

# **ZONING BOARD OF APPEALS**

## ***Minutes***

**Thursday, June 28, 2018**

**6:00 pm**

**Council Board Room**

**One Batavia City Centre, Batavia, NY**

Members present: *Bill Cox, Nick Harris, Paul McCarthy, Leslie Moma, Jim Russell*

Members absent: Deborah Kerr-Rosenbeck

Others present: Meg Chilano – Recording Secretary, Ron Panek – 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**

There were no corrections to the minutes. Mr. McCarthy assumed the motion and the minutes were approved by unanimous consent.

**RESULT: Approval of May 24, 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: Addition of two 9' x 20' asphalt parking spaces in the front (east) yard of this former four family dwelling. Two parking spaces are already provided in the existing 14.3' x 52' asphalt driveway

Area Variance: Construction of two sets of wood frame entry stairs, one at the front entrance and one at the north side entrance. Both sets will project into the required clear spaces

Address: 13 Porter Ave.

Applicant: Gerald Freeman, agent for owner

- Actions:
1. Review proposals
  2. Remove application from table
  3. Public hearing and discussion
  4. Action by the board

### **1. Review Application**

Acting Vice Chair Nick Harris read the summary of the proposal.

### **2. Remove Application from Table**

**MOTION:** Mr. McCarthy moved to remove the application from the table; the motion was seconded by Ms. Moma, and on roll call, was approved 5-0.

**RESULT:** Application removed from table.

### **3. Public Hearing and Discussion**

Mr. McCarthy reported that the Genesee County Planning Board recommended approval of the application with modifications. Approval was recommended for the front and side yard setbacks. However, the recommendation for the driveway width variance was disapproved because the driveway would be two times greater than the allowed amount, turning the front yard into a parking lot and affecting the residential nature of the neighborhood.

Mr. McCarthy related that the application was also considered by the Planning and Development Committee. According to the clerk, the PDC recommended approval of spaces 2,3, and 4 on the drawing; the space on the far side (toward Main St.) was excluded.

**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 6:08 pm.

Mr. Panek explained that the house can only be divided into two units as per the Batavia Municipal Code. According to the BMC, each unit must have two parking spaces; however, there is not enough room to put that number of parking spaces on the property. Mr. Freeman said that he could make less spaces work because many of the people he rents to do not own vehicles. Mr. Panek noted that it may be advisable to seek relief from the requirement concerning the number of parking spaces at a future date.

There was no one else present who wished to speak, and no calls, emails, or letters regarding the project.

**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 6:13 pm.

Mr. McCarthy said that he would be willing to approve the addition of one space.

Mr. Russell said that he stands with the County; he does not believe front yards should be turned into parking areas. He noted that once approved, the parking area would be there for the life of the property.

Ms. Moma asked if parking is allowed on the street, and Mr. Panek answered that it is not.

Mr. Cox said that he believes the parking situation creates a significant hardship. He pointed out that the property is landlocked, and though he is not in favor of front yard parking, Mr. Freeman will not be able to rent half of the building without additional parking.

Ms. Moma noted that one of the County's concerns is the amount of hardscape, which affects the City's stormwater management. She asked if the stormwater issues could be mitigated by requiring the materials used to create the parking area be water permeable.

Mr. McCarthy related that his experience with water permeable pavers in the northern states has been that they look good and work well until the weather turns cold, and then they buckle and become maintenance problems.

Mr. McCarthy said that he would prefer to vote on the variances separately. He chose the variance for the side setbacks first.

#### **4. 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, there is no room
- Substantiality: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, no room on the lot

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

**RESULT: Approval of Area Variance for side setbacks.**

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

- Undesirable change in neighborhood character: yes
- Alternative cure sought: no, there is no room
- Substantiality: yes, 21' is a large difference
- Adverse effect or impact on neighborhood/community: yes
- Self-created: yes

**MOTION:** Mr. McCarthy moved to approve the variance with the modification that only one parking space – the one adjacent to the existing driveway (#2 on the drawing) - is added. The motion was seconded by Mr. Cox, and on roll call, was **not** approved 3-2, because a supermajority of four votes was required to override the decision of the Genesee County Planning Board.

Votes in favor: 3 (Bill Cox, Nick Harris, Paul McCarthy)

Votes opposed: 2 (Leslie Moma, Jim Russell)

Votes abstained: 0

**RESULT: Disapproval of Area Variance for additional parking spaces.**

- B. Area Variance: Widen an existing 10.5' wide loose stone driveway/parking area by placing an additional 6.5' of loose stone to the south side of the existing driveway/parking area in the front yard of this property

Address: *16 Otis St.*

Applicant: Dominic Cervone, 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. The clerk informed the board 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. Harris, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:29 pm.**

Mr. Cervone stated that his daughter and son will be needing vehicles and there is not enough room for them to park.

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 6:30 pm.**

Mr. Russell asked if it would be possible to create more space by moving the parking area near the fence. Mr. McCarthy pointed out that moving the driveway in that direction would place it in front of the porch.

### 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 park the same way
- Self-created: no, it's a narrow city lot

**MOTION:** Mr. McCarthy moved to approve the variance, 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.

**RESULT: Approval of Area Variance.**

Votes in favor: 4 (Bill Cox, Nick Harris, Paul McCarthy, Jim Russell)

Votes opposed: 1 (Leslie Moma)

Votes abstained: 0

C.                    Area Variance: widen an existing 11.3' wide driveway by placing 4' of stone on the east side and 4.7' on the west side of the existing driveway

Address:        *212 Richmond Ave.*

Applicant:     Sarah Strumpf, 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. Cox reported 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. Harris, and on roll call, was approved 5-0.

**RESULT: Public hearing opened at 6:37 pm.**

Ms. Strumpf explained that the area is busy, with Notre Dame High School across the street and the V.A. Hospital in the vicinity, and there is no parking on the street. She noted that the entire driveway will be concrete.

Ms. Moma asked if the tree will remain, but Ms. Strumpf answered that the tree has already been removed. Ms. Moma expressed her concern that the widening the driveway will take away too much green space, and that the driveway width should be reduced by 2' on the side where the tree used to be.

Following a discussion of average parking space width in the City and car sizes, Mr. Harris said that the requested size seemed appropriate.

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 6:15 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, there is no room anywhere else on the property
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: yes, to a degree

**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 4-0.

Votes in favor: 4 (Bill Cox, Nick Harris, Paul McCarthy, Jim Russell)

Votes opposed: 1 (Leslie Moma)

Votes abstained: 0

**RESULT: Area Variance approved.**

- D.        Area Variance: placement of a 24' diameter above ground swimming pool with a 10' x 12' access deck in a yard other than a rear yard on this corner lot parcel

Address:        *23 Maple St.*  
Applicant:      Polly Rapone, 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.

#### 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 6:44 pm.**

Ms. Rapone described how what she considers her rear yard is defined as a side yard by the BMC because the parcel is a corner property. According to the BMC, pools are not allowed in a side yard, so she needs a variance in order to put up a pool.

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 6:46 pm.**

Mr. Russell asked about the fence requirement for a pool. Mr. Panek responded that in this case the pool will act as the barrier.

### **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, it's a corner property
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, it's a corner with a side yard

**MOTION:** Ms. Moma moved to approve the variance with 60 days to obtain the permit. The motion was seconded by Mr. Russell, and on roll call, was approved 5-0.


**RESULT: Area Variance approved.**

**VII. New Business: none**

**VIII. Setting of Next Meeting: July 26, 2018**

### **IX. Adjournment**

Mr. McCarthy moved to adjourn the meeting at 6:49 pm; Mr. Harris seconded. All voted in favor.



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Meg Chilano

Bureau of Inspection Secretary