

ZONING BOARD OF APPEALS
Draft Minutes
Thursday, July 27, 2017
6:00 pm
Council Board Room
One Batavia City Centre, Batavia, NY

Members present: *Bill Cox, Nick Harris, Paul McCarthy*

Members absent: Deborah Kerr-Rosenbeck, Jim Russell

Others present: Meg Chilano – Recording Secretary, Jason Molino – City Manager, Doug Randall – Code Enforcement Officer

I. Roll Call

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

II. Call to Order

Mr. McCarthy called the meeting to order at 6:05 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 June 22, 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: construction of a shed addition on the south side of the dwelling within the side yard clear space

Address: *2 Verona Ave.*

Applicant: James Basham, owner

Actions: Application removed from agenda.

- B. Area Variance: placement of a 10' x 20' wood frame shed in the west side yard of this corner lot parcel

Address: *23 Madison Ave.*

Applicant: Adam Figlow, owner

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

1. Review Application

Acting Vice Chair Nick Harris 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. Harris, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:10 pm.

The applicant, Mr. Figlow, pointed out that his property is a corner lot and stated that he would like to erect a shed for storage purposes.

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 3-0.

RESULT: Public hearing closed at 6:11 pm.

3. Action by the Board

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: no, it's a corner lot
- Substantiality: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: no

MOTION: Mr. McCarthy moved to approve the variance, with a 60 day time limit to obtain the permit. The motion was seconded by Mr. Harris, and on roll call, was approved 3-0.

RESULT: Approval of Area Variance.

- C. Area Variance: placement of a gas fueled 8 kW. electric generator at the northwest corner of the dwelling within the side yard clear space

Address: *657 East Main St.*

Applicant: Jennifer DeLong, owner

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

1. Review Application

Mr. Harris 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 3-0.

RESULT: Public hearing opened at 6:14 pm.

Mr. DeLong explained that it was difficult to find a place that was away from windows and a sufficient amount of space away from the neighbor's property. Mr. DeLong had brought photos showing where the generator would be placed.

Mr. Cox asked if the generator is natural gas operated and Mr. DeLong answered yes.

Mr. McCarthy asked about the noise level. Mr. DeLong responded that the generator is a new model that would only run for approximately 10 minutes per week and when the power is out.

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. Harris, and on roll call, was approved 3-0.

RESULT: Public hearing closed at 6:17 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. Harris moved to approve the variance, with 60 days to obtain the permit. The motion was seconded by Mr. Cox, and on roll call, was approved 3-0.

RESULT: Approval of Area Variance.

D. Area Variance: widen an existing 20' wide driveway by placing 10' of Portland cement to the southwest side of the existing driveway

Address: 23 Meadowcrest Dr.

Applicant: Dennie Lounghed, owner

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

1. Review Application

Mr. Harris read the summary of the proposal.

Mr. McCarthy reported that the Genesee County Planning Board and the Planning and Development Committee both 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. Harris, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:19 pm.

Mr. Lounghheed explained that there is a section between the cement pad and the road that becomes muddy when it rains. He said that the driveway tapers and he wants to make the whole thing the same size in order to make it roomier for his RV.

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 3-0.

RESULT: Public hearing closed at 6:22 pm.

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

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

3. Action by the Board

MOTION: Mr. McCarthy moved to approve the proposal; the motion was seconded by Mr. Harris, and on roll call, was approved 3-0.

RESULT: Area Variance was approved.

E. Area Variance: clear three parcels, merge the parcels, and erect a four story high rise apartment building

Address: 552, 554, and 556 East Main St.

Applicant: Adam Driscoll (Home Leasing, LLC), developer

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

1. Review Application

Mr. Harris read the summary of the proposal. Mr. McCarthy reported that the Genesee County Planning Board recommended approval with modifications: go through SHPO process; obtain a driveway permit from the DOT; and, verify the address for the 911 system. Mr. McCarthy noted that those items do not affect the decision-making process for the ZBA.

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 3-0.

RESULT: Public hearing opened at 6:29 pm.

Matt Tomlinson, engineer for the project, spoke about the proposal. He explained that Home Leasing is operating in partnership with Eagle Star Housing, an agency which transitions veterans back into society. He said that a number of units would therefore be reserved for occupancy by veterans. Home Leasing had applied for two variances. Mr. Tomlinson addressed the variance for the elevator first.

Two elevators are required for the project; Home Leasing proposed one. According to Mr. Tomlinson, good data regarding similar situations indicates that one centrally located elevator large enough to accommodate stretchers and to move furniture should be sufficient. He noted that two stair towers provide multiple means of access. Mr. Tomlinson indicated that a second elevator would create a hardship from a budgetary standpoint.

The second variance concerned parking. Mr. Tomlinson said that building only the amount of parking which is necessary is not only more cost efficient, but is also better for the environment and requires less maintenance. According to Mr. Tomlinson, the typical need for parking in a Home Leasing project is 40% of the population [residency], and considering the partnership with Eagle Star, the need is expected to be even less. He noted that on-street parking is available, and there is also bus service. Additionally, Eagle Star provides a van service for transporting veterans.

Mr. Cox said that he has two concerns: there is less than a 1:1 ratio of parking spaces to units and he believes there should be at least one parking space per unit; and, he also believes there should be two elevators.

Jennifer ___, attorney for the project, explained that installing an additional elevator would require sacrificing residential units, rendering the project economically unviable.

Mr. Cox expressed the concern that if there is only one elevator and it is out of service, there may be veterans who are unable to climb the stairs.

Jennifer answered that the elevator would be inspected every year, and Mr. Cox said that machines still break down.

Mr. McCarthy agreed that there is a possibility that the elevator could break down, but said that he did not believe in burdening the project with great expense for a small probability.

City Manager Jason Molino pointed out that NYS building code for this number of units does not require two elevators, and that the City has a fully paid Fire Department available 24/7 to deal with emergencies. He also noted that the Fire Chief has reviewed and approved the plans for the facility.

Mr. Tomlinson added that in the case of a fire, elevator use would not be permitted.

Julie Pacatte, Batavia Development Corp., stated that she has worked with Home Leasing for over a year-and-a-half to put this project together. She noted that from the beginning, Home Leasing wanted a site in Batavia that was walkable. Out of the 55 units in the apartment building, 17 are dedicated veteran units, though it is possible that a greater number of veterans could ultimately reside there.

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

RESULT: Public hearing closed at 6:41 pm.

3. Action by the Board

Mr. Cox asked where the dedicated veteran units are located. Jennifer said that where the veterans choose to live will be a conversation between the veteran and the property manager. She said that any prospective resident, whether veteran or not, will be asked about their preference so that if they want to be on the ground floor, they could exercise that option.

Mr. McCarthy asked if there is an area of the facility designated just to veterans. Jennifer said that there is no one specific area because part of the purpose of Eagle Star is to help veterans re-enter society and community living.

Mr. Cox said that he supports that goal but is still concerned about veterans with mobility issues. He proposed that if Eagle Star could guarantee four fully handicap accessible units on the first floor dedicated to veterans, he would be able to agree to one elevator. Eagle Star consented.

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

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

MOTION: Mr. McCarthy moved to approve the variance with the stipulation that **four fully handicap accessible units with preference given to veterans are provided**, with an 18 month time limit to obtain the permit. The motion was seconded by Mr. Harris, and on roll call, was approved 3-0.

RESULT: Approval of Area Variance with above stipulation.

F. Area Variance: construction of a four story mixed use building

Address: 40-52 and 56-70 Ellicott St.

Applicant: Samuel Savarino (Ellicott Station, LLC), developer

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

1. Review Application

Mr. Harris read the summary of the proposal. Mr. McCarthy reported that the Genesee County Planning Board took no action on the proposal.

2. Public Hearing and Discussion

MOTION: Mr. McCarthy 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 6:58 pm.

Mr. Hayes, developer for Savarino, described the need for the variance. The building will consist of four floors of residential units above one floor of parking. The residential portion of the project has 51 units, the amount required to meet the very restrictive underwriting limits. To accommodate the 51 units in a limited amount of space, it was necessary to raise the height of the building, for which a variance is needed.

Mr. Hayes stated that the proposed building will be five stories tall and 60' in height. He noted that there is a building in the downtown area which is six stories tall, and that St. Mary's Church, which is in the same neighborhood, is estimated by the Fire Department to be 65-70' in height. According to Mr. Hayes, the City design guidelines basically say that construction in a neighborhood should be in context with other buildings in the immediate surroundings, and this building meets that description.

Mr. Harris asked how many parking spaces will be available on the first floor and Mr. Hayes replied that there would be 45-50. Mr. Hayes said that the number of parking spaces does not exactly match the number of units, but noted that on-site parking will be available nearby. He said that the indoor parking will cost a modest fee.

Julie Pacatte, Batavia Development Corp., spoke on behalf of the proposal. She said that the BDC has been working on the project for two years and is very excited to have the proposed \$18 million investment in this brownfield site. She noted that the project is consistent with

the re-adaptive use called for in the Brownfield Opportunity Area plans, and that there will be approximately 62,000 sq.' of new development at the site as well.

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

RESULT: Public hearing closed at 7:04 pm.

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

- Undesirable change in neighborhood character: no, it will be an improvement
- Alternative cure sought: no
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no, it will be positive
- Self-created: no

3. Action by the Board

MOTION: Mr. Harris moved to approve both of the variances with 12 month to obtain the permit. The motion was seconded by Mr. Cox, and on roll call, was approved 3-0.

RESULT: Approval of Area Variances.

VII. New Business: none

VIII. Setting of Next Meeting: August 24, 2017

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 7:06 pm; Mr. Cox seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Secretary