

ZONING BOARD OF APPEALS

Minutes

Thursday, December 20, 2018

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Bill Cox, Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy, Leslie Moma*

Members absent: Jim Russell

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 6:04 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 as written by unanimous consent.

RESULT: Approval of October 25, 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: construction of a 16' x 16' one-story wood frame utility building within the lot line setback distance

Address: *10 Trumbull Pkwy.*

Applicant: Kenneth Wood, owner

Actions: 1. Review proposal
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. Harris, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:09 pm.

Mr. Wood told the board that the new shed is replacing one that was located in the same position.

Mr. Randall noted that a complaint had been made by a neighbor who believed the shed was constructed over the property line, but which was in fact not. There was no one present who wished to speak, and no other calls, emails, or letters regarding the project.

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 6:10 pm.

Mr. Cox asked if the shed would be place on the original foundation, and Mr. Wood answered that it would. Mr. Randall pointed out that the foundation size was increased by a small amount to accommodate the new shed.

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

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

RESULT: Approval of Area Variance.

- B. Area Variance: removal of an existing concrete side entry porch and construction of a 6' x 8.5' wood frame porch with roof structure within the required side yard clear space

Address: 5 West Ave.

Applicant: Brian Castrechino, contractor for the 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 6:13 pm.

Mr. Castrechino explained that the existing porch is concrete with an aluminum roof, but the concrete is falling apart. The structure will be the same size but the supporting poles will be placed on the outside of the concrete.

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 6:15 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: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Ms. Moma moved to approve the proposal, with a 30-day time limit to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance.

- C. Use Variance: addition of a non-permitted use physician's office in a portion of the building presently used for a "legal non-conforming" philanthropic use (YWCA). It would make sense to also consider including the non-conforming uses (philanthropic organizations, business/professional offices) for inclusion with this request to ensure those uses will be permitted to continue as conforming uses

Address: 301 North St.

Applicant: Katherine Hens, agent for the YWCA

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

1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal. Mr. McCarthy reported that the City of Batavia Planning and Development Committee recommended to allow the philanthropic organization and physicians' office use, with no increase of the square footage of the building permitted.

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 6:19 pm.

Reid Whiting, counsel for the YWCA, spoke on behalf of the project. He said that the main issue is whether or not financial hardship exists. He pointed out the auditing report and noted that it refers to severe financial hardship on the part of the YWCA. For several years the YWCA has been operating under deficits, declining cash flows and diminishing net assets. According to Mr. Whiting, the YWCA is technically insolvent, though it has taken extreme measures to try to continue to provide services to the community. He said that the organization has done everything possible to reduce its operating expenses.

Mr. Whiting also addressed the issue of self-created hardship. He noted that the YWCA predates the establishment of the R-1 district in that area, and it would not be feasible to adapt it to a single-family. There is no reasonable rate of return that can be realized, therefore, the YWCA needs to sell the building in order to continue to provide essential community services.

He added that the YWCA believes that the variance will preserve the integrity of the character of the neighborhood.

Lucille DiSanto, 3732 South Main Street Rd., stated that she is a YWCA board member. She explained the process the YWCA went through to find an acceptable buyer when it determined it needed to sell the building. The organization then held an open house to introduce the prospective buyer, Dr. Emily Fraser-Branche, to the neighborhood. Dr. Fraser-Branche will restore and care for the building, and will share space with the YWCA, which will continue to provide services for the community. As a pediatrician, Dr. Fraser-Branche already cares for many of the area children. According to Ms. DiSanto, the neighbors responded favorably to the plan. (Included with the minutes are signed petitions and letters of support.)

Dr. Gregory Branche, 25 Terry Hills Dr., related biographical information about Dr. Fraser-Branche, and talked about her dedication to the care of the people of the community. He

noted that My Sisters' Closet and Pathstone will remain located in the building. In addition, Dr. Branche explained that the property, which had previously been tax-exempt, under new ownership would be placed on the tax rolls and provide revenue for the City.

Colleen Hill, 7 New York Pl., in her professional capacity as a nurse, commended Dr. Fraser-Branche's caring and dedicated work in the community.

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 6:31 pm.

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. Harris, and on roll call, was approved 5-0.

RESULT: Negative declaration of SEQR

4. Action by the Board

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

- Reasonable return: no
- Unique hardship: no
- Essential character of neighborhood: no, it will be good for the neighborhood
- Self-created: no

The board members discussed what uses they would allow the variance to include. It was agreed that only professionals within the medical profession would be allowed, given the proximity to the hospital and the character of the neighborhood. Philanthropic organizations, rather than simply not-for-profits, would also be acceptable.

MOTION: Mr. Harris moved to approve the use variance to allow for any medical professional office, and/or philanthropic organization, with no increase of the square footage, with 12 months to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

RESULT: Use Variance approved.

VII. New Business: Approval of 2019 Meeting Dates


MOTION: Ms. Kerr-Rosenbeck moved to approve the meeting dates for the upcoming year; the motion was seconded by Ms. Moma, and on roll call, was approved 5-0.

RESULT: 2019 Meeting Dates approved.

VIII. Setting of Next Meeting: January 24, 2019

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:55 pm; Mr. Harris seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Secretary