

**City of Schenectady
Board of Zoning Appeals
Meeting Minutes
October 5, 2022**

I. CALL TO ORDER

Mr. Gleason called the meeting to order at 6:30 p.m.

After calling the meeting to order Mr. Gleason explained to the members of the public how the consideration of the applications would proceed. He stated that the applicants would have an opportunity to make their presentation to the Board, followed by any members of the public who would like to speak in favor of the application. Next any members of the public in opposition to the application would be invited to speak, followed by any further discussion or questions the Board Members wished to put forth prior to the vote. He added that after the initial presentation of the proposal the applicant would not be given another opportunity to comment unless directly questioned by a Board Member. The meeting is being recorded.

II. ATTENDANCE

PRESENT: James Gleason, Chair; David Connelly; Brendan Keller; Mary D'Alessandro-Gilmore; Fred Clark; Helene Lester, Matthew Smith, Senior Planner; and Sylvia Jimison, Development Staff.

EXCUSED: Chris Marney, Assistant Corporation Counsel

III. CONFLICT OF INTEREST CHECK

None.

IV. APPROVAL OF MEETING MINUTES

Motion by Mr. Connelly, seconded by Mr. Keller, to approve the Minutes of the September 7, 2022 meeting as submitted.

Motion carried unanimously.

V. APPLICATIONS:

Applications: Old Business

- A. Chris Spraragen** requests an area variance for 530 Franklin Street (tax parcel # 39.80-1-1), located in a "C-4" Downtown Commercial District, to allow for two attached signs on the same side of the building where one sign is permitted, pursuant to Section 264-61 Schedule I of the zoning ordinance.

Carly Clark from AJ signs is representing Chris Sparagen. She stated that she took the board's feedback from last meeting and removed the phone number from the sign and made a directional sign with an entrance arrow. She got further clarification from her client that they are legally required to have a phone number

somewhere on the exterior of the building so they are going to attach it in vinyl to the front door, while ensuring they meet window coverage requirements.

Commissioner Gleason asked if anyone opposed or public comments. No comments were made.

SEQR RESOLUTION

Motion by Mr. Connelly, seconded by Ms. D'Alessandro-Gilmore, to declare this project a Type II SEQRA Action.

Motion carried unanimously.

AREA VARIANCE APPROVAL

Motion by Mr. Connelly, seconded by Ms. D'Alessandro-Gilmore, to approve the area variance as submitted.

And based on the following findings of fact:

1. No undesirable change will be produced in the neighborhood.
2. The benefit sought by the applicant cannot be achieved by another method.
3. The variance is not substantial.
4. There will not be an adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship does not constitute a self-created difficulty.
6. The variance approval is specific to this property because of the nature of the tenant and school safety requirements.

Motion carried unanimously.

- B. Christopher C. Marney and Christopher W. White** request an appeal of the Zoning Interpretation and Decision for 2 North Ferry Street, (tax parcel #39.63-2-46.1), located in an "RH-2" Stockade Historic Residential District, pursuant to Article 5-A of General City Law.

Christopher Marney appeared before the board. He stated that wanted to make clear for the board that he appears not in a representative capacity for the city but as an applicant, and therefore can not give any legal advice to the board other than in the furtherance of his own application.

He stated that the board had some outstanding questions at the last meeting, specifically regarding the new ownership and percentages of lot coverage for impervious surfaces. Mr. Marney explained that the new owners are present at the meeting. He stated that he provided a timeline because he understands that the order of events can get a bit confusing. He stated he wanted to talk about some of the comments made at the last meeting concerning the permit issued by the former zoning officer.

Mr. Marney stated that he had submitted evidence that the former owners of the property had made certain misrepresentations to the former zoning officer in order to entice him to issue that permit. He explained the timeline of submissions and requests made by the prior owner that led to the approval by Mr. Epstein and the decisions made by Ms. Garrett and Mr. Lunn. He further stated that the evidence presented by the former owner does not meet the strict standard of substantial evidence needed to prove entitlement to a pre-existing non-conforming site condition. He stated that it is not the city's burden to prove that something existed, or didn't exist, but rather the former owner, Senga World's burden, and they essentially lied to Mr. Epstein to obtain the pre-existing non-conforming status.

Mr. Marney addressed Mr. Lunn's comments regarding the permeability of Mr. Marney's soil in being the reason for the pooling of water. He stated that Mr. Lunn did not inspect his property, nor conduct any permeability tests to make that determination. He explained, however, that this isn't even the standard for consideration, because the standard is whether the water is being diverted from the neighboring property, not whether his property can accept diverted water from neighboring properties.

Mr. Marney stated that while he has to go through this process to address the issues, he explained that he does not want immediate enforcement. He stated that he would like the opportunity to work out a solution with the new owners to address the drainage issue.

Mr. Marney explained that he is aware that a letter was sent from the Corp. Counsel to the board regarding a timeliness issue on Mr. Marney's appeal. He stated that typically there is a 60-day window to file an appeal to a filed determination made by a zoning administrator. However, he explained that the determination made by Mr. Epstein that the parking area was an existing non-conforming use was a simple e-mail to the previous owner, and not a filed determination. Therefore, he stated, he believes that the 60-day window has not begun to toll. In addition, he explained that because there were misrepresentations in the application, there is new information to be considered. He stated that the only official determination that he received was a zoning determination sent by Ms. Garrett in August, and therefore he stated he is within the 60-day window.

PUBLIC COMMENTS IN FAVOR

The new owner of the property, Mr. Josh Ellithorpe appeared before the board and stated that he was just made aware a couple of weeks ago about the issues surrounding the property even though he, the bank, and the attorney did a lot of

vetting of the property. He stated that the asphalt paving permit met code requirements and the final inspection was completed. He stated that he would not want a pool in the neighbor's yard and is hoping he can come to some resolution and that his tenants nor his business are punished as a result of the prior owner's negligence.

PUBLIC COMMENTS IN OPPOSITION

None.

SEQR RESOLUTION

Motion by Mr. Connelly, seconded by Ms. D'Alessandro-Gilmore, to declare this project a Type II SEQRA Action.

Motion carried unanimously.

BOARD DETERMINATION

Commissioner Keller made motion, seconded by Commissioner Connelly to:

- 1) Reverse the zoning enforcement officer's decision to pass and close paving permit #202102700 pursuant to their inspection and determination that the permit was compliant with the zoning ordinance.
- 2) Reverse the August 4, 2022 zoning enforcement officer decision denying the administrative appeal that was made by the applicant.
- 3) Declare that the parking area and driveway is not a legally established pre-existing off-street parking area, driveway, or non-conforming lot, and that it does violate Section 264-40(C) of the zoning ordinance.
- 4) Declare that the paving completed on the property as it exists today has been completed and graded in a manner which diverts additional surface water accumulation onto the applicant's parcel in violation of Section 264-43(H) of the zoning ordinance.
- 5) Establish that the applicant's appeal was timely in that the applicant discovered that misrepresentations were made during the original permit application process, pursued an administrative appeal with the city and only received a decision on that appeal in August of 2022.

And with the following findings of fact:

- 1) The review of the application is de novo and the board must put themselves in the shoes of the administrative official to make these decisions.
- 2) The withholding of a particularly relevant survey showing that the rear yard was gravel, and that no survey was ever submitted showing that the rear yard was paved with asphalt after that survey, were used as evidence for the decision.

Motion carried unanimously.

Applications: New Business

- A. Randeep & Nayneet Singh** request an area variance for 1730-1732 State Street (tax parcel # 60.30-3-63), located in a “C-5” Business District, to allow for a four (4) foot setback for parking and driveway access where a fifteen (15) foot setback is required, pursuant to Section 264-43D of the zoning ordinance.

Dan Morelli, with SRG architects, appeared before the board to represent the owner. He stated that the Planning Commission on August 17, gave him approval for conditional site plan approval. He stated that conditions addressed cleaning up the lot and taking care of the non-compliant tenant that operated at the rear of the lot who never got site plan approval to operate. He explained that on August 31, the owners sent a letter to the non-compliant tenant to terminate their lease.

Mr. Morelli stated that the city requires a 15-foot buffer for the parking lot from the rear property line. He stated that the buffer would eliminate any turning radius for vehicles to access the rear service bays, and would inhibit emergency vehicles to access the rear of the building. He explained that the owner is proposing the 6-foot fence on the property line to obstruct views from the neighboring property, along with 4-foot by 4-foot planter boxes in front of the fence.

PUBLIC COMMENTS IN OPPOSITION

Mike Lee and Jill who live at 24 Roosevelt Ave have concerns about business location. Mr. Lee stated when he bought his home there was already a 15-foot setback in place and grass in the area.

He stated that he has been to City Hall multiple times, wondering how that an actual garage for servicing cars was built facing his backyard. He stated that he is downhill of the garage and every time it rains, he gets water in his garage from the paving. In addition, since the business repairs cars there are fluids that leak and drain onto his property. He said there is no mitigation for the leaks or spills from the garage. He thinks a 15-foot area would be beneficial and stop environmental hazards.

He also stated emergency vehicles are not a concern to him because they cannot get to the back of most of the homes in the area. He stated that there is also a noise issue and he said without a setback it encourages people going around the building to drive excessive speeds and when it snows it is plowed against his fence which causes damages.

Judy who lives at 30 Roosevelt next door to Mike and Elena appeared before the commission. She stated that her issue is with the lights. She explained they are like sports stadium lights and are not directed on the property itself.

SEQR RESOLUTION

Motion by Mr. Connelly, seconded by Mr. Keller, to declare this project a Type II SEQRA Action.

Motion carried unanimously.

AREA VARIANCE DENIAL

Motion by Mr. Keller, seconded by Connelly, to deny the area variance as submitted.

And based on the following findings of fact:

- 1) A desirable change will be produced in the neighborhood.
- 2) The benefit sought by the applicant cannot be achieved by another method.
- 3) The variance is not substantial.
- 4) There will be an adverse effect on physical or environmental conditions in the neighborhood.
- 5) The alleged hardship does not constitute a self-created difficulty.

Motion carried unanimously.

- B. Vinod Brian Jagnath** requests a use variance for 743 Strong Street (tax parcel #49.40-1-14), located in an “R-2” Two Family Residential District, to operate an automobile sales and repair business which is not permitted, pursuant to Section 264 Schedule A of the zoning ordinance.

Joe Bianchine with ABD engineers representing Vinod Brian Jagnath said Brian owned the property at the corner of the 743 Strong Street since 2013. Over nine years, he has been working there as a used car business and car repair business.

He stated that he received his license from the state motor vehicle department for motor vehicle repairs in 2014, at that location, and in 2015, he received his license for motor vehicle inspections.

Mr. Bianchine went on to say that over 10 years he has used the building for that car repair purposes and the applicant is now seeking a use variance for that business.

Mr. Bianchine stated that the property is in an R-2 residential zone, and the property can not be used for a residential use.

Senior Planner Matt Smith stated that the owner is in court because there was never site plan review done and the last site plan was in 2013.

Commissioner Connelly suggested to table it until Senior Planner can get more background information about the matter.

PUBLIC COMMENTS IN SUPPORT

Harold, a neighbor who lives at 809 Strong Street, said his parents are in the ministry and the applicant attends their church. He stated that they have know Brian for a number of years and it will be devastating if his shop is taken away.

AREA VARIANCE DECISION

Motion by Mr. Keller, seconded by Mr. Clark, to table the project.

Motion carried unanimously.

VI. OTHER BUSINESS

None.

VII. MOTION TO ADJOURN

Motion by Mr. Connelly, seconded by Ms. Lester, to adjourn the meeting.

Motion carried unanimously.

The meeting was adjourned at 8:05 p.m.