

# **ZONING BOARD OF APPEALS**

## ***Minutes***

**Thursday, February 25, 2021**

***6:00 pm***

**Council Board Room**

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

Members present: *Nick Harris, Leslie Moma, Jim Russell*

Members absent: Deborah Kerr-Rosenbeck

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 Acting Chair Nick Harris declared a quorum.

### **II. Call to Order**

Mr. Harris called the meeting to order at 6:03 pm.

### **III. Pledge of Allegiance**

### **IV. Approval of Minutes**

There were no corrections to the minutes. Mr. Harris assumed the motion and the minutes were approved by unanimous consent.

**RESULT: Approval of December 17, 2020 minutes.**

### **V. Zoning Board of Appeals statement**

Mr. Harris explained the role of the Zoning Board of Appeals and the procedures it follows.

### **VI. Variance Requests**

- A. Area Variance: replace the existing internally illuminated, white background roof sign face panels with new, white background, internally illuminated face panels identifying the existing business. The signs are located within the Central Commercial District / Business Improvement District

Address: *60 Ellicott Street (Pok A Dot)*

Applicant: Mike Hodgins, sign contractor

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

### **1. Review Application**

Acting Vice Chair, Leslie Moma, read the summary of the proposal. Mr. Harris reported that the Genesee County Planning Board recommended approval of the variance; however, the Planning and Development Committee recommended disapproval because the internal illumination and light-colored background do not meet City design guidelines

### **2. Public Hearing and Discussion**

**MOTION:** Mr. Harris moved to open the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing opened at 6:08 pm.**

Mr. Hodgins told the board that replacement panels look the same as the ones that have been there since the restaurant opened in 1962.

Mr. Russell asked Mr. Randall if owners of the Pok A Dot would be required to appear before the board again if they wished to change the signs in the future. Mr. Randall said that they would not need permission to change the interior lighting or the background color if this variance is approved.

There were no calls, letters, or email concerning the proposal.

**MOTION:** Mr. Harris moved to close the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing closed at 6:13 pm.**

Ms. Moma pointed out that granting the variance could be setting a precedent. In response, Mr. Russell noted that the signs are staying the same and the variance is not substantial.

### **3. Action by the Board**

Mr. Harris 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 60 days to obtain the permit. The motion was seconded by Mr. Harris, and on roll call, was approved 3-0.

**RESULT: Area Variance approved.**

- B.                    Area Variance: place a 24' x 24' above grade, wood frame detached garage in the northwest (front/side) yard of this corner lot property

Address: 8 Carolwood Drive  
Applicant: Matthew Hume, RA

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. Mr. Harris reported that the Genesee County Planning Board recommended approval of the project.

### 2. Public Hearing and Discussion

**MOTION:** Mr. Harris moved to open the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing opened at 6:19 pm.**

A representative from Hume Construction spoke on behalf of the project. She explained that the design intent is to have the great room look out on the corner of the property, placing the garage behind the front view in what they are referring to as the back yard. She noted that the developer of the property, John Harrower, approves of the drawings for the project.

There were no calls, letters, or email concerning the proposal.

**MOTION:** Mr. Harris moved to close the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing closed at 6:23 pm.**

### 3. Action by the Board

Mr. Harris 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 60 days to obtain the permit. The motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Area Variance approved.**

C. Use Variance: add a non-permitted use food service business (Commit to Well / Eat Well Grill meal preparation service) in an existing kitchen / food preparation area of this existing multi use building

Address: 301 North St.  
Applicant: Dr. Emily Fraser-Branche, 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. Mr. Harris reported that the Planning and Development Committee reviewed the proposal and recommended approval with conditions: any business which occupies the space must be related to the health care business; and, no additional burden on traffic should be created.

### **2. Public Hearing and Discussion**

**MOTION:** Mr. Russell moved to open the public hearing; the motion was seconded by Mr. Harris, and on roll call, was approved 3-0.

**RESULT: Public hearing opened at 6:26 pm.**

Gregory Branche spoke on behalf of the project. He explained that the YWCA no longer leases the industrial kitchen space. Mr. Branche said that it would be cost prohibitive to remove and renovate the space to make it suitable for medical use. He pointed out that using the space as a lab or blood draw station would significantly increase the flow of traffic.

Mr. Branche said that he believes the current use of the kitchen to serve healthy meals is consistent with the purpose of a medical campus.

Dr. Faser-Branche added that she sees this business alliance as the perfect connection between medicine, educating the community about nutrition, and healthy eating.

There were calls, letters, and email concerning the proposal. The board members indicated they had read the public comments. [See attached.]

**MOTION:** Mr. Harris moved to close the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing closed at 6:40 pm.**

Mr. Russell started the discussion by saying that the public commentary seems to indicate that some of the adjacent neighbors believe that the YWCA, the former owner of the property, had not been a good neighbor. Some of the area residents expressed unhappiness with what they have perceived as a lack of cooperation on the part of the YWCA.

Mr. Russell said he believes that rather than feeling any real unhappiness with the food preparation business, the neighbors have displaced their dissatisfaction with the YWCA onto the project. Mr. Russell said that the relationship between the new owners and the neighbors is something they need to resolve on their own. The rest of the board agreed.

The board decided on the definition of a restaurant as a place where patrons sit down to eat meals cooked on the premises, and considered that the food preparation business does not fall into this category. However, the board expressed concern over what could happen if they approved the proposal and then the business decided to leave. The members agreed to place conditions on their approval in order to prevent restaurants occupying the space in the future.

Mr. Harris went through the list of supporting criteria for the variance:

- Reasonable return: if they had to modify the building the answer would be no
- Unique hardship: yes, it's a commercial building in a residential neighborhood
- Essential character of neighborhood: no, they've been operating this business for here for two years
- Self-created: no, it's an existing building

### 3. SEQR

Mr. Harris 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. Harris moved to approve a negative declaration of SEQR; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Negative declaration of SEQR**

### 4. Action by the Board

**MOTION:** Mr. Russell moved to approve the variance with conditions: the food will be prepared for takeout only; and the square footage of the kitchen space will remain the same regardless of what business is located there. The motion was seconded by Mr. Harris, and on roll call, was approved 3-0.

**RESULT: Area Variance approved with conditions.**

D. Area Variance: place a 4' x 4' non-illuminated pole sign in the north yard of this commercial parcel 6'

Address: 438 East Main Street

Applicant: Mike Hodgins, sign contractor

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. Mr. Harris reported that the Genesee County Planning Board

#### 2. Public Hearing and Discussion

**MOTION:** Mr. Harris moved to open the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing opened at 7:12 pm.**

The applicant, Mr. Hodgins, described the sign as something he called a post and panel sign; however, Mr. Randall explained that by definition of the Batavia Municipal Code, with the full intent of the Planning and Development Committee, this sign is a pole sign.

Mr. Russell commented that it is an area that needs addressing, but Mr. Randall pointed out that the PDC did address the issue and decided they did not like the appearance of that type of sign for this type of district.

There were no calls, letters, or email concerning the proposal.

**MOTION:** Mr. Harris moved to close the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing closed at 7:17 pm.**

### **3. Action by the Board**

Mr. Harris 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

Mr. Harris asked if there is a cost difference between this type of sign and a monument sign. Mr. Hodgins said that the cost for a monument sign is two or three times greater, and was the motivating action for creating this particular sign.

**MOTION:** Mr. Russell moved to approve the proposal with 60 days to obtain the permit; the motion was seconded by Mr. Harris, and on roll call, was approved 3-0.

**RESULT: Application approved.**

- E. Area Variance: construct a two-story addition covering approximately 5,113 sq.' or parcel area. A portion of the proposed addition is located within the front yard setback

Address: *127 North Street*

Applicant: Dave Hetrick, agent for the owner

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

### **1. Review Application**

Ms. Moma read the summary of the proposal. Mr. Randall reminded Mr. Harris that the Genesee County Planning Board recommended approval of the project, and the PDC approved SEQR.

## **2. Public Hearing and Discussion**

**MOTION:** Mr. Harris moved to open the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing opened at 7:22 pm.**

Mr. Hetrick informed the board that the addition would provide housing for the new MRI machine and CT scan, with a nice waiting area for patients.

There were no calls, letters, or email concerning the proposal.

**MOTION:** Mr. Harris moved to close the public hearing; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Public hearing closed at 7:28 pm.**

## **3. Action by the Board**

Mr. Harris 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's a corner lot

**MOTION:** Mr. Harris 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 3-0.

**RESULT: Area Variance approved.**

## **VII. Setting of Next Meeting: March 25, 2021**

## **VIII. Adjournment**

Mr. Harris adjourned the meeting at 7:35 pm.



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Meg Chilano

Bureau of Inspection Secretary