

ZBA Board Meeting Minutes

Village of Ballston Spa

Held on February 26, 2020

The meeting was called to order at 7:01 by chairman Paul Laskey.

Chairman present: Paul Laskey

Members present: John Luciani

Alternates present: Ed Fernau, Bernadette Van Deinse

Members absent: Kevin McDonough, Anna Stanko, James Jurcsak

Board members were unable to review and vote on the prior meeting's minutes as they did not have enough board members present to vote. Therefore, they will review at the next meeting.

New Business:

Michael DeFilippo's application to obtain a certificate of occupancy while having items (stairs) outside of zoning codes, located at 82 Church Ave. He is asking for a 7' relief variance side setback.

Chairman Laskey read the notice of hearing. Mr DeFilippo hands out photos showing his stairs that have recently been built (Exhibits B, C, D). The original building permit showed the stairs being built up against the current home, but they were unable to build them there due to the fact they would be covering up a bedroom window (egress).

Chairman Laskey explains that Saratoga County had reviewed the plans and they found no negative impact regarding this.

Chairman Laskey speaks about the current driveway situation at the home. There is a shared driveway between this home and the one next door at 80 Church St. Mr DeFilippo and his attorney, Oscar Schreiber, explain the situation. Mr DeFilippo's father owns the home next door and they do share a driveway. The home at 80 Church Ave will eventually become his as well. Chairman Laskey states that in order to grant this variance, it would have to be contingent on receiving legal paperwork showing an easement for the driveway. This would ensure that emergency vehicles would be able to access the property without permission from the neighbor.

Chairman Laskey explains that this home is in an R-1 district, but is a two-family residence, as it was pre-existing. He also states he has been to this home and the shared driveway is in fact large enough to accommodate large emergency vehicles.

Chairman Laskey goes over the five criteria that the board looks at when voting on a variance. Attorney Schreiber included in his handout their explanations for each item.

- a. He does not feel like it will affect anyone in the neighborhood, as the stairs are located near the back of the home. He proceeds to present a letter to the board from the neighbors at 84 Church Ave, who's home the stairs will be facing. They stated they

have no problem with the stairs or their location. (See Exhibit A) Board has no comment or argument.

- b. He does not have any other option, as he is unable to build stairs against the house that would cover the bedroom window. Board has no comment or argument.
- c. He doesn't feel like this is a substantial request. Chairman Laskey agrees.
- d. He believes he has made a great improvement to the house and neighborhood.
- e. Although Mr DeFilippo knew about the existing condition, he feels it is a necessary change. Chairman Laskey feels it is self-created, but pertinent to make the changes.

Chairman Laskey asks if the board has any more questions or comments, there are none. He opens the floor for public comment at 7:24. There is none. He closes the public comment at 7:25. He also explains to Mr DeFilippo that they are missing a member of the board today, so there are only four people voting. He has the choice to go ahead with the vote or wait until there is a board of five present. He'd like to go ahead with the vote tonight.

Member Luciani motions to approve the variance, contingent upon the Village receiving the regrested shared driveway ingress/egress license or easement. The board requests they send it to Attorney Ferradino once it's complete.

The Ballston Spa ZBA makes a motion to grant the 7' relief of the side yard setback on the left, or southern side of the house at 82 Church Ave, Ballston Spa, NY 12020. Chairman Laskey seconds the motion. The board votes, all ayes.

Old Business

David Avenarius and his attorney, Paul Kelly are both present to discuss the Avenarius proposal. The board discusses with Mr Kelly the proposals, as there are four different options. Mr Kelly has come prepared with two different suveys; an 8' and 12' setback, along with two different locations for the home on the surveys. One option has the home somewhat centered on the property, and the other has the home pushed over towards the eastern side, closer to the railroad tracks.

Chairman Laskey had to excuse himself from the meeting for a moment. Upon his arrival, he found Trustee Kormos speaking to the board and the applicants. Chairman Laskey informed Trustee Kormos that she is not to have discussion with the board or the applicants until the floor is open to the public.

The board at first discusses the proposed setbacks with Mr Kelly. As mentioned before, the board has never used an 8' setback for anyone in the village. The board's interpretation of the code is not the same as Mr Kelly's. After more discussion, the board settles on keeping with consistency, and only allowing the applicant to move forward with the surveys showing the 12' setback.

Chairman Laskey talks to the board about this application, explaining this is a very difficult lot and application to review. He presents a letter from Saratoga County that was given upon the initial application from Mr Avenarius proposing a storage unit. The county had requested that Mr Avenarius proceed with a single-family home rather than the storage units, as it is a residential neighborhood. The board appreciates that he took that recommendation from them.

Chairman Laskey informs the board that he has tried reaching out to the railroad company on many occasions to get some questions answered, and has not been able to get ahold of anyone. He points out there is a railroad company sign on the premises. Mr Kelly points out that the railroad that runs along the side of the property is very inactive, and only runs once or twice per year. He has handouts for all the board members to review (Exhibit A). He points out the proposals and their coordinating surveys. The proposed home went from 29' wide down to 25' wide. They are also proposing to line up the front of the home closely with the neighbor, Ms Betor, as she had previously requested in a ZBA meeting. Mr Kelly states they are trying to do everything they can to be accommodating to the neighbors and the ZBA board members.

Chairman Laskey asks the board if they have any thoughts on the proposals. Member Fernau states that aesthetically, he believes a house centered on the lot looks better than one pushed to one side. Members Luciani and VanDeinse both believe it would be better to have the home pushed towards one side to leave a larger side open for emergency vehicles to gain access. It would also allow more privacy for the neighbor on the side opposite the railroad. Member Fernau states that they shouldn't let the emergency vehicles become a deciding factor, as they have ways to get access with small side yards. He's had personal experience with that.

Chairman Laskey also prefers the option with the house pushed towards the eastern side, so the board agrees to move forward with that option.

The board and Mr Kelly go over the actual variances being requested. There is a 7' variance on the eastern side, and 2'7" western side variance. There is also a frontage variance of 34'9" requested, as the lot frontage is 45'3", not the required 80'.

The board discusses these variances amongst themselves for a few minutes. Chairman Laskey had to stop the meeting at one point due to Trustee Kormos speaking to Mr Kelly off to the side during the discussion. Chairman Laskey informed Trustee Kormos she is not to speak to the applicants or their associates during the meetings, as it could appear as if they are being "coached".

Chairman Laskey opens the floor to the public at 8:15. No comment, closed at 8:16.

Chairman Laskey goes over the five criteria the board uses to vote on the proposals. Mr Kelly has answered these in the handouts, but as an overview:

- a. There is no change in the neighborhood, as they are requesting to build a single-family home in a residential neighborhood, consistent with the current size and appearance. No comment or argument from the board.
- b. There are no other options, as he cannot build anything commercially there. No board comment or argument.
- c. The applicant does not feel this is a substantial variance request. Chairman Laskey disagrees, and points out this is considered a very large request, as Mr Avenarius is requesting a side variance for both sides of the property, which is unheard of.
- d. The applicant does not feel this proposed house would have an adverse effect on the neighborhood. He believes it will be positive, as he would be building on a vacant lot.
- e. The applicant purchased this lot at a tax sale, and although it was purchased as non-conforming, the owner did not cause this. However, Chairman Laskey believes if you

purchase a parcel of land, you should know whether or not it is conforming, therefore it could be considered a self-created hardship.

Chairman Laskey points out to Mr Avenarius and Mr Kelly that they are only a board of four members tonight, and they have the right to postpone their application until a full board of five is present. Mr Avenarius would like to move ahead with the vote tonight with the four members.

Chairman Laskey motions as follows: The Ballston Spa ZBA motions for a minimum lot frontage variance of 34'9", a motion for eastern boundary side yard setback relief of 7', and western side yard setback relief of 2'7". Member Van Deinse seconds the motion. The board votes, Chairman Laskey votes against it, all other members – aye.

Chairman Laskey asks if there is any new business to discuss. There is not.

Chairman Laskey motions to adjourn, Member Luciani seconds the motion. All ayes.

The meeting is adjourned at 8:25.

Respectfully submitted,

Shari Kanarek

Secretary