

ZONING BOARD OF APPEALS

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