

**ZONING BOARD OF APPEALS**  
**Thursday, August 22, 2019**  
*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 July 25, 2019 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

**Request**                      *69 Clinton St.*  
Laurie Kilbury Taylor, owner

Area Variance:              Placement of a 12' x 24' one story wood frame shed in a yard not a rear yard (front) of this property

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

- VII. Setting of Next Meeting: September 26, 2019
- VIII. Adjournment

**ZONING BOARD OF APPEALS**  
***Draft Minutes***  
**Thursday, July 25, 2019**  
**6:00 pm**  
**Council Board Room**  
**One Batavia City Centre, Batavia, NY**

Members present: *Bill Cox (6:20), Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy, Leslie Moma, Jim Russell*

Members absent:

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 6:02 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 June 27, 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 24' wide asphalt driveway by placing an additional 15' of asphalt paving for parking on the north side of the existing driveway in the front yard of this property

Address: *15 Oak St.*

Applicant: James Pontillo, owner

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

- B. Area Variance: place an additional asphalt parking area parallel to Swan Street on this property located within the downtown Business Improvement District (BID)

Address: 400 Ellicott St.  
Applicant: James Pontillo, owner

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

### 1. Review Application

Mr. Pontillo was not available to answer questions.

### 2. Action by the Board

**MOTION:** Mr. McCarthy moved to table the first two proposals; the motion was seconded by Mr. Harris, and on roll call, was approved 5-0.

**RESULT: Proposals for 15 Oak St. and 400 Ellicott St. tabled.**

- C. Area Variance: expand an existing deck with new wood frame construction. Portions of the new construction will be located within the required side and rear yard clear spaces

Address: 4 Thomas Ave.  
Applicant: Linda Blankenhorn, 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 variance.

### 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 6:07 pm.**

Mrs. Blankenhorn explained that they are expanding an existing deck to create a little more space.

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 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**

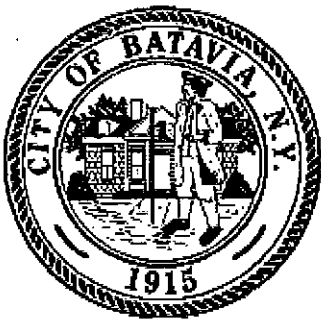
## **IX. Adjournment**

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



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Meg Chilano  
Bureau of Inspection 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: Genesee County Planning  
Zoning Board of Appeals

From: Doug Randall, Code Enforcement Officer

Date: 7/24/19

Re: 69 Clinton St.  
Tax Parcel No. 85.009-1-6

Zoning Use District: R-1

The applicant, Laurie Kilbury Taylor (owner), has filed an application to place a 12' x 24' one story wood frame shed in a yard not a rear yard (front) of this property.

**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) (10).**

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of the right of way of a state road or highway.

**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 190-35 D. Accessory buildings are not permitted to occupy spaces other than a rear yard.

**SEND OR DELIVER TO:**

GENESEE COUNTY DEPARTMENT OF PLANNING

3837 West Main Street Road

Batavia, NY 14020-9404

Phone: (585) 815-7901

**DEPARTMENT USE ONLY:**

GCDP Referral # \_\_\_\_\_



**\* GENESEE COUNTY \***  
**PLANNING BOARD REFERRAL**

Required According to:

**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**

(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**Board(s) Zoning Board of AppealsAddress One Batavia City CentreCity, State, Zip Batavia, NY 14020Phone (585) 345 - 6327 Ext. \_\_\_\_\_**2. APPLICANT INFORMATION**Name Laurie Kilbury TaylorAddress 69 Clinton St.City, State, Zip Batavia, NY 14020Phone (585) 356 - 0276 Ext. \_\_\_\_\_ Email lauriekdo@yahoo.comMUNICIPALITY: ☒ City ☐ Town ☐ Village of Batavia**3. TYPE OF REFERRAL:** (Check all applicable items)

- ☒ Area Variance  
☐ Use Variance  
☐ Special Use Permit  
☐ Site Plan Review

- ☐ Zoning Map Change  
☐ Zoning Text Amendments  
☐ Comprehensive Plan/Update  
☐ Other: \_\_\_\_\_

- Subdivision Proposal  
☐ Preliminary  
☐ Final

**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**A. Full Address 69 Clinton St.B. Nearest intersecting road Grandview Ter.C. Tax Map Parcel Number 85.009-1-6D. Total area of the property 2.24 ac Area of property to be disturbed \_\_\_\_\_E. Present zoning district(s) R-1**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?

☒ NO ☐ YES If yes, give date and action taken \_\_\_\_\_

B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law

BMC 190-35 D.C. Please describe the nature of this request Approval to place a storage shed in a yard not a rear yard**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral

- ☒ Local application  
☒ Site plan  
☐ Subdivision plot plans  
☐ SEQR forms

- ☐ Zoning text/map amendments  
☐ Location map or tax maps  
☐ Elevation drawings  
☐ Agricultural data statement

- ☐ New or updated comprehensive plan  
☒ Photos  
☒ Other: Cover letter

**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)Name Douglas Randall Title Code Enf. Officer Phone (585) 345 - 6327 Ext. \_\_\_\_\_Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020 Email drandall@batavianewyork.com



CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

PAID

JUL 26 2019

CITY OF BATAVIA  
CLERK-TREASURER

Application No.: 19-15

Hearing Date/Time: \_\_\_\_\_

APPLICANT: Laurie Kilbury Taylor Laurie K DO@yahoo.com  
Name Brian Taylor E-Mail Address  
Street Address 69 Clinton St 585 356 0276  
City Batavia State Ny Phone Fax  
City State Zip

STATUS: ☒ Owner ☐ Agent for Owner ☐ Contractor

OWNER: Same  
Name E-Mail Address  
Street Address Phone Fax  
City State Zip

LOCATION OF PROPERTY: 69 Clinton St

DETAILED DESCRIPTION OF REQUEST: place a prefabricated  
12x24 foot shed on stone/cinder foundation  
located Front / side yard to Right Left of  
house

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 Laurie Taylor Date 7/22/19

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

To be Filled out by Zoning Officer

TAX PARCEL: 85.009-1-6 ZONING DISTRICT: R-1 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

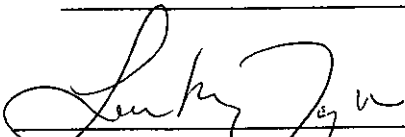
Provision(s) of the Zoning Ordinance Appealed: BMC 190-35 D. Accessory bldgs.  
are not permitted to occupy spaces other than rear yard.

## 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.  
Correct.
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
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.  
Correct.
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. Correct.

  
Applicant's Signature

7/22/19  
Date



DATE: 7/22/19APPLICANT NAME & PHONE: Laurie Kilbury Taylor and Brian Taylor**Project Location and Information**

Permit #:

Fee:

Address of Project: 69 Clinton Street Batavia NYOwner & Address: SamePhone: cell (585) 356 0276 (L) ; (716) 544 0597 (B)**Project Type/Describe Work**Estimated cost of work: 10,000Start date: 8/25/19

Describe project:

place a 12 x 24 foot prefabricated  
shed on stone / cinder Block foundation**Contractor Information** – Insurance certificates (liability & workers comp) required being on file**GENERAL**Name/Address: Douglas Farm Sheds, Rt 33, Stafford NY

Phone: \_\_\_\_\_

**PLUMBING** (City of Batavia Licensed Plumber Required)Name/Address: N/A

Phone: \_\_\_\_\_

**HEATING**Name/Address: N/A

Phone: \_\_\_\_\_

**ELECTRICAL**

(Third Party Electrical Inspection Required)

Name/Address: N/A

Phone: \_\_\_\_\_

**FOR OFFICE USE ONLY**Zoning District: R-1/L Flood Zone: NO Corner Lot: NO Historic District/Landmark: NO

Zoning Review: \_\_\_\_\_ Variance Required: \_\_\_\_\_ Site Plan Review: \_\_\_\_\_ Other: \_\_\_\_\_

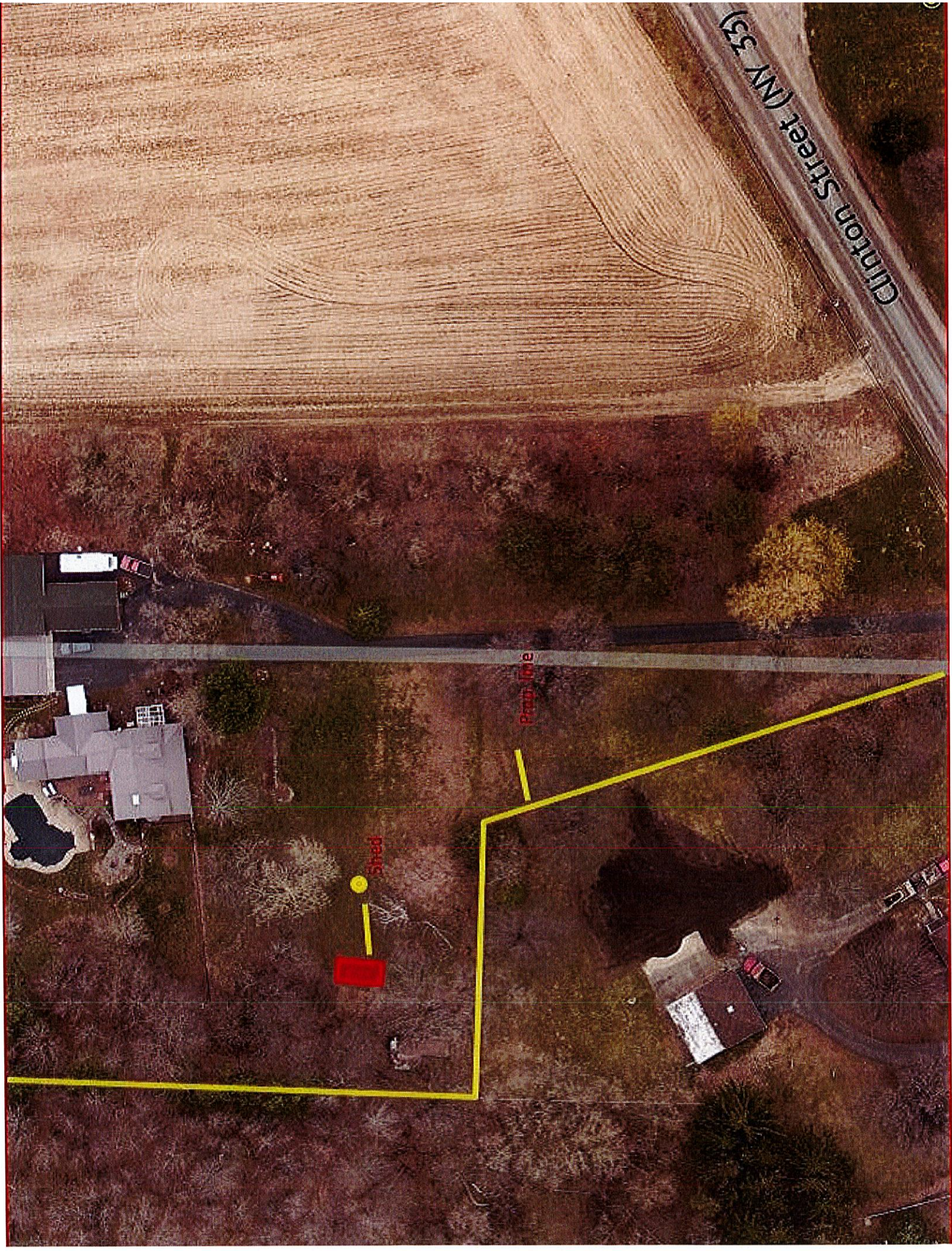
National Grid Sign Off (Pools): N/A Lot Size: 81 x 481Existing Use: 1 family NYS Building Code Occupancy Class: \_\_\_\_\_Proposed Use: same NYS Building Code Occupancy Class: \_\_\_\_\_



Clinton Street (NY 33)

Property

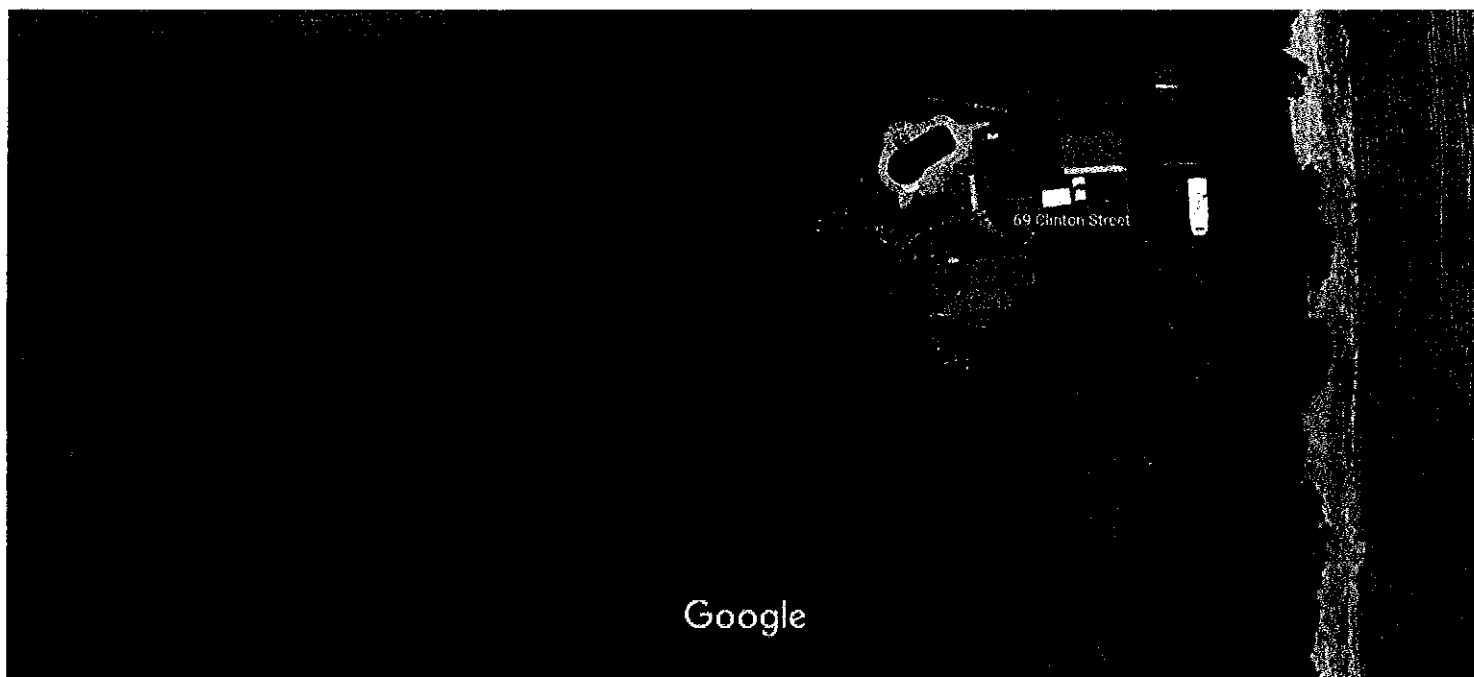
Shed











Imagery ©2019 Google, Map data ©2019 50 ft



## 69 Clinton St

Batavia, NY 14020



Directions



Save



Nearby



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phone



Share

### At this location

#### Batavia Quilt n Sew

Sewing company · 69 Clinton St

Open until 5:00 PM

















N.Y.S.R.L.S. No. 50249