

ZONING BOARD OF APPEALS
Official Minutes
Thursday, January 25, 2024
6:00 pm
Council Board Room
One Batavia City Centre, Batavia, NY

Members present: *Leslie Moma, Dave McCarthy, Jim Russell*

Members absent: Jeff Gillard, Nick Harris

Others present: Meg Chilano – Recording Secretary, Doug Randall – Code Enforcement Officer

I. Roll Call

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

II. Call to Order

Mr. McCarthy called the meeting to order at 6:03 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 November 16, 2023 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: place a 10' x 12' x 9'-tall pressure treated wood-frame gazebo with metal roof in a yard other than a rear yard on this corner lot property

Address: *111 Ross Street*

Applicant: Philip Marcello, owner

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

1. Review Application

Vice Chair, Leslie Moma, 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. Russell, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:07 pm.

Mr. Marcello explained that he and his wife live on a corner lot where there is no shade. They have been using temporary fabric structures, which continually wear out. They decided to place a more substantial gazebo on an already existing cement slab.

Mr. McCarthy read an email from adjacent neighbor, Carol Balaz (see attached). She expressed concern regarding noise. Mr. Marcello responded that there is only he and his wife and they do not make a lot of noise or have parties.

There were no further communications regarding the proposal, and no one present who wished to speak.

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

RESULT: Public hearing closed at 6:09 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 in the back
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, it is a corner property

MOTION: Mr. McCarthy moved to approve the proposal with 30 days to obtain the permit; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

RESULT: Area Variance approved.

- B. Area Variance: place a 12' x 24' one-story wood-frame utility shed in a yard other than a rear yard. The building will be located in the north side yard of this property. The accessory building is proposed to be located 1.166' (14") from the north side lot line

Address: 19 Union Street

Applicant: James Muoio, owner

- Actions: 1. Review application
2. Public hearing and discussion

3. Action by the board

1. Review Application

Ms. Moma 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. Russell, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:14 pm.

Mr. Muoio told the board the fire six months ago left a hole in the side yard. He placed a shed on the concrete slab that was already there. According to Mr. Muoio, his neighbor, Larry Hale, said that it was fine with him.

Mr. Russell said that his only issue is that there was an alternate cure. The shed could have been place in the rear yard. Ms. Moma pointed out that the shed is smaller than the previous structure.

There were no calls, letters, or email concerning the proposal, and no one present who wished to speak.

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

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: yes, he could have placed it in the rear

MOTION: Mr. McCarthy moved to approve the variance with 30 days to obtain the permit; the motion was seconded by Ms. Moma, and on roll call, was approved 3-0.

RESULT: Area Variance approved.

C. Area Variance: place a 12' x 12' 10.5'-tall wood frame gazebo in a yard other than a rear yard (front yard on this property)

Address: *107 Naramore Drive*

Applicant: Jackie Thompson, owner

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

1. Review Application

Ms. Moma 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 Ms. Moma, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:24 pm.

Mr. Thompson explained that the broken slate sidewalk had been cleaned up and the gazebo constructed from a metal kit. It is movable and has a brick skirt to keep it in place. He said that the contractor, Bucky Benson, told him that a building permit was unnecessary because the gazebo is a freestanding structure.

Mr. Russell said that he does not like to hold a contractor's failure against the homeowner.

Ms. Moma asked about the other options Mr. Thompson had considered when selecting a covered structure, and he answered that he had not considered any other possibilities.

Ms. Moma noted that when people consider making changes to the front of a house, they generally create extensions that align with the porch and the roof. Mr. Thompson responded that the structure will blend in with the house once there is landscaping around it.

Ms. Moma added that the intention is for the gazebo to serve as an extension of the house but it does not match the style of the house.

Mr. Russell said that it is personal esthetics.

Ms. Moma said that the gazebo alters the face of the house by obscuring the windows as well as the front porch. She pointed out that no one in else in the neighborhood has a gazebo in front of their house.

There were no calls, letters, or email concerning the proposal, and no one present who wished to speak.

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

RESULT: Public hearing closed at 6:26 pm.

3. Action by the Board

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

- Undesirable change in neighborhood character: Ms. Moma said yes
- Alternative cure sought: no, Mr. Thompson said he did not consider any other options
- Substantiality: Ms. Moma said yes

- Adverse effect or impact on neighborhood/community: Ms. Moma said that no other house in the neighborhood has a gazebo in front of it
- Self-created: yes

MOTION: Mr. Russell moved to approve the variance with a 30-day time limit to obtain the permit; the motion was seconded by Mr. McCarthy, and on roll call, was not approved 2-1-0.

Votes in favor: 2 (Dave McCarthy, Jim Russell)

Votes opposed: 1 (Leslie Moma)

Votes abstained: 0

RESULT: Area Variance denied.

- D. Area Variance: place an aluminum access ramp within the front yard clear space on this property

Address: 7 Morse Place

Applicant: Jeffrey Russell, contractor (H & H Mobility)

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

1. Review Application

Vice Chair, Leslie Moma, 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. Russell, and on roll call, was approved 3-0.

RESULT: Public hearing opened at 6:40 pm.

Jeff Russell, contractor for the project, said that ease of access is the primary concern when assessing the mobility needs of veterans.

He explained that there is not enough room in the rear and a large alteration would be needed to accommodate the ramp. Additionally, immediately on the inside of the rear entrance, there are two steps to ascend. Mr. Russell pointed out that there is also a step at the side entrance. The front door allows for the easiest access to the building.

Mr. Russell noted that the ramp is movable and when the ramp is no longer needed, the company will remove it free of charge.

Ms. Moma asked how the ramp would handle the snow load from the plow. Mr. Russell said that he believes the ramp is an adequate distance from the road, and Dr. Licata said that she would place reflectors at the bottom of the ramp.

There were no calls, letters, or email concerning the proposal, and no one present who wished to speak.

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

RESULT: Public hearing closed at 6:45 pm.

The board agreed there is no problem with installing the ramp.

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 not enough room for a ramp anywhere else
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: no, the ramp is needed for a disabled veteran

MOTION: Mr. McCarthy moved to approve the proposal with 30 days to obtain the permit; the motion was seconded by Ms. Moma, and on roll call, was approved 3-0.

RESULT: Area Variance approved.

VII. Setting of Next Meeting: February 22, 2024

VIII. Adjournment

Mr. McCarthy adjourned the meeting at 6:52 pm.



Meg Chilano

Recording Secretary