

**ZONING BOARD OF APPEALS**  
*Official Minutes*  
**Thursday, March 28, 2024**  
**5:30 pm**  
**Council Board Room**  
**One Batavia City Centre, Batavia, NY**

Members present:     *Zeke Lynn, 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. Four members were present and Chair Dave McCarthy declared a quorum.

**II.    Call to Order**

Mr. McCarthy called the meeting to order at 5:31 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 January 25, 2024 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 Variances:     *201 East Main Street*  
                              GO ART!

Area Variances to mount one sign on the railing, two signs on the west elevation, and two signs on the south elevation of the building located at 201 East Main Street

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

## **1. Review Application**

Vice Chair, Leslie Moma, read the summary of the proposal. She recused herself from voting because she is a member of the GO ART! board. Mr. McCarthy reported that the Historic Preservation Commission approved the signs, and the Planning and Development Committee recommended approval of the variances.

## **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 5:37 pm.**

Mr. Hallock explained that banners would be attached to the front of the building. One of the banners would advertise major programming events and the other would advertise monthly heritage celebrations in the world. He said that the banners would change monthly, though not necessarily at the beginning of each month. The timing of the changes would coincide with the dates of the various heritage celebrations.

Mr. Hallock told the board that he investigated how other historic properties handled advertising, and discovered that banners are a useful marketing tool. He said that masons who work on historic buildings would complete the work.

Mr. Hallock said that there is a tavern in the building, and the sign advertising it would be attached to the railing at the side of the building. The GO ART! sign would be placed on the wall next to the door at the side of the building.

On the wall where the kitchen is located, Mr. Hallock said that the sign is actually a mural that would be hung on the wall in a frame. The mural is composed of magnetic pieces, like a puzzle. The pieces can be changed depending on which art camp the sign is advertising.

Mr. McCarthy pointed out that GO ART! is located in the oldest building on Main Street, and believes it should be showcased and not covered by banners. He said that the mortar is as old as the building and not strong enough to hold the tap cons that would be used to install the hangers for the banners.

Mr. Russell agreed. He noted that signage on the front of the building could set a precedent for other businesses on Main Street. In addition, once approved, the variance for the banners on the front would remain with the building for its lifetime. Any business using the building after GO ART! could advertise whatever they wished.

Mr. Lynn expressed concern regarding the possibility that during a wind event the banners could be ripped off, causing damage on Main Street.

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 5:41 pm.**

### **3. Action by the Board**

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

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: not substantial
- Adverse effect or impact on neighborhood/community: no
- Self-created: yes

**MOTION:** Mr. McCarthy moved to approve the variance for the railing sign; the motion was seconded by Mr. McCarthy, and on roll call, was approved 3-0.

**RESULT: Area Variance approved.**

Mr. McCarthy went through the list of supporting criteria for the variance for the new GO ART! sign:

- Undesirable change in neighborhood character: no
- Alternative cure sought: no
- Substantiality: no
- Adverse effect or impact on neighborhood/community: no
- Self-created: it is just a replacement sign

**MOTION:** Mr. McCarthy moved to approve the variance for the new GO ART! sign; the motion was seconded by Mr. Russell, and on roll call, was approved 3-0.

**RESULT: Area Variance approved.**

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

- Undesirable change in neighborhood character: yes, too much signage
- Alternative cure sought: there are many other signs on the building
- Substantiality: substantial
- Adverse effect or impact on neighborhood/community: yes, could set precedence for other businesses
- Self-created: yes

**MOTION:** Mr. Russell moved to deny the variance for the banners; the motion was seconded by Mr. McCarthy, and on roll call, was approved 3-0.

**RESULT: Area Variance denied.**

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

- Undesirable change in neighborhood character: yes, very large
- Alternative cure sought: there could be other forms of advertising
- Substantiality: substantial, it is a larger sign than is allowed

- Adverse effect or impact on neighborhood/community: Mr. Russell thought it could be distracting; Mr. McCarthy said he did not see an impact
- Self-created: yes

**MOTION:** Mr. McCarthy moved to approve the variance for the large sign; there was no second.

**RESULT: Area Variance not approved.**

- B. Area Variance: Place a 6' tall fence on this property, parallel with the rear lot line. The structural members (posts, cross members, and rails) of that section of fence will face the neighboring property

Address: 19 Wood Street

Applicant: Gwen Morgan (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 4-0.

**RESULT: Public hearing opened at 6:08 pm.**

Ms. Morgan told the board that the fence had been installed a year ago when she returned from being deployed. The previous fence had been in a state of disrepair and she had two dogs that she needed to keep separate from the neighbor's dog. She added that her fence is back-to-back with the City fence around Pringle Park, which is falling apart. Ms. Morgan said that the fence had been erected with the smooth side facing her property, exactly as it had before.

The contractor had informed her that she did not need a permit because the support posts were not being replaced. After installation of the fence, she was deployed overseas again, and upon returning this time, she received a violation notice for putting up a fence without a permit.

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 4-0.

**RESULT: Public hearing closed at 6:10 pm.**

### 3. Action by the Board

Mr. Russell noted that he dislikes it when contractors perform work without permits, and though he understands that in this case it was easier for the contractor to install the fence facing the wrong way, contractors should know better.

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, it looks better
- Self-created: no, the contractor did it

**MOTION:** Mr. Russell moved to approve the variance; the motion was seconded by Mr. McCarthy, and on roll call, was approved 4-0.

**RESULT: Area Variance approved.**

C. Area Variance: subdivide this parcel by removing approximately .224 acres along the northeastern lot line

Address: 6-8 Lyon Street

Applicant: Brian Wormley (agent for BGW Properties, LLC)

- 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 4-0.

**RESULT: Public hearing opened at 6:15 pm.**

Mr. Wormley explained that the neighboring Burger King project needed 50' of space, which included part of Mr. Wormley's property at 6-8 South Lyon Street. Part of Mr. Wormley's building will come down as part of the sale to Burger King, leaving Mr. Wormley with 3.5' of space instead of the 12' needed for the side setback of his newly divided property.

The board expressed concern over what would take up the 3.5' of space between the properties. Ms. Moma said that believes the space should be filled with native deciduous trees and native plant species, excluding any species listed as invasive.

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 4-0.

**RESULT: Public hearing closed at 6:34 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

**MOTION:** Ms. Moma moved to approve the variance with the stipulation that the plantings in the space between the two properties is filled with native deciduous trees and native plant species, excluding any species listed as invasive. The motion was seconded by Mr. Russell, and on roll call, was approved 4-0.

**RESULT: Area Variance approved with the above stipulation.**

## **VII. Setting of Next Meeting: April 25, 2024**

## **VIII. Adjournment**

Mr. McCarthy adjourned the meeting at 6:42 pm.



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Meg Chilano

Recording Secretary