

ZONING BOARD OF APPEALS
Draft Minutes
Thursday, September 26, 2019
6:00 pm
Council Board Room
One Batavia City Centre, Batavia, NY

Members present: *Bill Cox, Deborah Kerr-Rosenbeck, Paul McCarthy, Leslie Moma, Jim Russell*

Members absent: Nick Harris

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 6:00 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 August 22, 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: widen an existing 29.9' wide Portland cement driveway by adding an additional 5.71' of Portland cement concrete, creating a total driveway width of 35'

Address: 8 Evergreen Dr.

Applicant: Donald Childs, owner

- 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. Ms. Chilano reported that the City of Batavia 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 Mr. Russell, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:05 pm.

Mr. Childs explained that he just purchased the house and the driveway is in poor condition. While he is redoing the driveway, he would like to create a bump-out so that cars can be parked out of the driveway itself. Mr. Childs pointed out that the neighbor is some distance from the driveway. According to him, the neighbor does not have an issue with Mr. Child's widening his driveway.

Mr. Cox asked how many vehicles Mr. Childs has. Mr. Childs answered that he has three vehicles at the moment, but since he has nine children, more vehicles will be added in the future.

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 6:07 pm.

Mr. McCarthy noted that the driveway already exceeds the allowable width. Mr. Childs responded that near the street, the driveway is the allowable width, and that it would only exceed the limit near the house where the bump-out would be located.

Mr. McCarthy said that he believes 35' will create a parking lot. If the entire driveway is made 29' wide, it will allow for sufficient parking.

Mr. Cox and Ms. Kerr-Rosenbeck indicated that they have no objection to the proposal. Mr. Cox said that as long as the neighbor does not have an issue with the proposed width, he does not have a problem with it. Ms. Kerr-Rosenbeck said that an additional 6' will not create a significant impact.

Ms. Moma asked if the neighbor had indicated any desire for a buffer, and Mr. Child's answered no.

Mr. Russell said that he is concerned about setting a precedent for driveways in the front yard. Mr. Cox pointed out that the ZBA is responsible for reviewing one case at a time according to its unique situation.

Mr. Randall added that the cases would have to be exactly the same in order for a precedent to be set.

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: possibly
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. Cox 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 denied 2-3-0.

Votes in favor: 2 (Bill Cox, Deborah Kerr-Rosenbeck)

Votes opposed: 3 (Leslie Moma, Paul McCarthy, Jim Russell)

Votes abstained: 0

RESULT: Disapproval of Area Variance.

MOTION: Ms. Moma moved to approve the variance with the stipulation that the entire driveway is 29'29" wide, with a 60-day time limit to obtain the permit. The motion was seconded by Mr. Russell, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance.

- B. Area Variance: placement of an 8' tall fence parallel to the northwest property line and returning to the dwelling

Address: 5 Walnut St.

Applicant: Erik Saluste, 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. Mr. McCarthy reported that the Genesee County Planning Board recommended approval of the project.

2. Public Hearing and Discussion

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

RESULT: Public hearing opened at 6:20 pm.

Mr. Saluste told the board that the current fence is falling down and he would like to replace it with a vinyl fence. The reason for the additional height is the neighbors. The property next door is a rental which is not well-cared for, and the neighbors disturb his privacy and throw things over the fence. Mr. Saluste wishes to provide privacy for the use of his pool.

Mr. Cox asked Mr. Randall if the reason for establishing the limit on the height of fences at 6' is explained in the Code. Mr. Randall said it is not. He pointed out that a possible consideration is ventilation and light, depending on how closely the fence runs along the neighboring house.

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 6:23 pm.

Mr. Russell said that while he generally is not supportive of 8' tall fences, he is sympathetic with problems stemming from bad tenants.

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. Russell moved to approve the variance, with a 60-day time limit to obtain the permit. The motion was seconded by Mr. Cox, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance.

- C. Area Variance: construction of a 12' x 24.5' one story wood frame addition to an existing attached garage. A portion of the addition will be located within the required front yard clear space

Address: 217 South Main St.

Applicant: Tim Stoddard, contractor for 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. Mr. McCarthy reported that the Genesee County Planning Board recommended approval of the project.

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 6:31 pm.

Mr. Stoddard explained that the garage can accommodate a single vehicle at present. He intends to build a bay to create a two-car garage. He noted that the addition will be sided, and it will look like every other property in the neighborhood.

Mr. Russell asked if the driveway is wide enough to accommodate the addition, and Mr. Stoddard answered that it is.

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 5-0.

RESULT: Public hearing closed at 6:33 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. McCarthy moved to approve the variance with 60 days to obtain the permit. The motion was seconded by Ms. Moma, and on roll call, was approved 5-0.

RESULT: Area Variance approved.

VII. New Business: none

VIII. Setting of Next Meeting: October 24, 2019

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:35 pm; Ms. Kerr-Rosenbeck seconded. All voted in favor.



Meg Chilano
Recording Secretary