

# **ZONING BOARD OF APPEALS**

## ***Minutes***

**Thursday, September 28, 2017**

**6:00 pm**

**Council Board Room**

**One Batavia City Centre, Batavia, NY**

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

Members absent: none

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 by unanimous consent.

**RESULT: Approval of July 27, 2017 minutes and August 24, 2017 minutes.**  
will be approved at the next meeting.

### **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: widen an existing 10' wide asphalt driveway to 23.5' by removing the existing driveway and placing a new one to match the attached plan

Address: 7 Richmond Ave.

Applicant: Matt Jolliff, 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, as well as the Planning and Development Committee, recommended approval of the proposal.

### 2. Public Hearing and Discussion

**MOTION:** Mr. McCarthy moved to open the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:09 pm.**

The applicant, Mr. Jolliff, explained that one of the updates he is making to the property is the replacement of the 10' wide garage door with a garage door that is 14' wide. He would like to widen the driveway to keep friends and family off away from the craziness of the street in that area and make room for them to park in the driveway without blocking the sidewalk.

There was no one 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 6:11 pm.**

Mr. McCarthy went through the list of supporting criteria for the area 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 an older driveway

### 3. Action by the Board

**MOTION:** Mr. McCarthy moved to approve the variance as submitted, with a 60 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.**

B. Use Variance: change the use of six automobile repair bays to individual storage units for rent

Address: 643-645 East Main St.

Applicant: Dan Mattice, owner

- 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 Genesee County Planning Board recommended disapproval of the variance on the basis that it was believed to be self-created. He reported that the PDC, on the other hand, recommended approval of the request.

## 2. Public Hearing and Discussion

**MOTION:** Mr. McCarthy moved to open the public hearing; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:14 pm.**

Attorney Michael DelPlato spoke on behalf of the project. He described how the property had declined prior to being foreclosed. Upon purchasing the property, the Mattices invested \$40,000 to upgrade the property, with a new roof, new siding, and clean up. They rented out the front for a florist's shop, but the attempt to rent the rest of the building as an auto repair shop failed. In an effort to salvage their investment, the Mattices would like to use the repair bays as large storage units for rent.

Mr. DelPlato said that he disagrees with the County Planning Board's assessment that the hardship is self-created because the Mattice's did not initially intend to use the building for storage; but when it turned out that they could not rent the property for its intended use, they had to figure out a different way to make the property useful and profitable.

Mr. DelPlato noted that the new use would be minimally invasive to the neighborhood, considering that it is neat and clean, low noise, and no increase in traffic flow. He also pointed out that another storage facility (Triangle Storage) abuts this property at the rear.

There was no one 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 6:21 pm.**

Mr. Cox said he believes that the law regarding the use of this property should be adhered to. He said that banks advertise foreclosure properties far enough in advance of the sale that the Mattices should have had sufficient time to investigate the usage of this property.

Mr. McCarthy said that when someone purchases a property and attempts to use it for the intended zoning usage, then discovers that it cannot be used in that way, a hardship has been created; but, the hardship is not a self-created one. If the Mattices had purchased the property with the intention to rent storage units, then the hardship would be self-created. Mr. Harris agreed, as did Mr. Russell and Ms. Kerr-Rosenbeck.

### 3. SEQR

Mr. McCarthy read through the supporting criteria the Mattices had listed for the use variance. 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. Russell, and on roll call, was approved 5-0.

**RESULT: Negative declaration of SEQR**

### 4. Action by the Board

**MOTION:** Mr. Russell moved to approve the variance, with a 60 day time limit to obtain the permit. The motion was seconded by Mr. Harris, and on roll call, was approved 4-1-0.

Votes in favor: 4 (Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy, Jim Russell)

Votes opposed: 1 (Bill Cox)

Votes abstained: 0


**RESULT: Approval of Use Variance.**

### VII. New Business: none

### VIII. Setting of Next Meeting: October 26, 2017

### IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:31 pm; Mr. Harris seconded. All voted in favor.



---

Meg Chilano

Bureau of Inspection Secretary