

# ZONING BOARD OF APPEALS

Thursday, October 26, 2023

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

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## AGENDA

- I. Roll Call
- II. Call to order
- III. Pledge of Allegiance
- IV. Approval of September 28, 2023 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

**A. Request #1**                      *301 North Street*  
Mike Hodgins (sign contractor)

Area Variance:                      Replace the existing pole sign with a new pole sign  
identifying a new business located within the R-2  
Residential District

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

**B. Request #2**                      *20 Washington Avenue*  
Ron Viele (contractor)

Area Variance:                      Remove an existing porch and construct a new entrance  
landing and stairs within the required front yard clear space

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

VII. Setting of Next Meeting: November 16, 2023

VIII. Adjournment

**ZONING BOARD OF APPEALS**  
***Draft Minutes***  
**Thursday, September 28, 2023**  
**6:00 pm**  
**Council Board Room**  
**One Batavia City Centre, Batavia, NY**

Members present: *Jeff Gillard, Nick Harris, Leslie Moma, Dave McCarthy*

Members absent: Jim Russell

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

**I. Roll Call**

Roll call of the members was conducted. Four members were present and Chair Dave 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 24, 2023 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: place a 5' x 5' accessibility lift adjacent to the southeast corner of the front entry porch. This new equipment will be located within the front yard clear space

Address: *19 Porter Avenue*

Applicant: Janice Cotto, owner

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

### 1. Review Application

Vice Chair, Leslie Moma, 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 4-0.

**RESULT: Public hearing opened at 6:05 pm.**

Ms. Cotto explained that her husband has been in the hospital and has become disabled. She would like to bring him home but he cannot make it up the stairs and there is not enough room in the front yard space for a ramp. She has decided to install a lift instead.

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

**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 6:06 pm.**

The board agreed there is no problem with installing the lift. It takes up less space than a ramp.

### 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 is not enough room for a ramp
- Substantiality: not substantial, smaller than a ramp would be
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, the front yard space is small

**MOTION:** Mr. Gillard moved to approve the proposal with one year to obtain the permit; the motion was seconded by Mr. Harris, and on roll call, was approved 4-0.

**RESULT: Area Variance approved.**

B. Area Variance: remove an existing 21'-wide asphalt driveway and place 36' of Portland cement in the front yard to create a new driveway

Address: *7 Hillside Drive*

Applicant: Daniel Koladzinski, owner

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

### 1. Review Application

Ms. Moma read the summary of the proposal. She reported that the Planning and Development Committee 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. Harris, and on roll call, was approved 4-0.

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

Mr. Koladzinski said that his truck takes up a lot of space and he would like to increase the size of the driveway.

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

Mr. Gillard noted that there are other properties with the same size driveway that Mr. Koladzinski has requested.

**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 6:11 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: yes

**MOTION:** Mr. McCarthy moved to approve the variance; the motion was seconded by Ms. Moma, and on roll call, was approved 4-0.

**RESULT: Area Variance approved.**

- C. Area Variance: reduction in required off-street parking and an increase in the maximum height of the building (construction of a 3,140 sq.' restaurant with drive-through service

Address: *301-305 West Main Street*

Applicant: Peter Sorgi, Esq., attorney for owner

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

### **1. Review Application**

Ms. Moma read the summary of the proposal. She reported that the PDC 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. Moma, and on roll call, was approved 4-0.

**RESULT: Public hearing opened at 6:16 pm.**

Mr. Sorgi explained that the PDC had requested more landscaping in the plan. The amount of off-street parking had to be reduced to make room for more green space, resulting in the need for a variance. Ms. Moma said that she is always in favor of more landscaping and Mr. Harris agreed.

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

**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 6:20 pm.**

### **3. SEQR**

Mr. McCarthy asked if the board had reviewed part one of the SEQR application and they indicated they had. The board went through the questions for part two.

**MOTION:** Mr. McCarthy moved to approve a negative declaration of SEQR; the motion was seconded by Mr. Harris, and on roll call, was approved 4-0.

**RESULT: Negative declaration of SEQR**

### **4. 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. Harris moved to approve the variance with a 14-month time limit to obtain the permit; the motion was seconded by Ms. Moma, and on roll call, was approved 4-0.

**RESULT: Area Variance approved.**

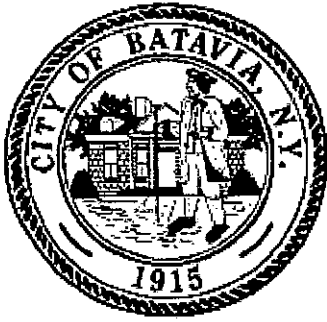
## **VII. Setting of Next Meeting: October 26, 2023**

## **VIII. Adjournment**

Mr. McCarthy adjourned the meeting at 6:30 pm.

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Meg Chilano  
Recording Secretary



*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020 (585)-345-6345 (585)-345-1385 (fax)

To: Zoning Board of Appeals  
From: Doug Randall, Code Enforcement Officer  
Date: 10/2/23  
Re: 301 North St.  
Tax Parcel No. 84.008-1-7.1

Zoning Use District: R-2

The applicant, Mike Hodgins, (sign contractor), has applied for approval to replace the existing pole sign with a new pole sign identifying a new business located within the R-2 Residential District.

**Note:** This is a type II action as defined by Environmental Conservation Law and is not subject to review under SEQR 6 NYCRR Part 617.5 (c) (1).

**Review and Approval Procedures:**

**Zoning Board of Appeals-** Pursuant to section 190-49 and 190-43 EE., the ZBA shall review and act on required variances.

Variance- Area

- 1) BMC 190-43 L Pole signs are not permitted within the R-2 residential use district.
- 2) BMC 190-43 T The minimum vertical clearance under pole signs is 10', 2' is provided.



**PAID** CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS  
OCT 4 2023

CITY OF BATAVIA  
CLERK-TREASURER

Application No: \_\_\_\_\_  
Hearing Date/Time: \_\_\_\_\_

APPLICANT: Signs by John's Studio Mike Hodaris mhdaris@johnsstudio.com  
 Name: 56 Harvester Ave. E-Mail Address: 345-1030 343-4469  
 Street Address: Batavia NY Phone: 14020  
 City: Batavia State: NY Zip: 14020

STATUS: \_\_\_ Owner  Agent for Owner \_\_\_ Contractor

OWNER: Three Little Birds Pediatrics 21995015@gmail.com  
 Name: 301 North Street E-Mail Address: 463-3081  
 Street Address: Batavia NY Phone: 14020  
 City: Batavia State: NY Zip: 14020

LOCATION OF PROPERTY: 301 North Street, Batavia NY 14020

DETAILED DESCRIPTION OF REQUEST: To install a 4x4 ft sign in the front of the property. The proposed sign is the same size and construction as the sign that was there from the previous property owner.

Applicant must be present at the hearing date. Failure to do so will result in the application being discarded. It is the responsibility of the applicant to present evidence sufficient to satisfy the Zoning Board of Appeals that the benefit of the applicant does not outweigh the health, safety, morals, aesthetics and general welfare of the community or neighborhood.

Applicant's Signature: Michael J. Hodaris Date: 9/29/23  
 Owner's Signature: [Signature] Date: 9/27/23

*To be Filled out by Zoning Officer*

TAX PARCEL: 84.008-1-7.1 ZONING DISTRICT: R-2 FLOOD PLAIN: C  
 TYPE OF APPEAL:  Area Variance FEE: \_\_\_ \$50 (One or Two Family Use)  
                   \_\_\_ Use Variance  \$100 (All other Uses)  
                   \_\_\_ Interpretation  
                   \_\_\_ Decision of Planning Committee

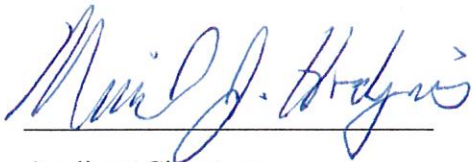
Provision(s) of the Zoning Ordinance Appealed: 190-43 L. Pole sign not permitted  
190-43T C. min. vertical clearance under the sign is 10'. 2' is provided.



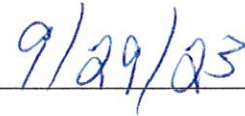
## Criteria to Support Area Variance

### Three Little Birds Pediatrics

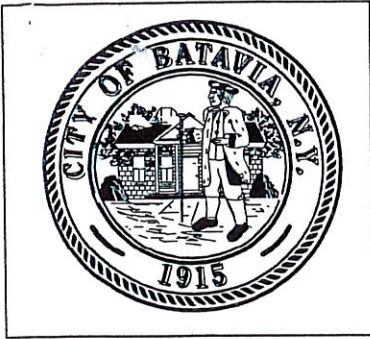
1. **Undesirable Change in Neighborhood Character** – The proposed sign is the same size and of the same construction as the sign that was in that location from the previous property owner. It is also being installed in the same location on the property.
2. **Alternative Cure Sought** - The design of the proposed sign is of the type that serves the building owner and their tenants best interests. Alternative designs would not be as effective or in keeping with the character of the property.
3. **Substantiality** – The requested variance is not substantial since it is of the same size and construction as the previous sign that was in that location.
4. **Adverse Effect or Impact** – There will be no adverse impact on the surrounding neighborhood due to the fact that the proposed sign is a replacement of one that was there for over 20 years of the same size and construction, and in the exact same location.
5. **Not Self-Created** - This property has been located in a R-2 zoning district since it was built in 1967 and the previous owner(YWCA) had a sign of the same size and construction in the same location since 1990.



Applicant Signature



Date



Permit No.: \_\_\_\_\_

Date: \_\_\_\_\_

Zone: R-2

### SIGN PERMIT APPLICATION

#### City of Batavia

One Batavia City Centre, Batavia, NY 14020

(585) 345-6345 • Fax (585) 345-1385

**APPLICANT/OWNER:**

Signs by Johns Studio mhadgins@johnsstudio.co  
 Name E-mail Address  
56 Harper Street 585-345-1030 343-4469  
 Street Address Phone Fax  
Batavia NY 14020  
 City, State, Zip Code

**ADDRESS OF SIGN:**

301 North St., Batavia, NY 14020

**AREA OF SIGN:**

Length 48" Width 48" Area 1659 ft.

**TYPE OF SIGN:**

- All sign applications must have an illustration of the sign with its dimensions and copy.
- Freestanding signs must have a Sit Plan to show the sign's location on the property.
- All other signs must include an elevation plan to show the sign's placement on the building.

Freestanding Set Back 10 ft Height 78" Area \_\_\_\_\_  
 Wall Wall Length \_\_\_\_\_ Wall Height \_\_\_\_\_  
 Projecting Length \_\_\_\_\_ Height \_\_\_\_\_ Area \_\_\_\_\_  
 Marquee Window Length \_\_\_\_\_ Window Height \_\_\_\_\_ Area \_\_\_\_\_  
 Awning / Canopy  
 Window  
 Portable

Lighting:  Internal None  External

**Existing Signs** (Please list all existing signs with dimensions):

Previous sign has been removed. Proposed replacement sign will be same size and in the same location

Applicant's Signature Maria J. Hayden

Date 9/18/23

Issuing Officer \_\_\_\_\_

Date \_\_\_\_\_

Planning Board Chairperson \_\_\_\_\_

Date \_\_\_\_\_

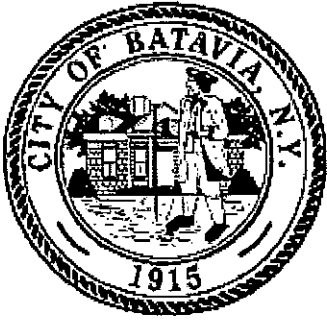
FEES: \_\_\_\_\_ \$25 Sign Permit \_\_\_\_\_ \$50 Special Sign Permit \_\_\_\_\_ \$10 Portable Sign

301 North Street Previous Sign



301 North Street Proposed Sign





*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020 (585)-345-6345 (585)-345-1385 (fax)

To: Zoning Board of Appeals  
From: Doug Randall, Code Enforcement Officer  
Date: 10/2/23  
Re: 20 Washington Ave.  
Tax Parcel No. 84.040-2-3

Zoning Use District: R-1A

The applicant, Ronald Viele, (contractor), has filed an application to remove existing and construct a new entrance landing and stairs within the required front yard clear space.

**Note:** This is a type II action as defined by Environmental Conservation Law and is not subject to review under SEQR 6 NYCRR Part 617.5 (c) (17).

**Review and Approval Procedures:**

**Zoning Board of Appeals-** Pursuant to BMC Sec. 190-49 of the zoning ordinance, the ZBA shall review and act on required variances.

Required variances- Area

1) BMC Sec. 190-29 A. and Schedule I

	<u>Required</u>	<u>Proposed</u>	<u>Difference</u>
Front yard clear space	20'	11'	9'



CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

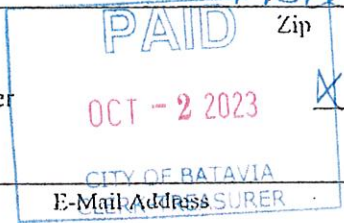
Application No.: 23-27  
Hearing Date/Time: \_\_\_\_\_

APPLICANT: VIELE CONSTRUCTION & DEVELOPMENT

Name: 61 SWAN ST #3 - RON VIELE E-Mail Address: \_\_\_\_\_  
Street Address: BATAVIA Phone: \_\_\_\_\_ Fax: 14020  
City: BATAVIA State: NY Zip: 14020

STATUS:  Owner  Agent for Owner  Contractor

OWNER: RICHARD RICHMAN  
Name: RICHARD RICHMAN E-Mail Address: SURER  
Street Address: 20 WASHINGTON AVE. Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
City: BATAVIA State: NY Zip: 14020



LOCATION OF PROPERTY: 20 WASHINGTON AVE.

DETAILED DESCRIPTION OF REQUEST: NEW CONSTRUCTED LANDING  
& STEPS INTO HOUSE, REAR ENTRANCE.

Applicant must be present at the hearing date. Failure to do so will result in the application being discarded. It is the responsibility of the applicant to present evidence sufficient to satisfy the Zoning Board of Appeals that the benefit of the applicant does not outweigh the health, safety, morals, aesthetics and general welfare of the community or neighborhood.

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_  
Owner's Signature \_\_\_\_\_ Date \_\_\_\_\_

To be Filled out by Zoning Officer

TAX PARCEL: 84.040-2-3 ZONING DISTRICT: R-1A FLOOD PLAIN: C

TYPE OF APPEAL:  Area Variance  Use Variance  Interpretation  Decision of Planning Committee  
FEE:  \$50 (One or Two Family Use)  \$100 (All other Uses)

Provision(s) of the Zoning Ordinance Appealed: BMC 190-29 A. and Schedule I - Frontyard  
Clearance.

## Criteria to Support Area Variance

In making its determination, the zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, moral, aesthetics and welfare of the neighborhood or community. The Zoning Board of Appeals shall consider the following test, as per §81-b of the General City Law when making its determination:

Explain how the proposal conforms to EACH of the following requirements:

1. Undesirable Change in neighborhood Character. The granting of the variance will not produce an undesirable change in the neighborhood or a detriment to nearby properties.

NO - just Replacement exists Landmark - stairs  
would be in new location. O O

2. Alternative Cure Sought. There are no other means feasible for the applicant to pursue that would result in the difficulty being avoided or remedied, other than the granting of the area variance. CORRECT.

3. Substantiality. The requested area variance is not substantial. CORRECT  
LANDING IS IN THE SAME LOCATION.  
STAIR IN A BETTER LOCATION.

4. Adverse Effect or Impact. The requested variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or community.

NO

5. Not Self-Created. The alleged difficulty existed at the time of the enactment of the provision or was created by natural force or governmental action, and was not the result of any action by the owner or the predecessors in title. NO

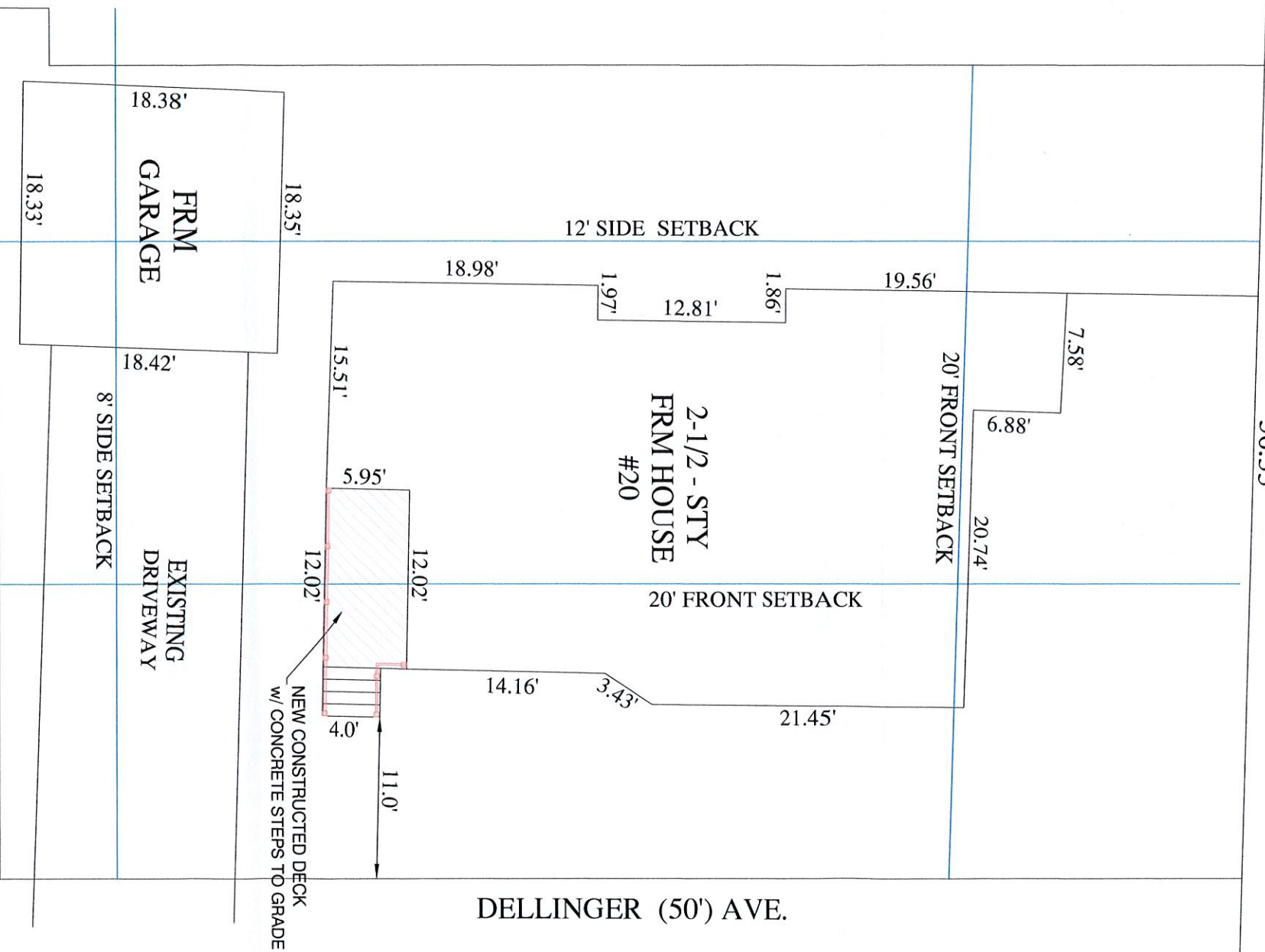
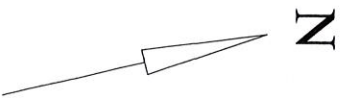
\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date



WASHINGTON (60') AVE.

56.33'



**PROPOSED SITE PLAN**

SCALE: 1:10

CITY OF BATAVIA - SITE DATA

1	TAX ID. #			
2	ZONING: R-1			
3	PARCEL AREA = +/- .111 ACRES			
4	MIN. LOT SIZE (SQ. FT.)	REQUIRED	PROPOSED	VARIANCE
5	MIN. FRONTAGE (FEET)	8,000	4,844.38	N/A
6	SETBACKS FOR ADDITION:	75'	56.33'	N/A
	FRONT (NORTH) =	20.0'	N/A	NO
	FRONT (EAST) =	20.0'	11'	YES
	SIDE (SOUTH) =	12.0'	N/A	NO
	SIDE (WEST) =	8.0'	N/A	NO
7	MAXIMUM BUILDING HEIGHT =	35'	N/A	NO
8	MAX. LOT COVERAGE	25%	N/A	NO

Project Name & Address:

**RICHARD RICHMAN**  
20 Washington Ave.  
Batavia, NY 14020  
Genesee County

Reconstructed Rear Porch  
12'-0" x 6'-0" 72 sq. ft.

Designer:



**DESIGN & DRAFTING**  
BY GINA, LLC

Gina Pestillo,  
Architectural Designer  
8468 Seven Springs Road  
Batavia, New York 14020  
+1 (585) 469-1113  
gpestillo@gmail.com

PROPOSED SITE PLAN

Drawing Name:  
Date: Sept. 27, 2023  
Drawn By: GMP  
Project: 2023.092  
Scale: AS SHOWN  
Sheet: S-1