

**MINUTES  
CITY OF CANANDAIGUA  
ZONING BOARD OF APPEALS**

**May 17, 2023**

PRESENT:	Joseph Bader, Chair	John Roberts
	Carol Henshaw, Vice Chair	Ryan Wilmer
	Susan Haller via Zoom	Julie Harris

ABSENT: Roger Brazill

ALSO PRESENT: Richard E. Brown, Zoning Officer

**CALL TO ORDER:**

Chairman Bader called to order the regular meeting of the Zoning Board of Appeals at 7:00 P.M.

**APPROVAL OF MINUTES**

Chairman Bader asked if anyone had any corrections or additions to the Regular Meeting Minutes of April 19, 2023. Mr. Wilmer moved to approve the minutes as corrected. Ms. Harris seconded the motion, which carried by unanimous voice vote (6-0).

**REVIEW OF APPLICATIONS:**

**ITEM 01      Application #23-077: 56 Lisk Avenue, WAYNE SWEET, requesting an Area Variance necessary to construct a front porch within 11 feet of the front property line. In accordance with Schedule 1 of Zoning Ordinance, porches must be set back 15 feet from the front property line.**

Wayne Sweet presented the application. His home is 19 feet from the sidewalk, which would allow for a 4-foot-deep porch. He is proposing a 3.3-foot variance to construct a porch that is a more functional width.

He has submitted photos showing homes on the east side of the street. The homes are very close to the road with porches and/or stairs that go right to the sidewalk, with no setback.

Chairman Bader opened the Public Hearing. No one came forward. Mr. Brown said no written comments were received. Chairman Bader closed the Public Hearing and directed the board to the five-part test.

This is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Chairman Bader noted that the porch would be 11 feet from the curb, which is more than ample space to see when backing out of the driveway. Others on the opposite side of the street are right at the sidewalk.

Ms. Harris, Mr. Wilmer and Mr. Roberts agreed

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Mr. Wilmer pointed out that the required setback is 15 feet, which would only allow for a 4-foot-wide porch.

Chairman Bader said a 4-foot porch is not functional.

Regarding question #3: *Show that the requested variance is not substantial.*

Mr. Wilmer said there would still be enough of a setback, and he noted an existing tree that sits closer to the property line.

Chairman Bader agreed. The tree is between the proposed porch and the curb.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Mr. Roberts said there would be none.

Chairman Bader and Mr. Wilmer remarked about the street being quiet. It is not as busy as others.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Chairman Bader said the hardship is self-created, due to a desire for a front porch.

Mr. Wilmer agreed.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Ms. Harris moved that the board Approve the application as submitted and presented for the following reasons:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.

Mr. Roberts seconded the motion, which *carried* with a roll call vote of (6-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Absent	
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

**ITEM 02      Application #23-089: 329 West Avenue, KEN PALMER, requesting an Area Variance necessary to construct a garage in the front yard of the property. In accordance with Schedule 1 of Zoning Ordinance, garages shall be set back 2 feet from the front of the primary structure.**

Ken Palmer presented the application. He is proposing a garage in his front yard, about 100 feet from the road. However, due to the orientation of the house, it feels more like a side yard.

Chairman Bader opened the Public Hearing.

Matt Palmer, of 331 West Avenue, came forward. He is opposed to the application because the garage would block his view. The applicant already has several structures on his property. To add one more would mean less green space.

Chairman Bader asked if there was anyone else wishing to speak. No one came forward. Mr. Brown said no written comments were received.

Chairman Bader closed the Public Hearing and directed the board to the five-part test.

This is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Ms. Henshaw believes there would be no change to the character of the neighborhood, but, as the neighbor mentioned, his view would be obstructed.

Chairman Bader agreed.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Mr. Wilmer asked how many structures the applicant currently has on the property. Mr. Palmer said there is a sauna, a garage for storage, and a barn for woodworking.

Mr. Wilmer said there is no other method that would not require a variance because there is no room to add an additional structure, other than the front yard.

Mr. Roberts mentioned constructing an addition to the existing garage.

Chairman Bader said this is a feasible option, but it is not optimal.

Regarding question #3: *Show that the requested variance is not substantial.*

Chairman Bader said it is dimensionally substantial, but not visually for this site.

Mr. Roberts asked if there is an existing sunroom addition that is not included in the displayed photograph. Mr. Palmer said yes. It was added approximately 2 years ago.

Mr. Wilmer believes the proposed garage would be substantial, because it would be visible from the road.

Chairman Bader inquired about the cost of constructing an addition to the existing barn. Mr. Palmer said the property drops 10 to 12 feet behind the barn, making an addition impractical.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Chairman Bader recognized that the applicant has a large lot. He believes there would be no impact.

Mr. Wilmer agreed.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Wilmer said it is self-created.

Chairman Bader pointed out that the existing setback of the house contributes to the hardship.

Chairman Bader asked if there were any additional comments or questions.

Mr. Wilmer summarized the findings. The lot size is fairly large, the proposed structure would sit back approximately 100 feet from the road, and it would obstruct the neighbor's view.

Chairman Bader added that the proposed location is in the front yard, but feels more like a side yard.

Chairman Bader asked the size proposed for the garage. Mr. Palmer said he would like 20' x 32' or 20' x 34'.

There was some discussion about reducing the size of the garage.

Chairman Bader called for a motion. If approved, he recommends limiting how far the structure protrudes into the front yard.

Mr. Wilmer moved that the board Approve the application as submitted and presented with the following condition:

1. The structure shall extend no more than 50 feet into the front yard.

Mr. Wilmer approved the application for the following reasons:

- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.

The motion *failed* for lack of a second.

Ms. Harris said she is concerned that the structure will block the view of the neighbor at 331 West Avenue.

Chairman Bader asked for an alternate motion.

Mr. Wilmer moved that the board Approve the application as submitted and presented with the following condition:

1. The structure shall extend to no more than 30 feet into the front yard.

Mr. Wilmer approved the application for the same reasons:

- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.

Ms. Harris seconded the motion, which *carried* with a roll call vote of (6-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Absent	
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

**ITEM 03      Application #23-090: 51 North Main Street, DAVID WHITCOMB, requesting an Area Variance necessary to operate a Short-Term Rental from an existing apartment on the property that is not his primary residence. In accordance with §850-110.5 of the Zoning Ordinance, within the R-I zone district, the Short-Term property must be the owner’s primary residence. Applicant seeks a variance from this requirement.**

David Whitcomb presented the application. This property is located in a mixed-use, Residential Institutional zone district. Along this stretch of Main Street, the offices, churches, and other institutional uses outnumber the residences. The property is flanked by the Historical Society Museum and Johnson Funeral Home.

The property is not his primary residence, but it is his place of business. The apartment is located on the second floor, over his legal office. He is proposing to rent the space short-term, which he anticipates would be primarily weekends. He is regularly present in the office on weekdays, and often on weekends too. The existing parking lot will accommodate up to 25 vehicles.

Chairman Bader opened the Public Hearing.

Mike Yarger spoke in favor of the application. He believes there will be no impact to other residences and it is a great use of the space.

Mr. Brown said he received an email from Kipling Goh and Adrienne Kantz-Goh, of 29 Gibson Street. They are opposed to the application. They expressed concern about the potential for boisterous gatherings.

Chairman Bader asked if there was anyone else wishing to speak. No one came forward. Chairman Bader closed the Public Hearing and directed the board to the five-part test.

This is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Mr. Wilmer recognized that the property is in a Residential-Industrial zone district and is surrounded by non-residential properties.

Chairman Bader noted the non-residential character of the building.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Ms. Haller said it is irrelevant that the property is the applicant's office. It is not his primary residence.

Chairman Bader believes the use of the property makes it more likely that the owner would be present. This provides better oversight than some residential properties.

Mr. Wilmer agreed.

Regarding question #3: *Show that the requested variance is not substantial.*

Mr. Wilmer believes it is not.

Chairman Bader agreed. It is less substantial for the applicant to seek a variance from the primary residence requirement at his workplace, than a home-owner seeking the same variance.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Mr. Wilmer said there will be no impact.

Chairman Bader agreed.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Wilmer believes it is not.

Chairman Bader agreed.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Mr. Wilmer moved that the board Approve the application as submitted and presented for the following reasons:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #3. The variance is not substantial.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.

Mr. Roberts seconded the motion, which *carried* with a roll call vote of (5-1):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Absent	
Julie Harris	Voting	YES
Susan Haller	Voting	NO
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

**ITEM 04**      **Application #23-094: 204 Fort Hill Avenue, CHARLES MONTAQUE, requesting an Area Variance necessary to construct a 288 SF storage structure within 2 feet of the property line. In accordance with §850-30 of the Zoning Ordinance, storage buildings cannot exceed 165 SF. Further, in accordance with §850-28, such structures must be at least 5 feet from the property line.**

Charles Montaque presented the application. He purchased the property approximately one year ago. It is an 850 square foot ranch home without a garage or basement. The proposed location is an existing 4-foot deep block wall with a concrete pad, that is 2 feet from the property line. It was the foundation of a previous structure. He is proposing a prefabricated 12'x 24' shed to provide storage for lawn equipment.

Chairman Bader opened the Public Hearing. No one came forward. Mr. Brown said no written comments were received. Chairman Bader closed the Public Hearing and directed the board to the five-part test.

This is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Mr. Roberts said the structure is consistent with the neighborhood.

Ms. Henshaw noted that there are structures in the neighborhood that are on the property line.

Chairman Bader agreed.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Ms. Henshaw noted that the existing foundation cannot be moved.

Chairman Bader said the applicant is permitted to have two storage structures, up to 165 square feet each. Although this may be feasible, but is not optimal.

Regarding question #3: *Show that the requested variance is not substantial.*

Mr. Wilmer acknowledged that there was previously a structure in the same location.

Chairman Bader believes it is substantial dimensionally. However, it is not a substantial request, considering the practicality of rebuilding on the existing foundation.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Mr. Roberts said there would be no impact.

Mr. Wilmer agreed.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Wilmer believes it is not self-created, due to the preexistence of the foundation.

Chairman Bader agreed.

Chairman Bader asked if there were any additional comments or questions. Hearing none, he called for a motion.

Mr. Roberts moved that the board Approve the application as submitted and presented for the following reasons:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #3. The variance is not substantial.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.
- #5. The hardship is not self-created.

Mr. Wilmer seconded the motion, which *carried* with a roll call vote of (6-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Absent	
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

**ADJOURNMENT**

Mr. Roberts moved to adjourn the meeting at 8:03, seconded by Mr. Wilmer and carried by unanimous voice vote (6-0).

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Richard E. Brown, Secretary

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Joseph Bader, Chairman