

**City of Schenectady
Board of Zoning Appeals
Meeting Minutes
August 7, 2019**

I. CALL TO ORDER

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

Prior to taking the first item on the agenda, Mr. Gleason explained to the members of the public present 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.

II. ATTENDANCE

PRESENT: James Gleason, Chair; David V. Connelly; Brendan Keller; Helene Lester; Krystina Smith; Avi Epstein, Zoning Officer; Jennifer Mills, Secretary
ABSENT: Fred Clark; Mary D'Alessandro-Gilmore

III. CONFLICT OF INTEREST CHECK

None.

IV. APPROVAL OF MEETING MINUTES

Motion by Mr. Connelly, seconded by Ms. Smith, to approve the Minutes of the July 10, 2019 meeting as submitted.

Motion carried unanimously.

V. NEW BUSINESS - APPLICATIONS

A. PATRICIA BOOCHOON requests an Area Variance for 27 ½ Columbia Street (49.27-2-17) located in the R-1 Single Family Residential District, to allow for a shared driveway with no setback from the abutting property line where 2' is required pursuant to §264-43.B(1) of the Zoning Ordinance.

Patricia Boochoon and Alger Scott Jr. presented the application. This application was considered and discussed together with item B, the Alger Scott Jr. Area Variance application, because the applications involve a shared driveway between the two properties.

Ms. Boochoon explained that at the July 2019 BZA meeting the applications that she and Mr. Scott presented were tabled because the Board asked for further information regarding where the cars that were using the driveway would be parked. Mr. Scott pointed out the drawings and photos that he and Ms. Boochoon had since submitted which show in detail the proposed parking areas in their rear yards. Zoning Officer Epstein noted that the parking areas just meet the requirement for maximum allowed impervious surface, which is 30%. Mr. Connelly asked the applicants if they will have enough room to maneuver in and out of the parking spaces. Mr. Scott stated that they had tested the spaces and there is enough room.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

Mr. Connelly stated that the applicants had submitted all of the information that the Board had requested and it appears that they will have no trouble installing the parking areas while still meeting the impervious surface requirements, and therefore he would have no objection to granting the variances. The other Board Members agreed.

SEQR RESOLUTION

Motion by Mr. Connelly, seconded by Ms. Smith, to declare the project a Type 2 SEQR action, with no significant impacts on the environment.

Motion carried unanimously.

AREA VARIANCE APPROVAL

Motion by Mr. Connelly, seconded by Ms. Smith, to approve the Area Variance 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 be no adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried unanimously.

B. ALGER SCOTT JR. requests an Area Variance for 27 Columbia Street (49.27-2-16) located in the R-1 Single Family Residential District, to allow

for a shared driveway with no setback from the abutting property line where 2' is required pursuant to §264-43.B(1) of the Zoning Ordinance.

Because they involve a shared driveway between two properties, this item was discussed and considered with the previous application.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

Please see Item A.

SEQR RESOLUTION

Motion by Mr. Connelly, seconded by Mr. Keller, to declare the project a Type 2 SEQR action, with no significant impacts on the environment.

Motion carried unanimously.

AREA VARIANCE APPROVAL

Motion by Mr. Connelly, seconded by Mr. Keller, to approve the Area Variance 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 be no adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried unanimously.

- C. SONDRA STEPHENS requests Area Variances for 1624 Union Street (50.30-3-8) located in the C-2 Mixed-Use Commercial District, to allow for a freestanding sign of 50 SQFT and for a second wall sign where a max of 25 SQFT is allowed for freestanding signs and one wall sign is allowed per business pursuant to Schedule I of the Zoning Ordinance.**

Sondra Stephens presented the application.

Ms. Stephens reviewed her application and explained that she has added on to the building that houses her jewelry store so that she may open the first woman-owned CBD clinic in New York State. She stated that she is seeking two signs, one to be added to the existing pole sign and a second wall sign on

the building, where the one allowed sign already exists for her jewelry store. Ms. Stephens stated that she believes that she has a hardship because the signs of her neighbors, specifically Trustco Bank and Northway AAA, limit the visibility of her signs and business.

Mr. Connelly asked Ms. Stephens how high her existing pole sign is. Ms. Stephens stated that she does not know but judging by a comparison to the 40-foot building height it is probably around 25 feet high. She noted that the height of the sign was grandfathered when she bought the building. Ms. Smith asked if the CBD Clinic will have a separate entrance. Ms. Stephens stated that it will, in addition to an entrance from inside the jewelry store.

Mr. Keller asked Ms. Stephens why one sign would not be sufficient for identifying the business. Ms. Stephens responded that the sign on the building will not be visible to passers-by on the street. Mr. Keller stated that if it would not be visible anyway, he was not clear as to why one sign – the one on the pole sign – would not suffice. Ms. Stephens stated that the sign on the building would make it clear to approaching customers where the clinic entrance is.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

Donald Andrews, owner of Upstate CBD at 1613 Union Street (across the street in the same block) spoke in opposition to the application. He stated that the added signage could prove distracting to drivers, and that the size and number of signs would be out of sync with the general character of the upper Union Street area. Mr. Keller asked Mr. Andrews if these are his only concerns or if he is also opposed to a competitor having an unfair advantage by having multiple signs. Mr. Andrews responded that he has concerns about all of these issues.

CONTINUED DISCUSSION

Mr. Connelly asked Mr. Epstein if it is an issue that the pole sign is grandfathered but would now be modified. Mr. Epstein stated that there are past variances in place regarding the height of the sign, so it is not a current concern. Mr. Keller stated that he did not hear a compelling argument as to why both signs are necessary. He also noted that the Board has not granted variances for multiple signs for one business in the past. Mr. Connelly stated that he can agree that this particular corner has a number of signs and difficult sight lines. Ms. Smith agreed. Mr. Keller stated that the argument could also be made that giving this business extra signage could be creating an unfair competitive advantage.

Mr. Keller asked Mr. Epstein to clarify why the façade sign needs a variance. Mr. Epstein responded that because Ms. Stephens is not operating the clinic as a separate business it counts as a second sign for the existing business. Ms. Smith stated that she would support one additional sign, either on the building or the pole, but not two. Ms. Lester suggested that the board ask Ms. Stephens which sign she would prefer if she had to choose only one. When asked Ms. Stephens responded that she believes that she needs the pole sign. After a brief additional discussion, it was determined that the Board would agree to grant a variance for the additional sign on the pole sign and Ms. Stephens would agree to remove the additional façade sign from the application.

SEQR RESOLUTION

Motion by Mr. Connelly, seconded by Ms. Smith, to declare the project a Type 2 SEQR action, with no significant impacts on the environment.

Motion carried unanimously.

AREA VARIANCE APPROVAL

Motion by Mr. Keller, seconded by Mr. Connelly, to approve the Area Variance for the freestanding sign of 50 SQFT while removing from the application the second wall sign 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 be no adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried, with Mr. Gleason opposed.

D. ANDREW BRICK on behalf of ConvenientMD requests Area Variances for 2330 Watt Street (59.36-1-19.2) located in the C-5 Business Zoning District, to allow for 4 wall signs measuring 777.3 SQFT where 2 wall signs for a total of 150 SQFT are allowed pursuant to Schedule I of the Zoning Ordinance.

Andrew Brick, attorney for ConvenientMD, Max Puyanic, CEO, and Dave Sanderson, Director of Real Este, presented the application.

Mr. Puyanic began the presentation by giving a brief overview of ConvenientMD and the services they offer. He explained that unlike other urgent care facilities which typically offer 30% of the services that Emergency Departments at hospitals offer, ConvenientMD locations treat approximately 75% of emergency concerns. He stated that the company places great

emphasis on the signage for their locations, because older locations with less signage have proven more difficult for patients, who are often in some form of physical distress, to locate.

Mr. Brick next briefly reviewed the application, noting that when the applicants went before the Planning Commission for site plan approval the Commission suggested that they add a fourth sign on the side of the building that faces the Plaza. He explained that the two allowed signs had been planned for the Watt Street and Route 7 sides of the building, and the applicants had also wanted a sign on the side facing the Chinese buffet, where the entrance will be, but the Commission suggested there also be a sign on the Plaza facing side because this is the side the patients will see as they drive into the Plaza. Mr. Brick noted that the intersection at Watt and Route 7 is a very busy one, and if the potential patient passes Watt Street and continues west on Route 7 he has to travel a long way before he can make any sort of turnaround to get back to his destination.

Ms. Smith asked the applicants if their business will be listed on the pylon sign. Mr. Puyanic stated that they would like to be but there is no agreement in place yet. Mr. Keller asked if Mr. Puyanic had any measured statistics available regarding outcomes of treatment at his facilities. Mr. Puyanic stated that there are no available statistics kept for urgent care outcomes; he added that a very small percentage of patients cannot receive adequate treatment and are thus sent on to the local Emergency Department.

The Board members and the applicants continued to discuss the size and number of the signs in relation to the design of the building and what the applicants feel is necessary for proper identification of the business. Mr. Brick noted that if the Board was absolutely opposed to four signs his clients would be willing to remove the fourth sign, facing the plaza, from the application.

PUBLIC COMMENTS IN FAVOR

Tony D'Adamo spoke in favor of the proposal, stating that the applicants should be trusted to know what signage is needed for properly identifying their business. He added that ConvenientMD will bring an impressive amount of community services to the area that are not currently being offered by another entity.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

Mr. Gleason stated that he believes that the applicants should provide more information regarding the size and visibility of the signs in relation to local roadways and potential clients coming from various directions. He noted that

previous applicants had provided scaled drawing or photographs depicting how the new building and signage would actually look in its planned setting. The other Board Members agreed that they would like to see more information of this type before making a decision on the application.

MOTION TO TABLE

Motion by Mr. Smith, seconded by Mr. Connelly, to table the application pending the submittal of further information regarding the size of the proposed signs as they relate to the surrounding area.

Motion carried unanimously.

- E. CHUCK MARSHALL on behalf of Stewart’s Shops Corp. requests Area Variances for 1773 State Street (60.39-1-31, 60.39.1-32, & 60.39-1-33) to allow for a 5’ setback and no landscaped barrier where a 15’ setback from residentially zoned property and a landscaped barrier are required pursuant to §264-43.D and §264-106.B of the Zoning Ordinance.**

Marcus Andrews presented the application.

Mr. Andrews gave a brief overview of the project and explained that on one side of the site, due to the moving of the property line to meet the current zoning district line, there will be an area that will not have the buffer that is required when commercial property abuts residential. He stated that Stewart’s Shops currently owns the residential property and plans to either sell or lease it. He noted that a six-foot high vinyl fence will be erected along the property line.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

Gail and Robert King, residents of 1633 Balltown Road in Niskayuna and owners of the property adjacent to Stewart’s on State Street, asked questions regarding the proximity of the new shop to their property and how it would be screened. Mr. Andrews stated that Stewart’s would be erecting a vinyl fence on that side as well.

CONTINUED DISCUSSION

Mr. Keller stated that he had no objection to the variance as long as the property line is properly screened. The other Board members agreed.

SEQR RESOLUTION

Motion by Ms. Smith, seconded by Mr. Keller, to declare the project a Type 2 SEQR action, with no significant adverse impacts on the environment.

Motion carried unanimously.

AREA VARIANCE APPROVAL

Motion by Mr. Connelly, seconded by Mr. Keller, to approve the Area Variance 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 be no adverse effect on physical or environmental conditions in the neighborhood.
5. The alleged hardship is not self-created.

Motion carried unanimously.

F. TONY DADAMO on behalf of Robles Granda Management LLC requests a Use Variance for 730 Bailey Street (49.45-3-8) located in the R-2 Two-Family Zoning District to allow for a 4-unit residential dwelling where a max of 2 units is allowed pursuant to Schedule A of the Zoning Ordinance.

Tony D'Adamo of Capital Architecture and Angela Granda presented the application.

Mr. D'Adamo explained that when his clients purchased the property from the City they assumed that it was a four-unit property and was zoned as such, and it was only when they attempted to pull permits to begin renovations that they were told that the property is only allowed to be developed as a two-family residence. He stated that when they purchased the building it was unfinished, but it was plumbed and set up as a four unit. He noted that it sits on a double lot. Mr. D'Adamo stated that he believes that the hardship of his clients is not self-created as they were unaware of the zoning restriction when they bought the property. He added that his clients could subdivide the lots and split the building into two duplexes, but this would require extensive renovation of the foundation, as well as installing new fire walls etc.

Mr. Gleason asked the applicants how old the building is. Mr. D'Adamo stated that it is approximately 15 years old. Zoning Officer Epstein noted that there was some confusion surrounding the property because it is assessed as a commercial property, which is usually four or more units. He noted that the State assessment guidelines and the City Zoning Code are two completely different entities. Mr. Keller asked the applicants why no one checked the zoning at the time of purchase. Mr. D'Adamo responded that they never imagined that it was not a four-unit building, as it was clearly designed as such. He added that the hardship is not self-created because his clients did not buy the building as a two-unit with the intention of converting to four units.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

Ms. Smith stated that while she can empathize with the applicants the Board has very strict guidelines that they must follow when granting use variances, and she does not believe that they can support the argument that the hardship was not self-created, as it is up to a prospective owner to do their due diligence prior to the purchase of the property, and it would not have been difficult for them to discover that the building was zoned as a two unit.

Mr. Keller stated that he also does not believe that the applicants have demonstrated that they cannot realize a reasonable return without the use variance. Mr. D’Adamo stated that they could convert the building to two units, but they would be very large four-bedroom units that would be difficult to rent to suitable tenants in this neighborhood. Ms. Smith stated that while she thinks the project is a good one, she believes that it is the buyer’s responsibility to know the allowed uses of the property. Ms. Lester agreed, stating that she does not believe that the evidence supports that the hardship was self-created. Mr. Keller agreed, stating that he believes that the proposal has merit, but the use variance is not justified in this case. Mr. D’Adamo stated that the City has had this problem many times and should look into how they conduct the sale of city-owned properties. Mr. Epstein stated that these are larger issues that should be addressed to the City Council but are not within the purview of the BZA.

SEQR RESOLUTION

Motion by Mr. Keller, seconded by Ms. Smith, to adopt a Negative Declaration on this unlisted action pursuant to SEQRA based upon the review and assessment of the Short Environmental Assessment Forms Parts 1 and 2, with the Negative Declaration being set forth in Part 3 of the Short Environmental Assessment Form.

Motion carried unanimously.

USE VARIANCE DENIAL

Motion by Mr. Keller, seconded by Ms. Smith, to deny the Use Variance based on the following findings of fact:

1. The applicant can realize a reasonable return with the allowed uses.
2. The alleged hardship relating to the property is not unique and applies to a substantial portion of the district or neighborhood.
3. The requested use variance will alter the essential character of the neighborhood.

4. The alleged hardship has been self-created.

Motion carried unanimously.

VII. MOTION TO ADJOURN

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

Motion carried unanimously.

Meeting was adjourned at 8:34 p.m.