

# **ZONING BOARD OF APPEALS**

## ***Minutes***

**Thursday, June 27, 2019**

**6:00 pm**

**Council Board Room**

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

Members present: *Deborah Kerr-Rosenbeck, Paul McCarthy, Leslie Moma,*

Members absent: Bill Cox, Jim Russell

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 6:05 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 May 23, 2019 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: install a non-permitted internally illuminated freestanding pole sign with manually changeable text. The sign is located within the R-2 Residential use district

Address: 25 Edward St.

Applicant: Al Rosemark, VFW Commander

- Actions:
1. Review proposal
  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 Ms. Moma, and on roll call, was approved 3-0.

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

Mr. Rosemark explained that the existing sign is like a carnival sign and they would like a new one to make the area look better.

Ms. Moma asked if the new sign will be the same size as the previous one, and Mr. Rosemark said that it will.

Ms. Moma asked if there will be a timer on the lighting. Mr. Rosemark answered that the sign will be turned off when the VFW is closed.

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. Moma, and on roll call, was approved 3-0.

**RESULT: Public hearing closed at 6:12 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: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

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

**RESULT: Approval of Area Variance.**

- B.           Area Variance: install three signs on a service station fuel pump canopy.  
                  The signs are located within the C-2 Commercial use district

Address:       *100-102 West Main St.*

Applicant:     Farhan David, owner

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

**RESULT: Public hearing closed at 6:08 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, it is just a small city lot

**MOTION:** Mr. Harris moved to approve the variance with 60 days to obtain the permit. The motion was seconded by Mr. Russell, and on roll call, was approved 5-0.

**RESULT: Area Variance approved.**

- D.        Area Variance: construct a one-story wood frame addition on the northeast corner of this single-family dwelling. The addition will be located within the required front yard clear space

Address:        *6 Washington Ave.*

Applicant:      Tim Stoddard, contractor

- 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 5-0.

**RESULT: Public hearing opened at 6:10 pm.**

Mr. Stoddard, contractor for the project, said that he is proposing to build a 15' x 14' bedroom off the front corner of the house where the living room is located. He explained that it will be a good location for the homeowner to have some space private from her mother and son, both of whom live with her. Mr. Stoddard noted that the addition will have cedar shake siding, the same as the rest of the house.

There was no one present who wished to speak, and no calls, letters, or email concerning the proposal.

Mr. McCarthy asked about the chimney and Mr. Stoddard answered that they will build around the chimney. Mr. McCarthy asked if fireproofing is necessary and Mr. Stoddard said yes.

Ms. Moma asked about drainage, and Mr. Stoddard explained that there will be gutters and a downspout which will drain into the back yard.

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

**RESULT: Public hearing closed at 6:12 pm.**

Mr. Russell noted that the addition will not extend past the corner of the house and Mr. Harris added that there is plenty of room for it.

### 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: yes

**MOTION:** Ms. Kerr-Rosenbeck 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.**

- E. Area Variance: place a 48" tall fence parallel to the south property line within 15' of the front property line

Address: 212 East Ave.

Applicant: Peter Mendola, 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 6:16 pm.**

Mr. Mendola told the board that the solid part of the fence is 35" tall; the portion of the fence that is see-through extends another 10" above that. He said that the fence is far enough back that it does not obstruct the view down the street.

Mr. Randall noted that the permit for the installation of the fence was issued on May 15<sup>th</sup>. The problem that brings the proposal before the board is that the fence is in violation because it is too tall. Mr. Randall clarified that Mr. Mendola was aware that the fence could not exceed 3' in height 15' back from the front property line.

Gerald Williams, attorney, spoke against the project. He said that according to the criteria for an area variance, there should be no other means to pursue, but in this case, the fence can be lowered. He pointed out that according to the criteria, a variance should not be substantial, but the fence is substantially higher than is allowed.

Annette Corbelli, 39 Trumbull Parkway, spoke against the proposal. It was her assertion that the height of the fence makes visibility difficult and creates a hazard for drivers.

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. Russell, and on roll call, was approved 5-0.

**RESULT: Public hearing closed at 6:25 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: could lower the fence
- Substantiality: no
- Adverse effect or impact on neighborhood/community: possibly
- Self-created: yes

**MOTION:** Mr. Russell moved to deny the variance; the motion was seconded by Mr. McCarthy, and on roll call, was approved 5-0.

**RESULT: Disapproval of Area Variance.**

- F. Extend the time limit condition to obtain the permit for two previously approved area variances

Address: 552, 554, and 556 East Main St. (Home Leasing Project)

Applicant: Matt Tomlinson (Marathon Engineering)

- Actions: 1. Review application  
2. Action by the board

## 1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal.

## 2. Action by the Board

Adam Driscoll, Development Manager of Home Leasing, and Zack Fuller, Executive Director of Eagle Star Housing were present to speak about the extension of the time limit to obtain the permit. In the fall of 2018, Home Leasing submitted an application for funding to the State. Despite a strong application, in June of this year Home Leasing learned that the Finger Lakes had not been awarded as much funding as anticipated. According to Mr. Driscoll, the State advised them to apply in the early round this year, which would be in October or November. Funding would be allotted four months later, necessitating the extension on the time limit to obtain the permit for Home Leasing.

Mr. Russell noted that he believes the board should follow a previously made decision to require an applicant to resubmit their proposal after one extension.

Mr. Russell said that he thinks when an applicant proposes a project, the applicant should have an alternate plan for funding if the original plan turns out to not be viable.

According to Mr. Driscoll, there is no alternative funding available for this type of project.

**MOTION:** Mr. McCarthy moved to approve the 6-month extension with the condition that if more time is needed after that period, the applicant must resubmit the proposal. The motion was seconded by Mr. Harris and on roll call, was approved 3-2-0.

Votes in favor: 3 (Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy)

Votes opposed: 2 (Bill Cox, Jim Russell)

Votes abstained: 0

**RESULT: Extension approved.**

- G. Area Variance: construct a five-story residential use building that exceeds both the maximum number of stories and permitted height of a building located within the Central Commercial District

Address: 40-52 Ellicott St.

Applicant: Samuel J. Savarino, developer

- 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. 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. Harris, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:46 pm.**

Mr. Savarino told the board that the project has not changed from the proposal that was previously presented. He is asking for approval on the resubmission.

Pierluigi Cipollone, President of the Batavia Development Corporation, spoke on behalf of the project. He said that they have been trying to launch the project for some time, and are looking for the project to be a catalyst for development in the Ellicott Street corridor. He said that the project, which is on a brownfield development site, will clean up the area and be a big improvement for the health of the City.

There was no one else present who wished to speak, and no letters, email or phone calls.

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

**RESULT: Public hearing closed at 6:50 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, there are five floors so parking could be included
- Substantiality: 25% difference in requested height is not substantial
- Adverse effect or impact on neighborhood/community: no, it will clean up the area
- Self-created: yes

**MOTION:** Mr. Harris moved to approve the variance with 12 months to obtain the permit, and no extensions allowed. The motion was seconded by Mr. Cox, and on roll call, was approved 4-1-0.

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

Votes opposed: 1 (Jim Russell)

Votes abstained: 0

**RESULT: Area Variances approved.**

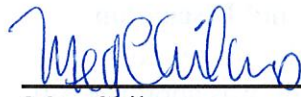
## **VII. New Business: Downtown Revitalization Initiative (DRI) update**

Martin Moore, City Manager, reported on the progress of the initiative. He and the Batavia Development Corporation put together a tracking sheet, which Dr. Moore explained to the board.

## **VIII. Setting of Next Meeting: August 22, 2019**

## **IX. Adjournment**

Mr. McCarthy adjourned the meeting at 7:16 pm.



Meg Chilano

Bureau of Inspection Secretary