

ZONING BOARD OF APPEALS
Draft Minutes
Thursday, March 24, 2016
6:00 pm
Council Board Room
One Batavia City Centre, Batavia, NY

Members present: *Deborah Kerr-Rosenbeck, Sandra Licata, Paul McCarthy, Emma Morrill*

Others present: Meg Chilano – Clerk, Ron Panek – Code Enforcement Office, Rosemary Christian - Councilwoman

I. Roll Call

Roll call of the members was conducted. Four members were present and Chairman McCarthy declared a quorum.

II. Call to Order

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

III. Pledge of Allegiance

IV. Approval of Minutes

MOTION: Dr. Licata moved to approve the minutes as written; the motion was seconded by Ms. Morrill, and on roll call, was approved 3-0-1.

Votes in favor: 3 (Sandra Licata, Paul McCarthy, Emma Morrill)

Votes opposed: 0

Votes abstained: 1 (Deborah Kerr-Rosenbeck)

RESULT: Approval of November 19, 2015 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: Placement of a 10' x 12' one story wood frame utility shed in the side (east) yard of this corner lot

Address: *11 South Spruce Street*

Applicant: Curt Stechenfinger, owner

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

1. Review Application

Dr. Licata, acting as Vice Chair, read the proposal summary for the board. Mr. McCarthy reported that the Genesee County Planning Board recommended approval of this variance.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:08 pm.

Mr. McCarthy asked the applicant if he wished to speak about the project. Mr. Stechenfinger declined.

Jerry Freeman, 15 South Spruce Street, spoke against the project. Mr. Freeman brought photographs to show the board. However, as Mr. Panek explained, the photographs depict a fence which will be the subject of a future variance and does not pertain to the current proposal.

Mr. Freeman said that the shed will block his view and that he believes it needs to be placed 15' from the corner, which is not where Mr. Stechenfinger has requested to place it. Mr. Panek stated that the shed needs to be placed 5' from all property lines. Mr. Stechenfinger pointed out that he has conformed to those requirements.

Dr. Licata asked how wide the property is between the fence and the end of the property. Mr. Panek referred the board to the survey of the property contained in the packet.

Mr. McCarthy asked how tall the shed is. Mr. Stechenfinger answered that it is about 7' tall. Mr. McCarthy said that he believes the main issue with the view upon backing out will be the fence and not the shed.

Mr. McCarthy determined that there was no correspondence or calls from neighbors.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:15 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; not much room on the lot
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. McCarthy moved to approve the application with 60 days to obtain the permit. The motion was seconded by Ms. Morrill, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance

- B. Area Variance: Construction of a wooden fence around the perimeter of the rear yard with the framing members of the fence facing the neighboring properties

Address: *153 Harvester Avenue*

Applicant: Patricia Diaz, owner

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

1. Review Application

Dr. Licata read the summary of the proposal. She also read the recommendation of the Genesee County Planning Board to approve the proposal with the modification that the applicant obtain a letter of consent from the neighbor to the south.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:17 pm.

Ms. Diaz explained that she was unaware that the Batavia Municipal Coded specifies that the finished side of a fence must face the adjacent neighbors. She said she thought that she only needed approval from her neighbors, which she indicated that she did have, in order to install the fence with the finished side facing inward.

The board spoke with Mark Rich, owner of 155 Harvester, via telephone. He stated that he did not object to the finished side facing inward.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:25 pm.

3. Action by the Board

MOTION: Ms. Kerr-Rosenbeck moved to approve the application with 60 days to obtain the permit. The motion was seconded by Mr. McCarthy, and on roll call, was approved 4-0.

RESULT: Approval of Area Variance

- C. Use Variance: Creation of 12 one- and/or two-bedroom dwelling units on the first floor of this existing commercial building located within the Central Commercial District

Address: *41-43 Liberty Street Rear and 45 Liberty Street Rear*

Applicant: Victor Gautieri, agent for Ellicott Square Plaza, LLC

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

1. Review Application

Dr. Licata read the summary of the proposal. She also read the recommendation from the Genesee County Planning Board to disapprove the proposal for the following reason:

Under the criteria set forth in NYS City Law, this proposal does not appear to meet the thresholds for the granting of a use variance. The hardship appears to be self-created as the parcel was purchased by the applicant's family in 1978 after the 1962 Zoning Law was in place. At least since the 1962 law, the property has been zoned in such a way that does not allow for residential uses. Under the law, the applicant must meet all four use variance tests in order for the Zoning Board of Appeals to grant the use variance. Possible inappropriate application of use variances may be precedent setting and pose significant impacts upon the development policies/processes of the City.

Mr. McCarthy reported that the City of Batavia Planning and Development Committee also recommended disapproval. The PDC stated that their reasons are because City Code prohibits residential uses in a C-3 district, and approval of this project would set an undesirable precedent.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy moved to open the public hearing; the motion was seconded by Dr. Licata, and on roll call, was approved 4-0.

RESULT: Public hearing opened at 6:30 pm.

Victor Gautieri spoke on behalf of the project. Mr. Gautieri said that he has not been able to rent any portions of the facility, which have been recently vacated. He said that the property has proven to be undesirable as office and retail space and that he has been told that the property is difficult to find because it is located too far back from the street.

Mr. Gautieri told the board that the property is creating a deficit of \$125,000 per year, and that according to his calculations, if the project were completed a profit of about \$33,000 per year could be expected.

Mr. Gautieri said that constructing apartments on the second floor would require elevators, stairwells, and structural changes that are not economically feasible.

Ms. Kerr-Rosenbeck asked if Mr. Gautieri's project consists of subsidized housing. He replied that he is planning on market rate apartments.

Ms. Kerr-Rosenbeck asked if Mr. Gautieri is looking for incentives or tax abatement. He answered that under the law they are allowed certain tax abatements that are applicable to anyone. Mr. Gautieri referred to two particular programs.

Ms. Kerr-Rosenbeck asked if Mr. Gautieri would be looking for HUD approvals and he responded that there would be no subsidized housing of any kind.

Ms. Morrill asked for how long the property has been vacant. Mr. Gautieri said that of the units which are vacant, the vacancies occurred over a period of time beginning about five years ago. One unit was vacated as recently as three months ago.

Mr. Vito Gautieri noted that they have advertised the availability of space but have received no response. He added that he realizes they created the situation but that they have no control over it because of the location.

Rose Mary Christian, Councilwoman for the Sixth Ward, stated that she realizes the Code does not allow for this type of project, but that she has no objection to the project itself. She said that some of the neighbors have spoken to her in support of the project.

Dr. Licata asked Councilwoman Christian her opinion of the Planning and Development Committee's recommendation that approval could set an unwelcome precedent. Councilwoman Christian responded that she could not speak for the PDC, not having been a part of their decision-making process.

Ms. Morrill asked about the process of changing a zoning district and Mr. McCarthy pointed out that re-zoning is not the responsibility of the ZBA. Mr. Panek explained that when the zoning of a parcel is changed, generally speaking, it changes to whatever zone the parcel is adjacent to. Mr. Panek said that a parcel in the middle of a commercial district would typically not be changed to a residential zone because it would be considered spot zoning.

Ms. Chilano reported a call from David Fasano, of Papa Pasquale's Italian Eatery, stating that he has no objection to the project.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Ms. Morrill, and on roll call, was approved 4-0.

RESULT: Public hearing closed at 6:45 pm.

Ms. Kerr-Rosenbeck said that she didn't think approval of the variance would set a precedent.

Ms. Morrill asked for an explanation of how the building would be converted into apartments. Mr. Gautieri answered that the footprint of the building would stay the same; all changes would be internal.

Ms. Morrill pointed out that there quite a number of vacant apartments throughout Batavia and asked why Mr. Gautieri believed his apartments would not also remain vacant. He responded that studies show there is a need for apartments in downtown Batavia. Ms. Morrill stated that the studies refer to high end apartments. Mr. Gautieri said he believed that

there was a study by LaBella showing the need for apartments at various economic levels and that indicators show that they will have no trouble renting the apartments.

Councilwoman Christian said that Savarino will be developing the Della Penna property along Ellicott Street, and that there will be a lot of development spurred by the STAMP project and a need for apartments.

Ms. Kerr-Rosenbeck commented that if Mr. Gautieri cannot make money on the property, he could stop paying his taxes and let the property go to ruin. Ms. Morrill stated that that is not the board's issue.

Mr. McCarthy and Ms. Morrill affirmed that they do not like the idea of residential construction in a commercial zone and the possibility for setting a precedent. Mr. McCarthy said that such an action could conceivably result in a worst case scenario with residences on downtown Main Street or in the Mall.

Mr. McCarthy asked if there was any more discussion; there was none.

3. Action by the Board

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

- Reasonable Return: property is losing money
- Unique Hardship: located away from the street
- Essential Character of the Neighborhood: the essential character of the neighborhood is commercial
- Not Self-Created: circumstance of the economy

MOTION: Mr. McCarthy moved to deny the application; the motion was seconded by Dr. Licata, and on roll call, was approved 3-1-0.

Votes in favor: 3 (Sandra Licata Paul McCarthy, Emma Morrill)

Votes opposed: 1 (Deborah Kerr-Rosenbeck)

Votes abstained: 0

RESULT: Disapproval of Use Variance

VII. New Business: none

VIII. Setting of Next Meeting: April 28, 2016

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:57 pm; Dr. Licata seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Clerk