

ZONING BOARD OF APPEALS

Draft Minutes

Thursday, June 22, 2017

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Bill Cox, Nick Harris, Deborah Kerr-Rosenbeck, Jim Russell, Paul McCarthy*

Members absent: none

Others present: Doug Randall – Code Enforcement Officer, Meg Chilano – Recording Secretary

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 6:03 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 May 25, 2017 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 86 lin.' of 8' tall vinyl fence along a portion of the northwest property line

Address: *411 Garden Dr.*

Applicant: Dominic Cavaliri, owner

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

1. Review Application

Acting Vice Chair Deborah 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 6:07 pm.

Mr. Cavaliri said that his fence was damaged in the wind storm, and since it needs to be replaced, at this time he would like to raise the height to 8'. He explained that the neighbors have a raised deck, and the additional height in his fence would provide privacy when the neighbors are entertaining. Mr. Cavaliri noted that the neighbors submitted a letter in support of his fence proposal.

Mr. Russell asked if the fence has been repaired. Mr. Cavaliri answered that the tree has been removed but the fence has not been fixed yet.

Mr. McCarthy read a letter of support from Dan and Whitney D'Amico, 409 Garden Dr., into the minutes.

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 6:15 pm.

Mr. Russell objected to the proposed height of the fence because he believes it could set a precedent. He thinks there could be other options.

Mr. Cox asked Mr. Randall if there is a particular reason for the fence height limit to be 6' and Mr. Randall responded that though the Code states the height requirement, it does not explain why this number was specified. Mr. Cox said that he does not have a problem with the request for two additional feet in height since it is not in a high traffic area.

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: Mr. Russell offered putting the fence around the pool instead of around the property line as a possible option. The other board members said no
- Substantiality: Mr. Russell said he believes it sets a precedent. Mr. Harris said he does not believe it sets a precedent because the ZBA makes decisions for variances on a case by case situation. Other properties might not be as secluded as this one, and therefore, not be granted a variance. Mr. McCarthy and Mr. Cox agreed with him.
- Adverse effect or impact on neighborhood/community: no
- Self-created: yes

3. Action by the Board

MOTION: Ms. Kerr-Rosenbeck moved to approve the variance with a 60 day time limit to obtain the permit. The motion was seconded by Mr. McCarthy, 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: Approval of Area Variance.

- B. Area Variance: Placement of a 10' x 16' one story wood frame shed in the front yard (northeast side) and placement of a 6' tall fence, 5' from the front property line in the northeast corner of this corner lot property

Address: 23 Roosevelt Ave.

Applicant: David Culver, 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 5-0.

RESULT: Public hearing opened at 6:22 pm.

The applicant, Mr. Culver, said that there had been a fence on the property when he purchased it, but the fence was falling apart so he removed it and would now like to replace it. The other part of the project is a shed that will replace the dilapidated one currently on the property.

Mr. Cox asked if there is a reason why the fence cannot be 3' in height and Mr. Culver answered that the fence he selected is a pre-fabricated model. Mr. Culver noted that even though the parcel is a corner property, the way the house is situated the fence is going around what is technically their back yard.

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 Mr. Cox, and on roll call, was approved 5-0.

RESULT: Public hearing closed at 6:30 pm.

3. Action by the Board

Mr. McCarthy said the he would like to see the shed moved back from the street and Mr. Harris agreed. Mr. McCarthy said that he would like to see the front of the shed even with the house next door on Adams St. Mr. Harris said that it might affect street visibility if the shed was not moved back from the street.

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. Cox moved to approve the variance for a **42” fence**, with a 60 day time limit to obtain the permit. The motion was seconded by Mr. Harris, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance with above stipulation.

MOTION: Mr. Russell moved to approve the variance for the shed, with a 60 day time limit to obtain the permit. 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, Jim Russell)

Votes opposed: 1 (Paul McCarthy)

Votes abstained: 0

RESULT: Approval of Area Variance.

- C. Area Variance: construction of a 20’ x 28’ pressure treated wood frame deck along the rear wall of this dwelling. A portion of the deck will be located within the side yard clear space

Address: *15 Clinton St.*

Applicant: Bryan Gordon, 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 noted 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. Cox, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:34 pm.

Mr. Gordon explained that his house sits on the property line. He wants to line up the deck with the house so that he exits the house onto the deck. He noted that his neighbor expressed disapproval with this proposal, and after discussion with the neighbor, Mr. Gordon agreed that 5' from the property line would be acceptable. The measurement of the deck would be 24' x 24'.

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 Mr. Russell, and on roll call, was approved 5-0.

RESULT: Public hearing closed at 6:37 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 to construct the deck 5' from the property line, with 60 days to obtain the permit. The motion was seconded by Mr. Russell, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance.

D. Area Variance: Placement of an 8' tall fence parallel to the west (rear) property line that abuts a commercial use property

Address: 9 Redfield Pkwy Dr.

Applicant: Jose Castaneda, 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 stated 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 Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:41 pm.

Mr. Castaneda said that Tops is directly behind his house, and because of the height of his house, a 6' fence is not sufficient to provide privacy.

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 Mr. Russell, and on roll call, was approved 5-0.

RESULT: Public hearing closed at 6:43 pm.

Mr. McCarthy commented that he did not approve of the 8' fence in this situation. He said that the trees would provide privacy for sitting outside in the summer, making an 8' tall fence unnecessary.

Russell observed that every house on the Tops side of the street had a 6' fence and therefore, this property should not have a different size fence.

Mr. Castaneda replied that there are no trees to block his view of the Tops entrance. He said that the chain link fence that runs along the Tops property line—which does not belong to him-- is falling apart and he cannot find someone to take responsibility for the fence.

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

- Undesirable change in neighborhood character: split between yes and no
- Alternative cure sought: could be possible alternatives
- Substantiality: split between yes and no
- Adverse effect or impact on neighborhood/community: split between yes and no
- Self-created: no

3. Action by the Board

MOTION: Mr. Russell moved to deny the proposal; the motion was seconded by Mr. McCarthy, and on roll call, was disapproved 2-3-0.

Votes in favor: 2 (Paul McCarthy, Jim Russell)

Votes opposed: 3 (Bill Cox, Nick Harris, Deborah Kerr-Rosenbeck)

Votes abstained: 0

RESULT: Area Variance was not denied.

MOTION: Mr. Harris moved to approve the variance for placement of an 8'tall fence; the motion was seconded by Mr. Cox, and on roll call, was approved 3-2-0.

Votes in favor: 3 (Bill Cox, Nick Harris, Deborah Kerr-Rosenbeck)

Votes opposed: 2 (Paul McCarthy, Jim Russell)

Votes abstained: 0

RESULT: Approval of Area Variance.

- E. Area Variance: Placement of a 4' tall fence on this corner lot parcel, parallel to the north and west property lines within 15' of the front property line

Address: 230 State St.

Applicant: Linda Chaya, 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 disapproval for reasons of safety.

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 6:49 pm.

Ms. Chaya explained that she just had a deck built and would like to have a taller fence that affords greater privacy. She asked if the fence could be shorter at the corner for traffic safety but taller elsewhere on the property to provide safety in the yard for her grandchildren and dogs.

Councilwoman Rose Mary Christian spoke in support of the project. There was no one else present who wished to speak, and no calls, letters, or email concerning the proposal. Ms. Kerr-Rosenbeck read into the minutes email from Dominic Lovria, 228 State St., in support of the project.

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 6:55 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: no
- Adverse effect or impact on neighborhood/community: no, it is an improvement
- Self-created: no

MOTION: Mr. Russell moved to approve the variance for a 4' tall fence, **with the stipulation that 16' back from the corner in each direction the fence will be 3' tall**, with a 60 day time limit to obtain the permit. The motion was seconded by Mr. Harris, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance with above stipulation.

F. Area / Use Variance: change the use of this property from the legal use of "commercial Radio Sales and Service" to a repair shop that services household consumer goods, furniture, appliances, small machinery / tools for the general public, a business office for a residential home inspection business, and a dog training facility with dog day care on weekdays

Address: 8-10 Wade Ave.

Applicant: James Jacobs, purchaser

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 disapproval, and the City of Batavia Planning and Development Committee recommended approval on the condition that outside kennels will never be added.

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 3-0.

RESULT: Public hearing opened at 7:03 pm.

Mr. Casey, attorney for Mr. Jacobs, explained that the building is not a residential type building despite being in an R-2 zone. The building is subdivided with part of it being used for the small appliance repair shop and part of it serving as space for a dog training facility. According to Mr. Casey, the facility is not a kennel; the dogs will not be staying overnight or on weekends. Mr. Casey affirmed that though Mr. Jacobs would likely put up a fence around the facility, the area would be used only for taking the dogs outside to relieve themselves.

Mr. Casey pointed out that the property is in a state of disrepair and Mr. Jacobs will be putting time and money into enhancing the value of the property.

Mr. Russell asked if there would be any appliance sales and Mr. Jacobs said he would only be doing repairs.

Mr. Jacobs had obtained signatures from the neighbors in support of the project.

Councilwoman Rose Mary Christian spoke in support of the project.

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 7:12 pm.

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

3. SEQR

Mr. McCarthy 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. McCarthy moved to approve a negative declaration of SEQR; the motion was seconded by Mr. Russell, and on roll call, was approved 5-0.

RESULT: Negative declaration of SEQR

4. Action by the Board

MOTION: Mr. Russell moved to approve both of the variances with 60 days to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, the vote was recorded 5-0.

RESULT: Approval of Area Variance and Use Variance.

VII. New Business: none

VIII. Setting of Next Meeting: July 27, 2017

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 7:24 pm; Mr. Cox seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Secretary