

ZONING BOARD OF APPEALS

Minutes

Thursday, October 23, 2014

6:00 pm

Council Board Room

One Batavia City Centre, Batavia NY

Members present: *Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy*

Others present: Pat Burk, Rick Wendt, Jeremy Yasses, 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 Gillard declared a quorum.

II. Call to Order

Mr. Gillard called the meeting to order at 6:00 pm.

III. Pledge of Allegiance

IV. Approval of Minutes from September 25, 2014 Meeting

Motion by: *Lee Hyatt*

"I make a motion to accept the minutes as written."

Seconded by: *William Hayes*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

Result: Approval of September 25, 2014 minutes.

V. Zoning Board of Appeals statement

Mr. Gillard read a statement regarding the role of the Zoning Board of Appeals and the procedures it follows.

VI. Variance Requests

- A. Change principal use of this commercial building from a restaurant/lounge to a theater for viewing live theatrical performances

Address: *241-243 Swan Street*

Applicant: *Jeremy Yasses, owner*

- Actions:
1. Review application
 2. Public hearing
 3. SEQR
 4. Discussion and action by the board

1. Review Application

Vice Chairman Hayes summarized the application for the board. Jeremy Yasses, owner of the property explained that he had applied on behalf of Pat Burk who intends to purchase the property. Mr. Yasses said that he had originally purchased it with the intention of reviving the St. Nick's Club but it did not work out. After that he rented the building to Steve and Daphne who opened a restaurant that lasted a year-and-a-half before it failed. Then he was approached by Mr. Burk with the idea of moving the Batavia Players to this location. Mr. Yasses said that the building has always played a role in the community and he thinks the theater will be an asset to the neighborhood.

Mr. Burk explained that his group, the Batavia Players, is familiar with the process of renovating a property for their use because their current location had been a condemned property. He said that the Swan Street location affords wonderful parking and offers them the opportunity to be located under one roof. Mr. Burk said that they are a 90 year-old organization which has moved up a step from community theater to regional theater. He said that an example of their ranking is the show "Mama Mia." The license became available a couple of months ago and the Batavia Players obtained the first license, a good indication of their commitment to quality. According to Mr. Burk, the theater has attained a 92% seating occupancy. At the moment, shows bring in 80-100 people; the new location will allow them to seat about 140.

Mr. Burk reported that they have done extensive planning, including obtaining an updated survey and an elevation certificate. He related that the mechanicals are one foot above the Base Flood Elevation, and that all of this information has been given to their attorney. Once the variance is approved, Mr. Burk said that they will proceed with the contract for the sprinkler system and emergency lighting. According to Mr. Burk, Ed Smart, architect for the project has completed preliminary drawings. Mr. Burk said that he has people lined up to take care of some of the immediate tasks, and the next step is to get final approval for inspection of the mechanical contracts. The group will begin renovation as soon as the purchase goes through. Mr. Burk stated that they have a mortgage holder and a down payment.

Mr. Gillard asked if there would be any outdoor activities. Mr. Burk replied that it has not been determined yet. He said that they have been approached about the possibility but most of their activities have been indoors. He pointed out that the area lends itself to the

possibility of an outdoor festival, but he said that they would move in first and then consider the zoning issues. Mr. Gillard asked Mr. Randall if outside activities would be part of the use variance and Mr. Randall responded that there is no reason they could not do those types of activities; nothing in the zoning prohibits it.

Dr. Licata asked how many shows they put on per year. Mr. Burk answered that this year they will finish with 11 shows and next year they will do 13 shows. Mr. McCarthy asked about how late the shows run into the evening. Mr. Burk replied that with a couple exceptions throughout the year, the public is normally gone from the building around 10:30 pm. Mr. Hyatt observed that the property has been for sale for some time and asked if Mr. Yasses has received offers to put the building to some other use. Mr. Yasses stated that he had the property listed for seven weeks with four showings, and Mr. Burk's group was the only offer. Mr. Yasses pointed out that the property had been listed privately for two months prior to being listed with a realtor.

Mr. Burk stated that the Batavia Players has 160 members, with over 120 people appearing on stage this year. According to Mr. Burk, actors come from as far away as Syracuse and Niagara Falls. He said that in the show opening next week there is a large contingent of actors from Rochester. Audiences come from out of town as well. Mr. McCarthy asked about live music. Mr. Burk responded that the music is pertinent to the show. He related that the group has members who live behind, next to, and across from the building. Mr. Yasses reported that Daphne's Restaurant, the previous business in that location, had a live band once or twice a month and there were no complaints regarding loud music.

2. Public Hearing

No calls or correspondence had been received and there was no one present who wished to speak about the variance.

3. SEQR

After reviewing the application a motion was made to approve SEQR.

Motion by: *Lee Hyatt*

"I make a motion to approve a negative declaration of SEQR."

Seconded by: *William Hayes*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

Result: Approval of SEQR

4. Discussion and Action by the Board

Mr. Gillard 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

Motion by: *Sandra Licata*

“I make a motion to approve this variance as submitted with a six month limit on the application.”

Seconded by: *Paul McCarthy*

Votes in favor: 5 (Jeffrey Gillard, William Hayes, Lee Hyatt, Sandra Licata, Paul McCarthy)

Votes opposed: 0

Votes abstained: 0

Result: Application for Use Variance approved

VII. Setting of Next Meeting: October 23, 2014

VIII. Adjournment

Mr. Gillard made a motion to adjourn the meeting at 6:24 pm. William Hayes seconded. All voted in favor.

Respectfully submitted,

Meg Chilano