

ZONING BOARD OF APPEALS

Minutes

Thursday, September 27, 2018

6:00 pm

Council Board Room

One Batavia City Centre, Batavia, NY

Members present: *Nick Harris, Deborah Kerr-Rosenbeck, Paul McCarthy, Leslie Moma, Jim Russell*

Members absent: Bill Cox

Others present: Meg Chilano – Recording Secretary, 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 6:00 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 August 23, 2018 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 6' tall wood frame fence parallel to the north property line with the framing members visible from the neighboring property to the north

Address: *107 Oak St.*

Applicant: Kathleen Curtiss, owner

- Actions:
1. Review proposal
 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. Mr. McCarthy reported that the Genesee County Planning Board recommended approval of the proposal with the stipulation that the applicant must obtain permission from the neighbor to install the fence with the rough side facing out.

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 5-0.

RESULT: Public hearing opened at 6:05 pm.

Ms. Curtiss told the board that the fence needs to be replaced, and her 96-year-old mother, who lives on the property, would prefer to have the fence installed with the smooth side facing her, the same way the fence has always been.

The clerk reported that Mr. Szatkowski, 109-111 Oak St., submitted a letter stating that installing the fence with the smooth side facing in is acceptable to him. There was no one present who wished to speak, and no calls, emails, or other letters regarding the project.

MOTION: Mr. McCarthy moved to close the public hearing; the motion was seconded by Mr. Harris, and on roll call, was approved 5-0.

RESULT: Public hearing closed at 6:06 pm.

Mr. Russell said that he would normally have a problem with the placement of the fence, however, the existing fence is situated with the smooth side in and this fence is just replacing that one.

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
- Self-created: no, it's replacing a fence that already there

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. Harris, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance.

B. Area Variance: widen an existing 20' wide asphalt driveway by placing 12.58' of asphalt to the east (right) side of the existing driveway

Address: 7 Burke Dr.

Applicant: John Bryant DeGolia, 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. Randall reported that the recommendation of the Planning and Development Committee is to reduce the width of the driveway to 10', and to taper the edge by the neighboring property instead of making it square.

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 5-0.

RESULT: Public hearing opened at 6:10 pm.

Mr. DeGolia explained that the driveway is scarcely long enough to accommodate his vehicles, one of which is a truck. The driveway also needs some repairs. None of the other residents in the neighborhood park their vehicles in front of their houses. There is a fire hydrant in front of his house which must be kept clear, limiting parking when he has visitors.

There was no one else 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 5-0.

RESULT: Public hearing closed at 6:12 pm.

Mr. McCarthy said that he agreed with the reduction in the width of the driveway because it would leave two feet to the property line rather than placing the driveway right on the property line.

Mr. Harris observed that the driveway will look the same as the one in the neighboring property to the west.

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, the neighbors' driveways look the same
- Self-created: no, it's a narrow driveway

MOTION: Mr. McCarthy moved to approve the variance with the modification that the width is reduced to 10' and the end is rounded in a manner similar to the neighbor to the west, with

a 60-day time limit to obtain the permit. The motion was seconded by Mr. Russell, and on roll call, was approved 5-0.

C. Area Variance: construction of a deck within the required front yard clear space

Address: *126 Osterhout Ave.*

Applicant: Christopher Valle, 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. Harris, and on roll call, was approved 5-0.

RESULT: Public hearing opened at 6:18 pm.

Mr. Valle said that his porch is falling apart and he would like to replace it, but he needs a variance because the porch will not be able to be 10' away from the sidewalk.

Ms. Moma asked if the new porch will be the same size as the previous. Mr. Valle said that the old porch was 5' x 7' and the new porch will be 7' x 10'. He noted that it will be a little bigger but not out of character with the other porches in the neighborhood.

There was no one else 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 6:19 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. 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 5-0.

RESULT: Area Variance approved.

D. Area Variance: placement of a 24' x 30' fuel station pump canopy on this property

Address: *100-102 West Main St.*

Applicant: Rex Cameron (Tritec Construction)

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 approval.

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.

Mr. Cameron explained that the canopy blew down in the wind storm and the owner of the fuel station would like to put up another canopy. He said that the previous canopy had one column, but the new canopy will have two. Single columns tend to rot at the bottom and become unstable.

There was no one else 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 5-0.

RESULT: Public hearing closed at 6:24 pm.

Ms. Kerr-Rosenbeck said that she thought canopies had to have sprinkler systems, but Mr. Russell responded that though sprinklers were required at one time, the Code no longer requires it.

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. Russell moved to approve the variance with 60 days to obtain the permit. The motion was seconded by Ms. Kerr-Rosenbeck, and on roll call, was approved 5-0.

RESULT: Area Variance approved.

E. Area Variance: placement of seven non-permitted free-standing/pole signs on this property

Address: 527 West Main St.

Applicant: Bryan Galus (McDonald's USA LLC)

Actions: 1. Review application
2. Public hearing and discussion
3. SEQR
4. 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 approval.

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 5-0.

RESULT: Public hearing opened at 6:28 pm.

Mike Wall, TY-Lin, spoke on behalf of the project. Mr. Wall said that the McDonald's has undergone a remodel, and now they want to update the sign package. According to Mr. Wall, the signs are appropriate for maintaining the safety of traffic and creating a more efficient drive-through. He noted that the signs are mostly directional in nature, and since the change in the sign code, are now considered free-standing signs.

There was no one else 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 5-0.

RESULT: Public hearing closed at 6:31 pm.

Mr. McCarthy asked if the signs had been updated when McDonald's remodeled the previous year. Mr. Wall answered that at the time of the previous remodel, the old signs were put up. He noted that the menu boards that were put back up last time are the large menu boards, which will be replaced with new narrower menu boards.

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. McCarthy moved to approve the variance. The motion was seconded by Mr. Russell, and on roll call, was approved 5-0.

RESULT: Approval of Area Variance.

F. Extend the time limit condition to obtain the permit for two previously approved area variances

Address: 552, 554, and 556 East Main St. (*Home Leasing Project*)

Applicant: Matt Tomlinson (Marathon Engineering)

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

1. Review Application

Ms. Kerr-Rosenbeck read the summary of the proposal.

2. Discussion and Action by the Board

Mr. McCarthy noted that Marathon Engineering applied for the extension with enough notice that he does not have a problem with granting the request for more time.

Mr. Russell, however, believed that they had sufficient time in which to obtain a permit and should not be granted an extension.

Mr. Driscoll, architect for the project, explained that the application for grant money is submitted to the State in December, and awards are made in May or June. They want to be able to demonstrate to the State that if they are awarded a grant, they will be able to obtain the permit.

Mr. Driscoll explained that they were not awarded a grant last year, but after enhancing their application, they are hopeful of receiving one this year. He noted that it is not uncommon to fail to receive an award the first year of application.

Ms. Moma asked if Home Leasing owns the three parcels on which the project will be developed. Mr. Driscoll responded that the parcels are under a purchase contract.

Mr. Russell said he would be willing to grant approval, but that there should be a stipulation that if the permit is not obtained within the newly established time frame, they should have to reapply for the variances.

MOTION: Mr. McCarthy moved to extend the time limit condition to obtain the permit for the two previously approved area variances, with the stipulation that the permit must be obtained 10 months from January 27, 2019. The motion was seconded by Ms. Moma, and on roll call, was approved 5-0.

RESULT: Application approved with the above stipulation.

VII. New Business: none

VIII. Setting of Next Meeting: October 25, 2018

IX. Adjournment

Mr. McCarthy moved to adjourn the meeting at 6:51 pm; Mr. Russell seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Secretary