

ZONING BOARD OF APPEALS

Minutes

Thursday, October 26, 2017

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy, Jim Russell*

Members absent: Bill Cox

Others present: Doug Randall – Code Enforcement Officer

I. Roll Call

Roll call of the members was conducted. Four 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 September 28, 2017 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 a 12' x 8' one story wood frame shed in the southwest corner (side yard) of this corner lot property

Address: 20 Sumner St.

Applicant: John Konarski, 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.

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 4-0.

RESULT: Public hearing opened at 6:05 pm.

The applicant, Mr. Konarski, explained that he would like to put up a shed for storage in order to make space in the garage for the car. He lives on a corner property and needs a variance before he can place the shed.

Mr. McCarthy read an email from Councilperson Rosemary Christian in support of the proposal.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Mr. Harris, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:07 pm.

3. Action by the Board

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: there isn't one
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, it is a corner lot

MOTION: Mr. Russell moved to approve the variance as submitted; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance.

B. Area Variance: placement of a 31.5 sq.' pole sign on this property in the northeast portion of this parcel located within the I-1 Industrial District

Address: 602-604 East Main St.

Applicant: Nick Cannizzo, sign contractor

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

1. Review Application

Ms. Kerr-Rosenbeck Harris read the summary of the proposal. Mr. Harris noted that the Genesee County Planning Board recommended disapproval of the request. It is their belief that since the sign code was recently rewritten, approval of this request would set an unwanted precedent.

2. Public Hearing and Discussion

MOTION: Mr. Russell moved to open the public hearing; the motion was seconded by Mr. McCarthy, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:11 pm.

The applicant, Mr. Cannizzo, told the board that there are several factors in support of the request: this sign is smaller than the original sign, which measured 4' x 8'; as the site of the previous sign, this location already has power running to it; the area consists of grass, which is easier to excavate than an asphalt parking lot; and, there is a two-story residential structure located on the other side of the driveway.

He related that Mr. Randall had informed him that the property is split nearly down the middle as far as zoning is concerned, with one half of the property zoned C-2 and the other half zoned I-1. If the sign were to be placed on the same side as the residence, no variance would be necessary; however, Mr. Cannizzo did not think the residents would appreciate looking out of their window at the sign.

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. Russell, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:14 pm.

3. Action by the Board

Mr. Harris said that he thought it would be cost prohibitive for the applicant to move the sign to the other side of the driveway and relocate the power.

Ms. Kerr-Rosenbeck said she did not have an issue with variance, especially considering there are only a few feet to the other side of the driveway. Mr. McCarthy agreed.

Mr. Russell said that moving the sign to the other side of the driveway could create a problem for the neighbor.

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: Mr. Russell pointed out there is an alternative but that it creates its own set of problems
- Substantiality: a little because of the size involved
- Adverse effect or impact on neighborhood/community: no
- Self-created: not really

MOTION: Mr. McCarthy moved to approve the variance, with a 30 day time limit to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance.

- C. Area Variance: relocation of a 6' tall fence to an area restricted to 3' and placement of an 8' x 19' swim spa in the northeast side yard of this corner lot property

Address: 128 Ross St.

Applicant: Patrick J. O'Brien, 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 Ms. Kerr-Rosenbeck, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:21pm.

Mr. O'Brien stated that he would like to install a large hot tub to the rear of his property behind the house. Mr. O'Brien said that he would like to replace the 3' portion of the fence with a 6' tall fence, and move it back to make it even with the 6' portion of the fence in what would be considered the rear yard.

Ms. Kerr-Rosenbeck noted that the reason for the 3' height limit is line of sight and safety, especially for someone walking down the sidewalk. She expressed concern that raising the fence to 6' all the way down to the end of the driveway would obscure the line of sight when backing out of the driveway. She pointed out that the board has required previous applicants with similar requests to lower the height of a fence at the sidewalk in order to maintain a clear line of sight. Mr. Harris and Mr. McCarthy agreed.

Mr. Randall pointed out that a variance is not necessary for placement of a 3' tall fence, but rather, only to raise a fence beyond the 3' limit in height. Also, Mr. O'Brien will not need a variance to repair the fence that is already in place.

Mr. Randall reported a phone call from an adjacent neighbor who is concerned about the height of the fence and visibility.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:24 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. O'Brien withdrew the request for an area variance for the fence.] Mr. Russell moved to approve the area variance for placement of the spa, with 60 days to obtain the permit, on the condition that the fence is repaired. The motion was seconded by Mr. McCarthy, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance.

VII. New Business: none

VIII. Setting of Next Meeting: November 16, 2017

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:27 pm; Mr. Russell seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Secretary