

# **ZONING BOARD OF APPEALS**

**Thursday, April 28, 2022**

*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 December 16, 2021 minutes
- V. Statement about the role of the Zoning Board of Appeals and the procedure it follows
- VI. Variance Requests

*3 Morton Avenue*  
Richard Ayres, owner

Area Variance:

Place a 12' x 12' wood-frame deck in the rear yard of this property. A portion of the stairs will be located within the west side yard clear space and the deck is proposed entirely within the rear yard clear space due to the insufficient depth of the yard

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

- VII. Setting of Next Meeting: May 26, 2022 (in the Community Room)
- VIII. Adjournment

**ZONING BOARD OF APPEALS**  
***Draft Minutes***  
**Thursday, December 16, 2021**  
**6:00 pm**  
**Council Board Room**  
**One Batavia City Centre, Batavia, NY**

Members present: *Deborah Kerr-Rosenbeck, Dave McCarthy, Leslie Moma, Jim Russell*

Members absent: Jeff Gillard, Nick Harris

Others present: 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 one correction to the minutes: Vice Chair Deborah Kerr-Rosenbeck was absent from the November meeting. Mr. McCarthy assumed the motion and the minutes were approved as corrected by unanimous consent.

**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: construct an attached garage on the north side of the existing dwelling. A portion of the new garage will be placed within the rear and side yard clear spaces

Address: 6 Grandview Terrace

Applicant: Bruce Scofield, owner

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

**1. Review Application**

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 Mr. Russell, and on roll call, was approved 4-0.

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

Mr. Scofield told the board that the current garage looks more like a shed. He would like to improve the appearance of garage while making it large enough to house his truck. The footprint will remain the same, but the building will be taller to make room for the truck. He noted that the pitch of the garage roof would be the same as the pitch of the house roof.

There were 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 4-0.

**RESULT: Public hearing closed at 6:07 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. Russell moved to approve the variance with 30 days to obtain the permit. The motion was seconded by Mr. McCarthy, and on roll call, was approved 4-0.

**RESULT: Area Variance approved.**

B. Area Variance: place a metal wheelchair access ramp in the front and side yards of this property

Address: 31 Hutchins Street

Applicant: Garland Bruce Elliott, 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. Russell, and on roll call, was approved 4-0.

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

Mr. Elliott related that he and his wife have lived in the house for 40 years. His wife's health is declining to the point where she must use a wheelchair, but they wish to remain living in their home. In order for that to happen, his wife needs a ramp so that she can leave and enter the house.

Mr. Stone, the contractor for the ramp, explained that despite considering multiple options, he still could not make the ramp fit inside the setback while maintaining ADA compliance.

Mr. Welch, Mr. Elliott's neighbor, noted that they have lived beside one another for many years, and he has no objection to the ramp.

There were 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 4-0.

**RESULT: Public hearing closed at 6:14 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 30 days to obtain the permit. The motion was seconded by Ms. Moma, and on roll call, was approved 4-0.

**RESULT: Area Variance approved.**

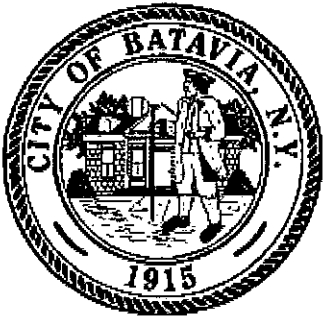
## **VII. Setting of Next Meeting: January 27, 2022**

## **VIII. Adjournment**

Mr. McCarthy adjourned the meeting at 6:17 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: 3/25/22  
Re: 3 Morton Ave.  
Tax Parcel No. 84.019-1-7

Zoning Use District: R-2

The applicant, Richard Ayres (owner), has applied for a permit to place a 12' x 12' wood frame deck in the rear yard of this property. A portion of the stairs will be located within the west side yard clear space and the deck is proposed entirely within the rear yard clear space due to the insufficient depth of the yard.

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

**Required variances- Area**

**BMC Sec. 190-29 A. and Schedule I**

		<u>Required</u>	<u>Proposed</u>	<u>Difference</u>
1)	Side yard clear space	8'	6' (5.71' existing)	2'
2)	Rear yard clear space	20'	6.08' (18.08' existing)	13.92'



CITY OF BATAVIA  
APPLICATION TO THE ZONING BOARD OF APPEALS

Application No.: 22-01  
Hearing Date/Time: \_\_\_\_\_

APPLICANT: Richard F. Ayres Jr. bambam4clown@yahoo.com  
Name E-Mail Address  
3 Morton Ave 585-813-6445  
Street Address Phone Fax  
Batavia NY 14020  
City State Zip

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

OWNER: Colby Ayres Ayres7786@gmail.com  
Name E-Mail Address  
6175 Tower Hill Rd.  
Street Address Phone Fax  
Byron NY 14422  
City State Zip

LOCATION OF PROPERTY: 3 Morton Ave Batavia NY 14020

DETAILED DESCRIPTION OF REQUEST: Requesting to add a deck to the rear of the  
house. The deck would be 12'x12' and about 4' high. This would  
serve as a seating area for family + friends but also as the main way  
to enter the house through the garage.

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.

[Signature]  
Applicant's Signature

3/8/22  
Date

Colby Ayres  
Owner's Signature

3/8/22  
Date

To be Filled out by Zoning Officer

TAX PARCEL: 84.019-1-7 ZONING DISTRICT: R-2 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 Sched. 1

Side and Rearyard Clear spaces.

PAID

MAR 21 2022

CITY OF BATAVIA  
CLERK-TREASURER

## 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  
\_\_\_\_\_  
\_\_\_\_\_
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. No  
\_\_\_\_\_  
\_\_\_\_\_
3. **Substantiality.** The requested area variance is not substantial. No  
\_\_\_\_\_  
\_\_\_\_\_
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



## CITY OF BATAVIA

## BUILDING PERMIT APPLICATION

DATE: 3/21/2022APPLICANT NAME & PHONE: Richard Aynes Jr. 585-813-6445**Project Location and Information**

Permit #: \_\_\_\_\_ Fee: \_\_\_\_\_

Address of Project: 3 Morton AveOwner & Address: Colby Aynes 6137 Tower Hill Rd, Byron NY 14422Phone: 585-813-5635**Project Type/Describe Work**Estimated cost of work: \$3,200.00Start date: 04/30/2022

Describe project: 12' x 12' Seating area outside off the South side of the house  
2 stair ways, one on the East West side of the Seating area to access rear  
entrance of house and garden bed to the West of the deck.

**Contractor Information** – Insurance certificates (liability & workers comp) required to be on file**GENERAL**Name/Address: Richard F. Aynes Jr. 3 Morton Ave Batavia NY 14020

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

**PLUMBING** (City of Batavia Licensed Plumber Required)

Name/Address: \_\_\_\_\_

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

**HEATING**

Name/Address: \_\_\_\_\_

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

**ELECTRICAL** (Third Party Electrical Inspection Required)

Name/Address: \_\_\_\_\_

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

**FOR OFFICE USE ONLY**

Zoning District: \_\_\_\_\_ Flood Zone: \_\_\_\_\_ Corner Lot: \_\_\_\_\_ Historic District/Landmark: \_\_\_\_\_

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

National Grid Sign Off (Pools): \_\_\_\_\_ Lot Size: \_\_\_\_\_

Existing Use: \_\_\_\_\_ NYS Building Code Occupancy Class: \_\_\_\_\_

Proposed Use: \_\_\_\_\_ NYS Building Code Occupancy Class: \_\_\_\_\_



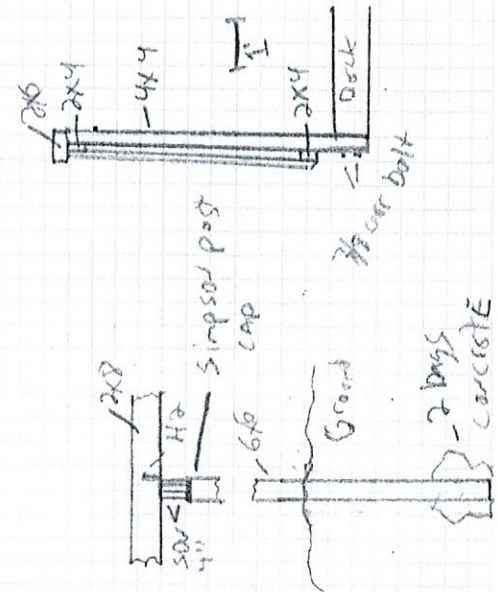
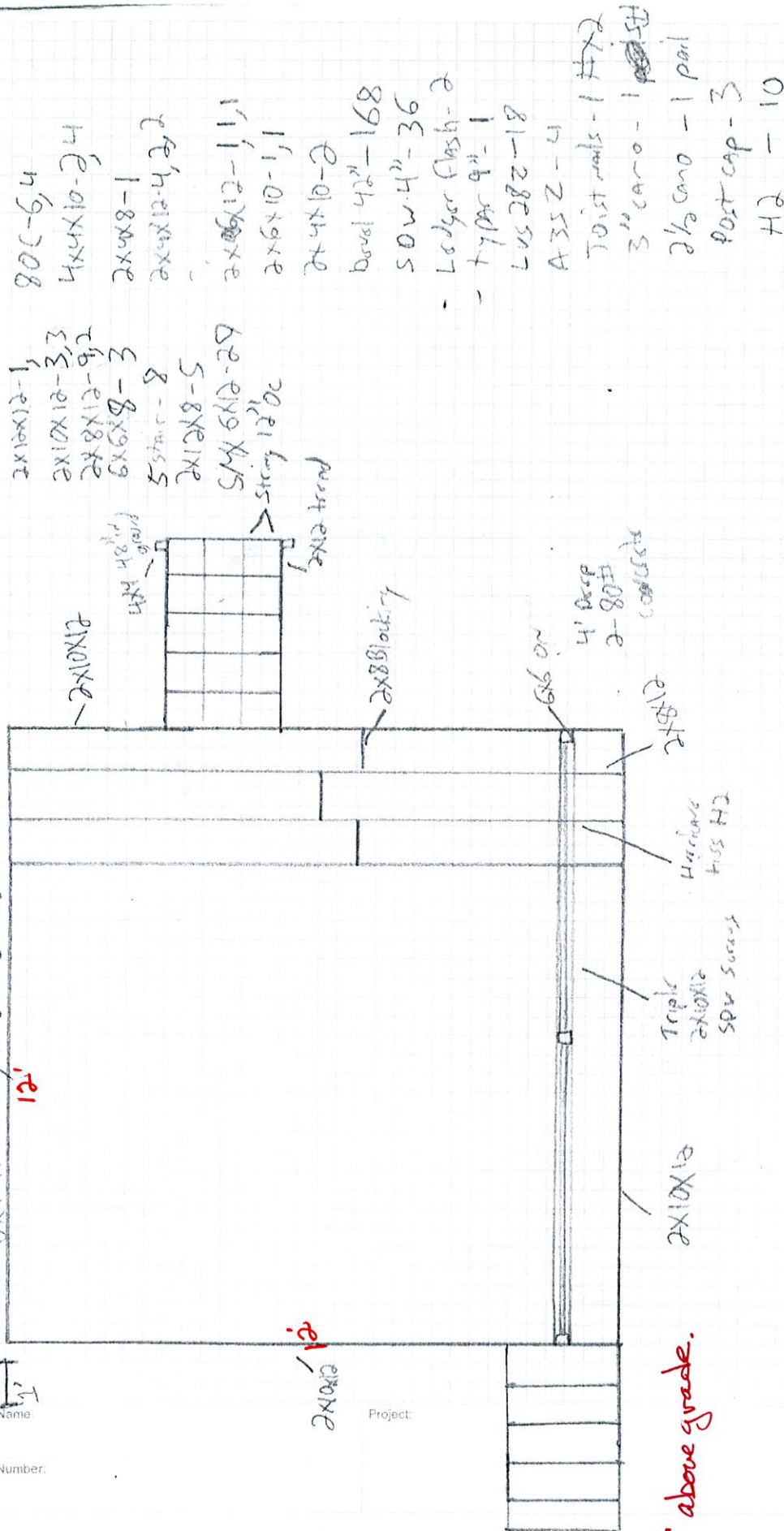
Horse

Job Name

Job Number:

Project:

34" above grade.



Date:

Approval:

Scale:

X-4M carrier bolts  
to 2x10 ~ 3/8 bolt

477053









LAVINIA J. TOMPKINS SUBDIVISION FILED  
AT BOOK 4 OF MAPS, PAGE 196  
SURVEY MAP NO. 98-126 BY DAVID S.  
LAMENDOLA, L.S., DATED JULY 20, 1998

I, GREGORY W. TOWNSEND, CERTIFY TO:  
COLBY AYRES  
LACY KATZEN LLP  
M & T BANK, ITS SUCCESSORS AND/OR ASSIGNS,  
AS THEIR INTEREST MAY APPEAR  
SHAPIRO, DICARO & BARAK, LLC  
THE TITLE INSURANCE COMPANY INSURING THE MORTGAGE

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