

# **ZONING BOARD OF APPEALS**

## ***Minutes***

**Thursday, December 18, 2014**

***6:00 pm***

**Council Board Room**

**One Batavia City Centre, Batavia NY**

Members present: *Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy*

Others present: Robert Greathouse, Brandon Hall, Kelly Herold (late), Nicholas Salvador, Dave Tufts, Mr. and Mrs. White, 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 Gillard declared a quorum.

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

Mr. Gillard called the meeting to order at 6:04 pm.

### **III. Pledge of Allegiance**

### **IV. Approval of Minutes from October 23, 2014 Meeting**

Motion by: *Lee Hyatt*

**"I make a motion to accept the minutes as written."**

Seconded by: *Sandra Licata*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

**Result: Approval of October 23, 2014 minutes.**

### **V. Zoning Board of Appeals statement**

Mr. Gillard read a statement regarding the role of the Zoning Board of Appeals and the procedures it follows.

### **VI. Variance Requests**

- A. Add a second driveway along the north property line. The proposed loose stone driveway with Portland cement apron and sidewalk will be 9' wide and 35' long

Address: *6 Goade Park*

Applicant: Kelly Herold, owner

Vice Chairman Hayes summarized the first application for the board. Mr. McCarthy had a question but the applicant was not present. He said that he wished to table the proposal.

Motion by: *Paul McCarthy*

**“I make a motion to table the application.”**

Seconded by: Lee Hyatt

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

**Result: Application tabled**

B. Placement of an 8' x 12' one story wood frame shed in the northernmost portion of this property which has two yards that adjoin a street

Address: 20 Chestnut Street

Applicant: Brandon Hall, owner

Actions: 1. Review of application  
2. Public hearing  
3. Discussion and action by the board

### **1. Review of Application**

Mr. Hayes summarized the proposal for the board. He asked the applicant if the shed had already been erected and Mr. Hall replied that it had. Mr. Hayes then asked if the shed is moveable, and Mr. Hall responded that it is.

### **2. Public Hearing**

Mr. Gillard opened the public hearing at 6:09 pm. There was no one present who wished to speak about the proposal and no correspondence or calls from adjacent neighbors. He closed the public hearing at 6:10 pm.

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

Mr. Gillard 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

Motion by: *Paul McCarthy*

**“I make a motion to approve this variance with 60 days to complete the paperwork.”**

Seconded by: *William Hayes*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

**Result: Approval of Area Variance**

The first applicant, Kelly Herold had arrived late to the meeting. At this point, Mr. Gillard asked if Kelly Herold was present, and the board went back to the first application.

- A. Add a second driveway along the north property line. The proposed loose stone driveway with Portland cement apron and sidewalk will be 9’ wide and 35’ long

Address: *6 Goade Park*

Applicant: Kelly Herold, owner

- Actions:
1. Remove application from table
  2. Review application
  3. Public hearing
  4. SEQR
  5. Discussion and action by the board

## **1. Remove Application from Table**

Motion by: *Paul McCarthy*

**“I make a motion to remove the application from the table.”**

Seconded by: *Lee Hyatt*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

**Result: Application removed from the table**

## **2. Review Application**

Mr. Hayes summarized the proposal for the board. He asked Ms. Herold if there is enough room in the current driveway for two vehicles. Ms. Herold said that there is space for two cars, which is taken up by the tenants in the upper apartment. She explained that while the lower apartment is presently vacant, she intends to rent it and there will be no available

parking space for that tenant. She stated that she owns both 6 and 2 Goade Park and there is room at 6 for the driveway. At the board's request, Ms. Herold indicated on the photo accompanying the application where the driveway would be placed. According to Ms. Herold, though the driveway will be made of stone at the moment, she intends to have it paved.

### **3. Public Hearing**

Mr. Gillard opened the public hearing at 6:14 pm. No calls or correspondence had been received and there was no one present who wished to speak about the proposal. Mr. Gillard closed the public hearing at 6:15.

### **4. SEQR**

After reviewing the application a motion was made to approve SEQR.

Motion by: *Sandra Licata*

**"I make a motion to approve a negative declaration of SEQR."**

Seconded by: *Jeffrey Gillard*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

**Result: Approval of SEQR**

### **5. Discussion and Action by the Board**

Mr. Gillard 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

Mr. Gillard noted that the Genesee County Planning Board recommended approval. Mr. Randall informed the board that the Planning & Development Committee (PDC) recommended approval with the condition that the driveway is paved within one year.

Motion by: *Sandra Licata*

**"I make a motion to approve this variance with a provision to pave within one year, and 60 days to obtain the permit."**

Seconded by: *William Hayes*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

**Result: Application for Area Variance approved**

- C. Construction of a 12' x 12' one story addition that is proposed within the side yard clear space on the west side of this property

Address: 509 Ellicott Street

Applicant: Nicholas Salvador, owner

- Actions: 1. Review of application  
2. Public hearing  
3. Discussion and action by the board

**1. Review of Application**

Mr. Hayes read the summary for the proposal.

**2. Public Hearing**

Mr. Gillard opened the public hearing at 6:21. There was no correspondence or calls and no one present who wished to speak. Mr. Gillard closed the public hearing at 6:22.

**3. Discussion and Action by the Board**

Mr. Gillard 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

Mr. Gillard read the recommendation for approval by the Genesee County Planning Board.

Motion by: *Paul McCarthy*

**"I make a motion to approve the variance with 60 days to obtain the building permit."**

Seconded by: *Jeffrey Gillard*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

**Result: Application for Area Variance approved.**

- D. Installation of a parking lot in the front yard of this Church property

Address: 238 Vine Street

Applicant: Robert Greathouse, Trustee for Grace Baptist Church

Actions: 1. Review application  
2. Public hearing  
3. SEQR  
4. Discussion and action by the board

### **1. Review Application**

Mr. Hayes summarized the application for the board. Mr. Randall reported that the PDC recommended approval with three conditions: the parking lot is paved within 12 months; development of a snow removal plan for ZBA approval; and, a small swale along the northern property line for drainage purposes. Mr. Gillard asked Mr. Greathouse if the snow management plan was part of the proposed application and he responded that it was intended but not yet written. Mr. Greathouse explained that the snow management plan is to plow the snow to the west between Vine Street and the lot. If excess snow becomes problematic, it will be trucked away, the same way the parking lots at the Church are presently handled.

Mr. Gillard asked about drainage and Mr. Greathouse indicated on the drawings the direction of the drainage. Mr. Hayes asked if the water drained in only one direction or several directions. Mr. McCarthy discussed drainage using the drawings to show how the water drains. Mr. Greathouse said that the current swale was put in according to the permit from the Church's previous expansion project. He added that the new permit will allow for extension of the swale. Mr. McCarthy explained that the parking lot is being built up a bit so the water will drain toward the street. A discussion followed about the placement of the swale, what plants make up the swale, how the swale is graded, and how it works to direct the flow of water.

### **2. Public Hearing**

Mr. Gillard opened the public hearing at 6:33 pm. Sharon White, 8 Northern Boulevard, said that she would like to know about the Church's snow removal plan. Dr. Licata asked Mrs. White to indicate the location of their property on the map. Mr. Hayes asked if the Mr. and Mrs. White are experiencing problems at the moment. Mrs. White replied that they had had a problem at one time, but that they had spoken with the pastor and he had corrected it. She said that their concern is that with the increased parking there will be more snow. Mr. Greathouse repeated to the Whites how the Church intends to handle the snow removal. Mr. White wanted to know if the snow removal plan could be made permanent and not contingent upon who is in office at the Church. Mr. Randall said that the snow management plan would be a condition of the permit and handled through code enforcement. Mr. Greathouse said that as an additional safeguard the snow removal plan would go into the Church minutes and become part of the record. The plan would be attached to the snow

removal contract. Mr. White asked what would happen if the Church was taken over by another church and Mr. Gillard answered that the permit is attached to the property. Mr. Gillard asked if the Whites were satisfied and they responded that they were. Mr. Gillard closed the public hearing at 6:40 pm.

### 3. SEQR

After reviewing the application a motion was made to approve SEQR.

Motion by: *William Hayes*

**“I make a motion to approve a negative declaration of SEQR.”**

Seconded by: *Lee Hyatt*

Votes in favor: 4 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata)

Votes opposed: 0

Votes abstained: 1 (Paul McCarthy abstained from voting because his company is doing the work)

**Result: Approval of SEQR**

### 4. Discussion and Action by the Board

Mr. Gillard 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

Motion by: *Lee Hyatt*

**“I make a motion to approve this variance with the following conditions: 1. Drainage swale on the north side; 2. Length of paving reduced to 19’ to align with the front of the garage and not the dwelling; 3. Must be paved within a year; 4. Snow removal plan consists of plowing snow to the west and if there is a problem with excess snow, it will be trucked away; with six months to obtain the permit.”**

Seconded by: *Sandra Licata*

Votes in favor: 4 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata)

Votes opposed: 0

Votes abstained: 1 (Paul McCarthy)

**Result: Application for Area Variance approved**

- E.                    Construction of a 3,490 sq.’ two story addition that will include four indoor parking spaces on the first floor and two dwelling units on the second floor; a 172 sq.’ (approx.) enclosed entry stairway to provide private access to two proposed dwelling units on the second floor of the

existing building; and a 189 sq.' one story enclosed front entry addition to the first floor commercial space with patio/deck above to service second floor dwelling units

Address: 438 East Main Street

Applicant: D.A. Tufts Co., agent for the owner

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

### **1. Review Application**

Mr. Hayes summarized the application for the board. Mr. Tufts was present to speak about the project. He said that he is purchasing the property with the intent to take advantage of what he sees as a need for higher end apartments. He said that each apartment would be 1,300 sq.' and have a private entrance. The apartments will have two bedrooms, two bathrooms, walk-in closets, a private indoor garage, and be furnished with washers and dryers. He said that the approach to development style would be consistent with the mid-century modern approach taken initially with the building. According to Mr. Tufts, inquiries have resulted in expressions of interest in the idea of the higher end apartments. He said that the side yard variance will be necessary in order to construct the stairs for the private entrance on that side. He said that there would have been enough parking for the apartments and office spaces; however, medical office space requires an increase in the number of parking spaces. Mr. Tufts said that the parking variance would allow greater flexibility in prospective tenants for the office space. Mr. Gillard commented that it is nice to see old buildings rehabbed and use. Mr. Tufts said that the building has fallen into disrepair and will go down quickly if something is not done to maintain it.

Mr. Hayes asked about the garages and Mr. Tufts said replied that there would be one for each apartment. Mr. Hyatt asked about outside entrances. Mr. Tufts said that each apartment has one and pointed out that there was not enough room in the front for one of them and it had to be situated on the northwest corner. Mr. Tufts clarified that tenants of apartments 2 and 4 have to enter their apartments from outside while 1 and 3 can enter from within the garage. Mr. Hyatt asked if there is an overhang in the front and Mr. Tufts answered that the dotted line on the drawing indicates the overhang. Mr. Hayes asked about parking for the commercial space on the first floor. Mr. Tufts responded that the variance is needed because 19.5 spaces are required and there are only 16 spaces available.



## **2. Public Hearing**

Mr. Gillard opened the public hearing at 6:58 pm. No calls or correspondence had been received and there was no one present who wished to speak about the variance. A letter had been sent by Fred Powell, DDS, 436 East Main Street, which Mr. Gillard read into the minutes. Mr. Gillard closed the public hearing at 6:59 pm.

Mr. Gillard read the referral from the Genesee County Planning Board which recommended gutters to divert water away from the neighboring property. Mr. Hyatt asked about diverting the water. Mr. Tufts answered that the neighboring property is 2' higher and will not pose a problem for water management. He said that the parking lot is paved and the water runs toward Harvester Avenue.

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

Mr. Gillard went through the list of supporting criteria for the side yard variance:

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no

Motion by: *Lee Hyatt*

**"I make a motion to approve this variance with the stipulation that the water runoff is managed."**

Seconded by: *Sandra Licata*

Votes in favor: 4 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata)

Votes opposed: 0

Votes abstained: 1 (Paul McCarthy abstained because he said he does work for Dave Tufts)

**Result: Application for Area Variance approved**

Mr. Gillard asked for discussion on the parking variance. Mr. Tufts showed the board photos of the parking on Main Street in front of the building. He pointed out that there are seven available spaces which he said the photos indicate are seldom used and could compensate for the missing 3.5 spaces.

Motion by: *Sandra Licata*

**"I make a motion to approve the parking variance with six months to obtain the permit."**

Seconded by: *William Hayes*

Votes in favor: 4 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata)

Votes opposed: 0

Votes abstained: 1 (Paul McCarthy)

**Result: Application for Area Variance approved**

**VII. Setting of Next Meeting: January 15, 2015**

**VIII. Adjournment**

Mr. Gillard made a motion to adjourn the meeting at 7:24 pm. Dr. Licata seconded. All voted in favor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Meg Chilano', written in a cursive style.

Meg Chilano