

ZONING BOARD OF APPEALS
Draft Minutes
Thursday, August 25, 2016
6:00 pm
Council Board Room
One Batavia City Centre, Batavia, NY

Members present: *Nicholas Harris, Lee Hyatt, Deborah Kerr-Rosenbeck, Sandra Licata, Paul McCarthy*

Members absent: Emma Morrill

Others present: Meg Chilano – Clerk, 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 6:01 pm.

III. Pledge of Allegiance

IV. Approval of Minutes

MOTION: Ms. Kerr-Rosenbeck moved to approve the minutes as written; the motion was seconded by Mr. Harris, and on roll call, was approved 5-0.

RESULT: Approval of July 28, 2016 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: Addition of a driveway to the southeast portion of this property by placing pavers and loose stone to form a 16' wide x 60' long area for parking. This would be in addition to the existing 12' wide asphalt driveway in the northeast portion of this property

Address: 59 Lyon St.

Applicant: Randy White, owner

The applicant was not in attendance. Mr. Randall reported that an error was found in the application. The County discovered that the parcel actually consists of two unmerged parcels. If the applicant wishes to pursue the project in the future, the two parcels would need to be merged prior to submitting the application. Additionally, the applicant has not

paid the fee to appear before the ZBA and has not responded to efforts to contact him. The Code Enforcement Office withdrew the proposal.

- B. Area Variance: Addition of a 14' wide x 30' long stone driveway in the northwest portion of the front yard. This driveway will be in addition to a driveway in the southwest portion of this newly developed two family dwelling property

Address: 61 River St.

Applicant: Fred Mruczek, 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 PDC recommended disapproval for the following reasons: the driveway will be over the limit of the allowed frontage; and, it will be in front of the house.

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 5-0.

RESULT: Public hearing opened at 6:13 pm.

From the beginning of the project, Mr. Mruczek said he had wanted two driveways, the same as his other three apartment buildings on River St. (46, 86, 96), however, there was a utility pole on the left side in the middle of the space for the second driveway. When he inquired about moving the pole, National Grid told him it would cost over \$6,000 to move the pole, so he changed the plan to allow for only one driveway.

Mr. Mruczek said that when it came to the point in the building where it was time to put in an electrical line, he decided to put in an underground service. The customer service representative from National Grid estimated the pole would only last five more years and told Mr. Mruczek that she would like to put up a new pole. At Mr. Mruczek's request, she moved the pole 10' to place it beside the property line, leaving room to put in the second driveway he had wanted from the beginning of the project. Mr. Mruczek said he believes that two driveways create a balanced esthetic and also afford each family privacy.

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 6:25 pm.

Mr. Harris asked about the plan for entrance into the apartments and Mr. Mruczek said that most of the time everyone enters through the front doors.

Mr. Hyatt asked if the kitchens are in the back. Mr. Mruczek responded that they are. Mr. Hyatt pointed out that it would be closer to carrying groceries into the house if parking is in the back. Mr. Mruczek said that he believes it is more important to have a private drive than ease of carrying in groceries.

Mr. Harris asked about snow plowing and Mr. Mruczek said that he plows the driveways with his 8' wide plow.

Mr. Hyatt asked if the driveway will be stoned and Mr. Mruczek answered yes.

Mr. Hyatt asked where the driveways end and Mr. Mruczek said the driveways of his houses typically end at the front edge of the house.

Dr. Licata asked if Mr. Mruczek would be willing to compromise on the width of the driveway and he said that he would but that he would like both drives to be the same size for balance and symmetry.

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: could park in the back
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: possibly a little
- Self-created: it is a narrow lot

3. Action by the Board

MOTION: Ms. Kerr-Rosenbeck moved to approve the variance with the following modification: the existing driveway will be reduced to 14', and the new driveway will be 14' wide and approximately 30' in length, with 60 days to obtain the permit. The motion was seconded by Dr. Licata, and on roll call, was approved 4-1-0.

Votes in favor: 4 (Nicholas Harris, Lee Hyatt, Sandra Licata, Deborah Kerr-Rosenbeck)

Votes opposed: 1 (Paul McCarthy)

Votes abstained: 0

RESULT: Approval of Area Variance with modifications.

C. Interpretation: The City of Batavia's Planning and Development Committee has requested an interpretation of the Batavia Municipal Code regarding window signage

- Actions:
1. Review the request
 2. Discussion and action by the board

1. Review the Request

Ms. Kerr-Rosenbeck read the summary of the proposal. The Planning and Development Committee requested an interpretation of the sign code as it pertains to the proposal for 206 East Main St.

Interpretation:

- Do the perforated vinyl window coverings constitute a window sign as defined by Batavia Municipal Code?
- Is the maximum window sign coverage area based on the percentage of coverage for the individual window pane or all window surfaces combined?

Definitions (according to Batavia Municipal Code):

Sign: structure or device designed or intended to convey information to the public in written or pictorial form.

Window sign: a sign visible from a sidewalk, street, or other public place painted or fixed on glass or other window material or located inside within 4' of the window, not including graphics in connection with customary window display of products.

Sign Surface Area: the entire area within a single continuous perimeter enclosing the limits of writing representation, emblem, or any figure or similar character. Supports, uprights, or structures on which any sign is supported shall not be included in the sign face area unless it is an integral part of the sign.

2. Discussion and Action by the Board

The board discussed signs and graphics and what constitutes a customary window display of products. Mr. McCarthy stated he believes the window covering is a sign because it conveys information to the public in pictorial form. Mr. Harris disagreed. He said he believes it is a graphic.

Mr. McCarthy said that graphic refers to the customary display of products, which the window covering is not. There was further discussion among the board members regarding what constitutes a customary window display of products.

Mr. Hyatt asked Mr. Marchese about his intent for the window and Mr. Marchese responded by saying he wanted to make it look nicer. Mr. Hyatt pointed out that Mr. Marchese is advertising pizza on the window covering and Mr. Marchese agreed.

The board discussed the meaning of sign coverage area and whether window surface area refers to just the window the sign is on or all windows on the façade. They discussed if façade includes only the first floor or the entire wall on which the window is located.

MOTION: Mr. McCarthy moved to interpret this form of window treatment as a sign according to the definition in the BMC; the motion was seconded by Dr. Licata, and on roll call, was approved 3-0.

Votes in favor: 3 (Lee Hyatt, Sandra Licata, Paul McCarthy)
Votes opposed: 2 (Nicholas Harris, Deborah Kerr-Rosenbeck)
Votes abstained: 0

MOTION: Mr. McCarthy moved to clarify that the maximum amount of window coverage allowed refers to the individual space in which the sign is located and not all window surfaces combined; motion was seconded by Dr. Licata, and on roll call, was approved 3-0.

Votes in favor: 3 (Lee Hyatt, Sandra Licata, Paul McCarthy)
Votes opposed: 2 (Nicholas Harris, Deborah Kerr-Rosenbeck)
Votes abstained: 0

VII. New Business: none

VIII. Setting of Next Meeting: September 22, 2016

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 7:18 pm; Ms. Kerr-Rosenbeck seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Clerk