip Finley (agent for the owner), has filed applications for five area variances. He is proposing to subdivide this existing parcel into two separate parcels and construct an approximately 2,170 sq.' Dunkin Donuts restaurant with a drive-through window on the newly created parcel

Address: *401-409 West Main Street*

Applicant: Kip Finley, agent for the owner

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

1. Review Application

Mr. Hyatt, acting as Vice Chair, read the proposal summary for the board.

2. Public Hearing and Discussion

Mr. Gillard opened the public hearing at 6:09 pm. The applicant spoke first and addressed the request for each of the variances:

- Shorter distance to property lines because driveways will be shared with neighbors
- Small number of parking spaces because BMC requires a large number of spaces
- Change the front yard setback because it was suggested by PDC that having the restaurant closer to the street would create a more urban café style
- Increase the height of the drive in restaurant because PDC requested a more residential type structure
- Narrow the driveway width to discourage motorists from entering from the left

Donald Fryling, 6 Redfield Parkway

Mr. Fryling spoke in opposition to the project:

- Traffic congestion
- Too many donut shops and drive-through restaurants in the City
- Lot too small
- Public sentiment against it

Mary Joyce Hatch, 72 Roosevelt Avenue

Mrs. Hatch spoke in opposition to the project:

- Volume of traffic making left turns from River Street on to Main Street

James Owen, 2 Redfield Parkway

Mr. Owen spoke in opposition to the project:

- Traffic congestion
- Problems getting on to Main Street from Redfield Parkway

Nann Zorn, 12 River Street

Ms. Zorn spoke against the project:

- Traffic congestion
- Location
- Lot too small
- Too many variances needed

Mr. Gillard closed the public hearing at 6:32 pm.

3. Discussion and Action by the Board

Mr. Hyatt and Ms. Morrill asked how the driveways worked. Mr. Finley showed, using arrows on a diagram, where the driveways would be located and the direction that cars would travel to enter and exit the parking lots.

Driveways for drive-in restaurants are not permitted to be closer than 20' from side lot lines.

The proposed West Main Street curb cuts, west side of parcel ingress and east side exit driveways cross the proposed side lot lines at the street, and are on the line for the majority of the driveway's length

Mr. Gillard went through the list of supporting criteria for the variance, generally considering, however, the project as a whole:

- Undesirable change in neighborhood character: more traffic will be generated
- Alternative cure sought: not sure if they looked for another site
- Substantiality: yes
- Adverse effect or impact on neighborhood/community: yes
- Self-created: yes

The board then considered the criteria as it related more specifically to the variance before they voted.

MOTION: Dr. Licata moved to approve the application; the motion was seconded by Mr. Gillard, and on roll call, was approved 3-1.

Votes in favor: Jeffrey Gillard, Sandra Licata, Emma Morrill

Votes opposed: Lee Hyatt

Result: Approval of Area Variance

Parking is required at the rate of four spaces for each 100 sq.' of principal building space of drive-in restaurants. 88 spaces are required; 30 spaces are proposed on this parcel, with a difference of 58 spaces

After clarifying with Mr. Finley that there are 21 seats in the restaurant and 9 employees, Dr. Licata asked where the customers who just want to run in, grab coffee and leave are going to park. Mr. Finley answered that there is some flexibility in the parking area at Five Star Bank across from the entrance of the proposed restaurant. Mr. Finley added that the five additional spaces in Five Star Bank's parking lot are not considered in the 30 spaces specified by the variance.

Mr. Hyatt said he did not see a reason for 88 parking spaces.

Dr. Licata stated that she believes 88 spaces are too many but 30 spaces are not enough.

MOTION: Mr. Hyatt moved to approve the application as written; the motion was seconded by Ms. Morrill, and on roll call, was approved 3-1.

Votes in favor: Jeffrey Gillard, Lee Hyatt, Emma Morrill

Votes opposed: Sandra Licata

Result: Approval of Area Variance

The front yard clear space shall be a minimum of 25'; 12' is proposed for a difference of 13'

Mr. Hyatt asked Mr. Finley to clarify who wanted the building moved closer to the street. Mr. Finley replied that the topic came up in the discussion with the PDC about having a more residential style structure. Mr. Finley noted that 12' would leave sufficient room for a patio to be constructed.

Mr. Hyatt asked for the reasoning behind moving the building closer to the street. Mr. Finley explained that the initial design had the building set toward the rear of the lot with parking in front, and residents complained. In response to the complaints, the design was altered to bring the building forward and move the parking to the rear of the lot.

Mr. Gillard asked if the building would be even with Batavia Marine and Mr. Finley responded that it would be close.

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

- Undesirable change in neighborhood character: considering that the building is nearly in line with the other buildings on the street, no
- Alternative cure sought: the building could be moved farther back on the lot if they chose to do so
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

Dr. Licata asked if the placement of the building on the lot changed the length of the queue. Mr. Finley said that moving the queue to the rear creates an additional three feet for the queue.

MOTION: Mr. Gillard moved to approve the application as written; the motion was seconded by Mr. Hyatt, and on roll call, was approved 4-0.

Result: Approval of Area Variance

The maximum permitted height for a drive-in restaurant is 18'; 25.29' is proposed for a difference of 7.29'

Dr. Licata asked about roof measurements. Mr. Finley explained that if roof on the building was flat, like the one on the prototypical Dunkin Donuts buildings, it would measure 18'; however, the more residential-looking peak on the proposed design measures 25.9'.

Ms. Morrill asked about the choice of roof and Mr. Finley answered that the PDC had said a more residential style building would be more acceptable

Mr. Gillard asked if there was something other than dead space beneath the peak of the roof and Mr. Finley said no. Mr. Gillard asked if the roof could be reduced by 3' to make it closer to the same height as the other roofs in the area. Mr. Finley said the height of the roof was necessary to maintain the Cape Cod style and mimic the residential appearance of the houses across the street.

Mr. Gillard asked what is on the back part of the roof where a guard rail is indicated on the drawing. Mr. Finley explained that the air conditioning is being hidden behind an area meant to resemble a walk-out terrace.

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

- Undesirable change in neighborhood character: considering that the building is supposed to look more residential, it would be difficult to make it the same height as the neighboring businesses
- Alternative cure sought: the building design is based on a suggestion from the PDC
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. Gillard moved to approve the application as written; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

Result: Approval of Area Variance

Driveways for drive-in restaurants may not be less than 20' in width. 14' is proposed at the West Main Street exit (northeast corner of parcel) for a difference of 6'

Dr. Licata asked if the driveway is currently 14' wide and Mr. Finley answered that it is approximately 30' wide.

Ms. Morrill stated that she has a problem with the proposed width of the driveway. Mr. Finley responded that if the driveway is too wide, it invites motorists to make a left turn either out of or into the restaurant. Mr. Finley said that 14' is the smallest width that will still allow room for a UPS or delivery truck to enter.

Ms. Morrill asked if Batavia Marine would be sharing the driveway. Mr. Finley replied that the driveway would be shared, but large RVs would probably use the River Street driveway.

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: Mr. Gillard suggested perhaps the DOT would allow for a greater angle on the entrance
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Dr. Licata moved to approve the application; the motion was seconded by Mr. Gillard, and on roll call, was approved 3-1.

Votes in favor: Jeffrey Gillard, Sandra Licata, Emma Morrill

Votes opposed: Lee Hyatt

Result: Approval of Area Variance

VII. New Business: none

VIII. Setting of Next Meeting: December 17, 2015

IX. Adjournment

Mr. Hyatt moved to adjourn the meeting at 7:18 pm; Mr. Gillard seconded. All voted in favor.

A handwritten signature in black ink, appearing to read "Meg Chilano", written over a horizontal line.

Meg Chilano

Bureau of Inspection Clerk