

ZONING BOARD OF APPEALS

Minutes

Thursday, May 28, 2015

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: Meg Chilano - Recording Secretary, Doug Randall - Code Enforcement Officer

I. Roll Call

Roll call of the members was conducted. All five members were present and Chairman Gillard declared a quorum.

II. Call to Order

Mr. Gillard called the meeting to order at 5:58 pm.

III. Pledge of Allegiance

IV. Approval of Minutes from March 26, 2015 Meeting

MOTION: Mr. Hyatt moved to approve the minutes; the motion was seconded by Mr. Hayes, and on roll call, was approved 5-0.

Result: Approval of March 26, 2015 minutes.

V. Zoning Board of Appeals statement

Mr. Gillard explained the role of the Zoning Board of Appeals and the procedures it follows.

VI. Variance Requests

- A. Construction of a one story attached garage with breezeway and enclosed patio on the west side of an existing one story dwelling. A portion of the proposed addition is located within the west side yard and rear (north) yard clear spaces

Address: *6 Douglas Street*

Applicant: Ronald Jackett, owner

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

1. Review Application

Vice Chairman Hayes read the proposal summary for the board. Upon finishing the summary, Mr. Hayes asked if the side and rear counted as a single variance and Mr. Randall clarified that it only required one vote. Mr. Hyatt questioned the removal of the request for six additional inches on the driveway. Mr. Jakkett responded that 6" is not going to make that much difference and it was not worth it for him to take the time to go through the Planning and Development Committee for the added width. He said that he has a builder ready to begin the project. Mr. Hyatt asked what Mr. Jakkett intended to do with the existing driveway on the other side of the property and Mr. Jakkett replied that he was going to turn it back into lawn.

2. Public Hearing and Discussion

Mr. Gillard opened the public hearing at 6:04 pm. There were no calls or correspondence and no one present who wished to speak about the project. Mr. Gillard closed the public hearing at 6:05 pm.

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
- Self-created: no

3. Action by the Board

MOTION: Dr. Licata moved to approve the application as requested with 30 days to complete the paperwork. The motion was seconded by Mr. Hayes, and on roll call, was approved 5-0.

Result: Approval of Area Variance

- B. Construction of an 8' x 21' addition on the east side of this one family dwelling and extension of an existing wood frame deck by adding an 8' x 12' section on the south side of the proposed addition. A portion of the new construction will be located within the side yard setback on the east side of the dwelling

Address: *10 Highland Park*
 Applicant: Kentt Monteleone, owner

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

1. Review Application

Mr. Hayes read the summary of the proposal. Dr. Licata asked if there was a recommendation from the Genesee County Planning Board. Mr. Randall answered that it was not required for the proposal to go to the Planning Board.

2. Public Hearing and Discussion

Mr. Gillard opened the public hearing at 6:07 pm. There were no calls or correspondence and no one present who wished to speak about the project. Mr. Gillard closed the public hearing at 6:08 pm.

Mr. Gillard asked if the back would be even with the house and if it would be 4-5' out from the side bump-out. Mr. Monteleone responded that it would.

Mr. Hayes asked where the drainage would go. Mr. Monteleone said that he would take it down the side of the house toward the street, the same place the rest of the drainage goes.

3. 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
- Self-created: no

MOTION: Mr. McCarthy moved to approve the application as written with 60 days to obtain the permit; the motion was seconded by Dr. Licata, and on roll call, was approved 5-0.

Result: Approval of Area Variance

- C. Construction of a pressure treated wood frame deck between the existing dwelling and garage structures. The proposed location is within the side yard clear space along the south side property line

Address: *10 Park Avenue*

Applicant: Sarah Rosenbeck, owner

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

1. Review Application

Mr. Hayes read the summary of the proposal.

2. Public Hearing and Discussion

Mr. Gillard opened the public hearing at 6:12 pm. There were no calls or correspondence and no one present who wished to speak about the project. Mr. Gillard closed the public hearing at 6:13 pm.

Ms. Rosenbeck stated that they would like to have an outdoor living space and that the best way to achieve that goal would be to have the deck as close to the fence as possible.

Mr. Gillard asked if the deck would cover the concrete and follow the line of the roof. Mr. Rosenbeck answered that the deck will abut the fence that separates the property and then extend to the end of the garage.

Mr. McCarthy asked if they had considered having the deck 12'' off the lot line rather than directly on the lot line in the side yard. Mr. Rosenbeck explained that the fence is right on the property line and if the deck was built 12'' away, there would be a gap between the fence and deck. Mr. Hyatt asked to whom the fence belongs but Mr. Rosenbeck was unsure. According to Mr. Randall, the survey indicates that the fence crosses the property line. If the Rosenbecks were to build the deck tight to the fence, in the corner the deck would be 6'' over the neighbor's property line.

After examining the survey, the Rosenbecks explained that there was a misunderstanding about which fence they were referring to. The fence that will be abutted by the deck belongs to the Rosenbecks, and it is 1.8' away from their property line.

3. 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
- Self-created: no

MOTION: Mr. Gillard moved to approve the application amended to 1.8' instead of zero, with 60 days to obtain the permit; the motion was seconded by Dr. Licata, and on roll call, was approved 5-0.

Result: Approval of Area Variance

- D. Widen an existing 15' wide asphalt driveway by placing an additional width of 4' of asphalt to the south side of the existing driveway

Address: *139 Jackson Street*

Applicant: *JoAnn M. Fisher-Plath, owner*

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

1. Review Application

Mr. Hayes read the summary of the proposal.

2. Public Hearing and Discussion

Mr. Gillard opened the public hearing at 6:25 pm. There were no calls or correspondence and no one present who wished to speak about the project. Mr. Gillard closed the public hearing at 6:26 pm.

Mr. Randall noted that the Genesee County Planning Board had recommended approval. Dr. Licata asked what the Planning Board said in the review and Mr. Randall reported that the Planning Board recommended approval but only for 4' in front of the house.

Ms. Fisher-Plath stated that there is not enough room in the driveway to park two cars side by side. Mr. Gillard asked if the new driveway extend to the porch and Ms. Fisher-Plath replied yes.

Mr. Gillard asked if she would need a curb cut. Mr. Randall asked Ms. Fisher-Plath if she intended to widen the driveway out to the road and she answered yes. Mr. Randall said that in that case she will need a permit from the Bureau of Maintenance for a street opening permit.

3. SEQR

MOTION: After reviewing the application, Dr. Licata moved to approve a negative declaration of SEQR; the motion was seconded by Mr. McCarthy, and on roll call, was approved 5-0.

4. 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
- Self-created: no

MOTION: Mr. Hyatt moved to approve the application as submitted; the motion was seconded by Mr. Hayes, and on roll call, was approved 5-0.

Result: Approval of Area Variance

VII. New Business

David A. Steele, resident of 44 Vernon Avenue, was in attendance and requested permission to speak on the subject of 316, 318, and 320 West Main Street.

Mr. Gillard opened the public hearing at 6:32 pm.

According to Mr. Steele, he is representing the residents from Vernon Avenue. Mr. Steele said he understood that the developer had removed his plans from the City of Batavia Planning and Development Committee, but he still wished to let the board know how the residents feel about the situation. He handed out a packet to the board which he explained held the plans for the proposed Arby's, along with a petition signed by 95 residents. He brought the board's attention to an aerial photo, as well as a list of concerns of the residents.

Mr. Steele reported that the residents believe a development such as Arby's at the end of the street would have ill effects on the residential nature of the street. He said that the residents would like their input considered regarding the type of development that will take place on the corner of their street.

Another concern Mr. Steele expressed involved the zoning of the area. He said that the residents were unsure about how the zoning of the three properties under consideration came to be commercial. Though he was uncertain that the meeting was the proper place to ask, Mr. Steele requested information about the history of the commercial zoning of the three properties.

Mr. Steele stated that even the development farther down the street has had an impact on the neighborhood. He noted that Castilone's car dealership extends behind the houses on the Vernon Avenue, with 24-hour per day lighting and the noise from the repair shop impacting the residents.

According to Mr. Steele, some residents have indicated that they would put their houses up for sale if a business like Arby's develops those three properties. Mr. Steele said the concern is that property values could decrease, and the neighborhood could change from single family homes to landlord held properties.

Mr. Randall pointed out that the timing for citizen concern is good because the City will soon be engaged in the Comprehensive Plan update and citizens will be asked for input in the process.

Mrs. Steele expressed concern about the lighting at Castilone's reflecting onto residents of Vernon Avenue, and questioned how the boards alert residents of development in their neighborhoods.

Mr. Randall explained that according to board procedures, adjacent neighbors are notified by letter for appropriate applications. He told Mrs. Steele that any resident can request to be notified about a proposal, and a letter will be sent to them as well. Mr. Randall noted that meetings are also advertised in The Daily News.

When Mrs. Steele continued to speak about the lighting, Mr. Randall explained that the Planning and Development Committee and the Zoning Board of Appeals addressed the issue of lighting when Castilone's appeared before the boards. He said that a study was done on the lighting which showed how the lights should be adjusted for zero reflection at the property line. He pointed out that the Code Enforcement office has not received any complaints regarding lighting at Castilone's and if complaints were received, the office would request that Castilone's perform further studies and put shielding on the lights.

According to Mr. McCarthy, the lighting at Castilone's was designed by a firm that specialized in automotive sales lot lighting. He described the lights as being 24' in height, with LED bulbs and shielding. He said that the study that was performed indicated that at the lot line the lighting intensity is at 3-4 candlepower, which he explained is equivalent to the light from 3-4 candles placed 3-4' away from the viewer. Mr. McCarthy said that if the lights were installed properly, the light is directed away from adjacent properties.

Mr. Gillard checked with the Steeles to make sure they were satisfied that the board had addressed their concerns. He closed the public hearing at 6:45 pm.

VIII. Setting of Next Meeting: June 25, 2015

IX. Adjournment

Mr. Gillard made a motion to adjourn the meeting at 6:47 pm. Dr. Licata seconded. All voted in favor.



Meg Chilano

Bureau of Inspection Clerk