

# **ZONING BOARD OF APPEALS**

## ***Minutes***

**Thursday, November 16, 2017**

***6:00 pm***

**Council Board Room**

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

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

Members absent: Bill Cox, Nick Harris

Others present: Meg Chilano – Recording Secretary, Doug Randall – Code Enforcement Officer

### **I. Roll Call**

Roll call of the members was conducted. Three members were present and Chairman McCarthy declared a quorum.

### **II. Call to Order**

Mr. McCarthy called the meeting to order at 6:06 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 October 26, 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 10' x 16' one story wood frame shed in the east side yard

Area Variance: construction of a pressure treated wood frame deck within the required side yard clear space

Address: *1 Seneca Ave.*

Applicant: Patrick McNutt, 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 Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

**RESULT: Public hearing opened at 6:11 pm.**

The applicant, Mr. McNutt, explained that he needs a variance to put up a shed because he lives on a corner property, and technically, does not have a back yard. He also needs a variance to construct a deck. He would like the deck to be in line with the house and the house is only 6' from the property line.

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 Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

**RESULT: Public hearing closed at 6:13 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 variances as submitted, with 60 days to obtain the permit; the motion was seconded by Mr. McCarthy, and on roll call, was approved 3-0.

**RESULT: Approval of both Area Variances.**

B.           Area Variance: placement of a 10' tall fence parallel to the north (rear) property line

Address:       8 Dewey Ave St.

Applicant:     Eric Olson, 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. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing opened at 6:15 pm.**

The applicant, Mr. Olson, described how he has had privacy for most of the 40 years he has lived at on this property. Seven years ago, the trees which lined the back of the property, became infested with beetles and had to be cut down. The apartment complex at 193 South Main St. was still obscured from view by a line of trees at that address; however, National Grid removed those trees in September. Now the apartment building, with clutter behind every apartment, is in full view.

Mr. Olson noted that his property sits at the lowest point on Dewey Ave., and estimated that it would take a fence with a height of 10' to block the view of the first floor of the apartment complex and provide him with a measure of privacy.

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 3-0.

**RESULT: Public hearing closed at 6:23 pm.**

## **3. Action by the Board**

Mr. McCarthy stated that he does not like a 10' fence because it is a great deal above the 6' limit. The board has only previously approved fences that were 8' in height. Mr. Olson responded that the fence itself would be 8' in height and then he would raise it 2' from the ground.

Mr. McCarthy asked if the ground is built up 2' and then an 8' fence is installed on that ground, would it be considered 8' or 10' in height, according to the BMC. Mr. Randall answered that it would be considered an 8' fence.

Ms. Kerr-Rosenbeck expressed concern over setting a precedent by approving a 10' fence.

Mr. Russell reminded the board that he is generally opposed to the installation of fences over the 6' limit; however, in this particular instance, featuring this particular landscape, he said he could understand Mr. Olson's desire for privacy. He pointed out that the apartment complex does not present a favorably landscaped property.

Mr. Randall noted that as a non-conforming use property, the apartment complex would not be allowed to exist in this residential neighborhood today.

Mr. McCarthy agreed that this area presents a difficult situation. He does not like the idea of a 10' fence but said that he would find an 8' fence placed on a 2' berm acceptable.

Mr. Russell commented that he is not sure there is enough value in trucking in enough dirt to create a 2' berm. Mr. Olson said that his window of opportunity to bring that amount of soil onto wet ground is very limited. He said that he understands the concern over the 10' fence but no one other than he will see the fence.

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: not really

**MOTION:** Mr. Russell moved to approve the variance as proposed, with a 60 day time limit to obtain the permit. The motion was seconded by Mr. McCarthy, and on roll call, was approved 3-0.

**RESULT: Approval of Area Variance.**

**VII. New Business: Approval of 2018 Meeting Dates**

**MOTION:** Mr. Russell moved to approve the 2018 meeting dates; the motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 3-0.

**RESULT: Approval of 2018 meeting dates.**

**VIII. Setting of Next Meeting: December 21, 2017**

**IX. Adjournment**

Ms. Kerr-Rosenbeck moved to adjourn the meeting at 6:38 pm; Mr. McCarthy seconded. All voted in favor.



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Meg Chilano

Bureau of Inspection Secretary