

# March 6, 2018      Zoning Board of Appeals Meeting

The meeting was called to order by Ms. Conroy at 6:00 p.m.

## Attendance

Board: Conroy, McCann, McLaren, Normile, Pavlic  
Staff: Hillary  
Counsel: Gonzalez

ZB 2018-01    United Armenian Calvary Congregational Church requests a Use Variance, as well as Area Variances for a lot area deficiency and excessive density, related to a proposal to convert a church into 8 apartments, with a combined total of 27 bedrooms and 13 parking spaces, at 144 Ninth Street (ID 101.39-6-11) in a R-2 zone.

Michael Ginsberg described the project on behalf of the applicant.

1 person spoke in favor.

Conroy asked how many attendees were in opposition to this project:

Hillary counted 18 raised hands.

## 5 people spoke in opposition:

- Asked the board to respect the recent zoning conversion from R3 to R2.
- If this project is given a PILOT, then the tax revenue expected from this project would be lost anyway.
- Cited Section 281b of the General City Law, which speaks about permitted actions by the Zoning Board.
  - Listed the four “findings of fact” which need to be met in order for a Zoning Board to grant a Use Variance.
    - \* Financial criteria is required to meet condition # 1.
    - \* Wants to know if any real estate data was provided (how long the property has been on the market, what the asking price was, how many potential buyers expressed interest).
- A Use Variance “runs with the property”. That means that if this project is approved and later goes defunct, or the developer sells the property, new owners can still use the property as an 8-unit residence, in perpetuity.
- Pleaded for the Zoning Board to allow a delay in the case vote, in order for The Caponera Law Firm, PC to submit a brief on behalf of the opposition.
- The city previously (4 years ago) granted a variance for a similar project on 2152 Twelfth Street, and it is an overcrowded, noisy, ill-kept disaster.
- At least two other entities were interested in buying the property were rebuffed.

Michael Ginsberg made a rebuttal on behalf of the applicant.

Normile asked if all bedrooms in the project will have windows.

Ginsberg replied that some do not, but the ones that don't will have skylights.

David Gonzalez, the new legal counsel to the Zoning Board, discussed some of the issues concerning this case:

- The zoning board tabling a case in order to allow one side or the other to accept a legal brief regarding a case is perfectly acceptable, but by no means mandatory.
- The Zoning Board does not have to render a decision on this particular case for another month.
- The Zoning Board is constrained by the legal standards for granting a use variance
- The applicant must provide evidence (including financial data) that each permitted use for the property in this zone is infeasible.

Conroy reminded everyone that the applicant is the church, and so the church, not Ginsberg, must prove that hardship exists.

Conroy asked if specific financial information has been provided, and if it is necessary for the zoning board to review the actual figures? If not, do we need to have it?

Gonzalez responded by advocating for a high degree of specificity.

A motion to declare this project an unlisted SEQR action, with no environmental significance, advanced by McLaren, was seconded by Normile, and passed with a 5-0 vote.

A motion by Normile, seconded by McLaren to DENY the USE VARIANCE, based on the following findings of fact, failed:

- The use SHALL alter the essential character of the neighborhood, and depreciate aesthetic or property values of the locality, because of its density.

Conroy NO    McCann NO    McLaren YES            Normile YES            Pavlic NO  
In favor 2        Opposed 3

A motion by Conroy, seconded by McCann to APPROVE the USE VARIANCE received the following vote.

Conroy YES    McCann YES            McLaren NO            Normile NO    Pavlic YES  
In Favor 3        Opposed 2

Initially deemed approved because of a simple majority, the decision was later deemed denied pursuant to Section 285-31.C of the Zoning Code which requires 4 affirmative votes for the granting of a variance. The project is DENIED in its entirety.

ZB 2018-03 1844 Land Development, LLC requests a Use Variance, as well as Area Variances for a parking deficiency, rear setback deficiency, excessive density, and excessive building height, related to a proposal to construct 4 residential buildings on a vacant parcel, with 11 units apiece, for a total of 44 residential units, at 171 Oakwood Avenue (ID 90.56-2-3) in an R-1 zone.

Jamie Easton (project engineer, from M.J. Engineering) and Kevin Vandenburg (developer) stood up on behalf of this project. Easton gave a presentation, and passed out some documents to the board members.

Nobody members of the public spoke in favor of the project.

Conroy asked how many attendees were in opposition to this project:

Hillary counted 8 raised hands. Additionally, one opponent presented a petition of 15 signatures in opposition to this proposal.

3 people spoke in opposition:

- This project will not conform to the existing neighborhood character.
- Despite the fact that the project meets the parking requirements in the Zoning Code, it will still not have enough parking to meet the needs of all of its residents, and one opponent was concerned that some of the “overflow parking” (cars that belong to project residents, but cannot fit in the project parking lot) will park in his/her parking lot.
- City officials are often keen to approve large dense developments, because of the resulting increase in property tax revenue. But there is evidence that shows that needs for increased infrastructure and public services that result from such developments sometimes cancel out the revenue increase.
- Comparisons between this project and the Martin Luther King public housing complex nearly across the street are irrelevant, because the former is in a R1 zone, and the latter is in a R2 zone. Also, the latter has different characteristics than the former.

Vandenburg and Easton both gave a rebuttal to the opposition.

A motion to declare this project a TYPE 1 SEQR action by McLaren, was seconded by Normile, and passed by a 5-0 vote.

A motion by McCann, seconded by Pavlic, to APPROVE the USE VARIANCE.

Hillary asked if McCann wanted to give any grounds in his approval.

Gonzalez said that with respect to grounds, there is a legal standard: There are four factors that the applicant must prove. (He then read the four findings of fact that must be met in order to grant a Use Variance.)

Conroy YES McCann YES McLaren NO Normile NO Pavlic YES  
In favor 3 Opposed 2

A motion by Conroy, seconded by McCann to APPROVE the AREA VARIANCE for a parking deficiency of 16 spaces.

Conroy YES McCann YES McLaren NO Normile NO Pavlic YES  
In favor 3 Opposed 2

A motion by Conroy, seconded by McCann to APPROVE the AREA VARIANCE for a rear setback deficiency of 14 feet.

Conroy YES McCann YES McLaren NO Normile NO Pavlic YES  
In favor 3 Opposed 2

A motion by Conroy, seconded by McCann to APPROVE the AREA VARIANCE for excessive density of 10.4 units per acre over 5.5 units per acre for a total of 15.9 units per acre (289 % of allowance).

Conroy YES McCann YES McLaren NO Normile NO Pavlic YES  
In favor 3 Opposed 2

A motion by Conroy, seconded by McCann to APPROVE the AREA VARIANCE for excessive building height of 8 feet.

Conroy YES McCann YES McLaren NO Normile NO Pavlic YES  
In favor 3 Opposed 2

Initially all variances were deemed approved because of a simple majority, the decision was later deemed denied pursuant to Section 285-31.C of the Zoning Code which requires 4 affirmative votes for the granting of a variance. The project is DENIED in its entirety.

ZB 2018-04 Dara Silbermann seeks a Use Variance related to a proposal to build a small commercial garden, farm stand, and compost bins on a vacant corner lot, at 492 Second Street (ID 111.52-3-1) in an R-4 zone.

Dara Silbermann, the applicant, briefly explained the project.

Conroy asked how many attendees were in favor of this project:  
Hillary counted 29 raised hands.

2 people spoke in favor of this project.

There was no opposition to this project at the meeting.

A motion to declare this project an UNLISTED SEQR action, with no environmental significance, by McLaren, was seconded by Normile, and passed by a 5-0 vote.

A motion by Normile, seconded by Pavlic to APPROVE the USE VARIANCE, passed, based on the following findings of fact:

1. The land, property, structure, or building in question cannot yield a reasonable economic return if used only for a purpose allowed in the zone
2. The need for the variance was not caused by the applicant, because that's the way the lot was laid out
3. The use shall not alter the essential character of the neighborhood, nor depreciate aesthetic or property values of the locality
4. The plight of the owner is due to unique circumstances of the property in question

Conroy YES    McCann YES                  McLaren YES                  Normile YES                  Pavlic YES  
In favor 5        Opposed 0

ZB 2018-05    Gallivan Companies seeks an Area Variance for a nonconforming fence, related to a proposal to install a 6' chain wire fence topped by 1 foot of barbed wire, at 2702 Sixth Avenue (ID 90.78-2-14) in a B-5 zone.

Ed LeMay of Gallivan Companies described the project.

He noted that, aside from the new front/side fence which is the subject of the application, the applicant is willing to put wooden slats in the existing back fence (which is also a chain link fence) in order to remedy another zoning violation of this property:

§ 285-62.D.1.j: Minimum green space and screening per the following: At least 15% of any nonresidential property in this Zone shall be maintained as green space, and shall at a minimum be planted with grass seed and maintained on a continuing basis. Adjacent to a residential zone, this shall be either a solid fence at least 5' H, or continuous evergreen shrubbery at least 3' W and at least 4' H along said property line.        *(Its rear side borders an R-2 district.)*

Nobody spoke in favor or in opposition of the project.

A motion to declare this project a TYPE 2 SEQR action, with no environmental significance, advanced by McLaren, and seconded by Normile, carried by a 5-0 vote.

A motion by Normile, seconded by McLaren to APPROVE the AREA VARIANCE for a nonconforming fence, was passed with the following stipulation:

- The applicant will “improve” the chain link fence along the rear of its property, by putting wooden slats in the chain links.

based on the following findings of fact:

- The requested area variance is not substantial.

Conroy YES McCann YES McLaren YES Normile YES Pavlic YES  
In favor 5 Opposed 0

ZB 2018-06 Charles Hathaway seeks Area Variances for a lot width deficiency and parking deficiency, related to a proposal to reconvert a 1-unit apartment back into a 2-unit apartment, at 3 Ashland Place (ID 101.77-8-3) in an R-4 zone.

The applicant was not present.

A motion to TABLE this project, advanced by McCann, and seconded by McLaren, carried by a 5-0 vote.

ZB 2018-07 Stewart's Shops Corporation seeks Area Variances for a front setback deficiency and rear setback deficiency, regarding a proposal to install a 20' x 73' gas canopy with 3 new gas dispensers, replace all underground gas tanks, upgrade lighting to LED, replace granite curbing as needed, replace all existing catch basins and drywells, make minor cosmetic improvements, and extend blacktop to add parking, at an existing Stewart's shop at 764 Fifth Avenue (ID 80.33-8-11) in a B-3 zone.

Marcus Andrews of Stewarts Shops Corporation, the applicant, gave a presentation of the project.

Nobody spoke in favor of the project.

1 person, the resident of the property immediately north of the project, was concerned that the 3 drywells in this project are too close to his property, and may exacerbate the flooding on his property which occurs after rainstorms.

Andrews answered his concerns, showing that there is an "overflow pipe" leading south from the drywells, away from the concerned neighbor's house.

McLaren made a motion, seconded by Normile, to declare this project an UNLISTED SEQR action, with no environmental significance.

Gonzalez opined that it should be a TYPE 2 project instead.

A motion to declare this project a TYPE 2 SEQR action requiring no environmental review, advanced by McLaren, and seconded by Normile, passed by a 5-0 vote.

A motion by Normile, seconded by McLaren, to APPROVE the AREA VARIANCE for a front setback deficiency of 75.5 feet for the new gas canopy, passed, based on the following findings of fact:

- The proposed variance WILL NOT have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district

Conroy YES    McCann YES                    McLaren YES                    Normile YES                    Pavlic YES  
 In favor 5        Opposed 0

A motion by Normile and seconded by McLaren, to APPROVE the AREA VARIANCE for a rear setback deficiency of 27.5 feet for the new gas canopy, passed, based on the following findings of fact:

- The proposed variance WILL NOT have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district

Conroy YES    McCann YES                    McLaren YES                    Normile YES                    Pavlic YES  
 In favor 5        Opposed 0

ZB 2018-08    Primax Properties, LLC, c/o Bohler Engineering MA, LLC, seeks Area Variances for a front setback deficiency, rear setback deficiency, and parking deficiency, regarding a proposal to demolish the existing gas station, and put up a Dollar General Store, with 24 parking spaces, at 396 Second Avenue (ID 80.71-10-7) in a B-2 zone.

Caryn Mlodzianowski from Bohler Engineering gave a presentation of the project. She said that the average Dollar General store is 9,100 square feet. The applicant is making this Dollar General store only 7,500 square feet, in order to better scale it to an urban environment.

Originally, the applicant submitted a plan with a 10 foot front setback, which is allowable. At the request of the Troy Planning Department, the applicant changed it to a 5 foot front setback, which requires a front setback deficiency.

Noting that the property is currently an abandoned former gas station, McCann asked if the gas tanks are still underground.

Mlodzianowski replied that they are. “We have environmental studies, and everything would be compliant with environmental standards as far as moving these.”

1 person spoke in favor of the project, although he was skeptical if parking would be sufficient.

Nobody spoke in opposition to the project.

A motion to declare this project an UNLISTED SEQR action, with no environmental significance, advanced by McLaren, and seconded by McCann, passed by a 5-0 vote.

A motion by Normile, seconded by McLaren to APPROVE the AREA VARIANCE for a front setback deficiency of 5 feet, was passed based on the following findings of fact:

- The requested area variance IS NOT substantial, because it would be helping the building keep with the character of the surrounding neighborhood.

Conroy YES McCann YES McLaren YES Normile YES Pavlic YES  
 In favor 5 Opposed 0

A motion by Normile, seconded by McLaren to APPROVE the AREA VARIANCE for a rear setback deficiency of 11 feet, passed, based on the following findings of fact:

- The proposed variance WILL NOT have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, because it borders an alley.

Conroy YES McCann YES McLaren YES Normile YES Pavlic YES  
 In favor 5 Opposed 0

A motion by Normile, seconded by McLaren to APPROVE the AREA VARIANCE for a parking deficiency of 14 spaces, passed based on the following findings of fact:

- An undesirable change WILL NOT be produced in the character of the neighborhood, or a detriment to nearby properties WILL NOT be created by the granting of the area variance, because it is a walkable neighborhood.

Conroy YES McCann YES McLaren YES Normile YES Pavlic YES  
 In favor 5 Opposed 0

ZB 2018-09 Philip Krzemieniecki seeks a Special Use Permit, as well as an Area Variance for a front setback deficiency, related to a proposal to construct a new automobile repair shop on two adjoining vacant lots, at 647-651 Second Avenue (ID 80.47-2-5, 80.47-2-6) in a B-2 zone.

Philip Krzemieniecki, applicant and Paul Page, business partner described the project.

Page asked that the official applicant be considered Tesla Associates, LLC, the name of the business venture headed by Krzemieniecki and Page, that will develop and operate this project.

- They plan to install a prefabricated 3,600 square feet steel building, with a 4-bay garage (5 car spaces per bay), on two adjoining lots which have both been vacant for at least 10 years.
- The business will be called “Collar City Auto Haus”.
- Hours of operation will be 8:30 AM – 5:30 PM, on Monday through Friday.
- Krzemieniecki has trained for years to restore classic British vehicles, and that is the planned primary focus of this business.

Nobody spoke in favor of the project.

1 person spoke in opposition, worried that it will bring neighboring property values down.

Gonzalez noted that Condition 2 for a Special Use Permit does not apply, since there are no landscaping or screening criteria.



A motion to declare this project an UNLISTED SEQR action, with no environmental significance, advanced by McLaren, and seconded by Pavlic, passed by a 5-0 vote.

A motion by Normile, seconded by McLaren to APPROVE the SPECIAL USE PERMIT, with the following 3 stipulations:

- 1) No repair work is to be done outside the shop
- 2) No storage of vehicle parts is allowed outside the shop
- 3) No junk or dismantled vehicles can be stored on the lot, outside, for over 30 days

was approved based on the following findings of fact:

- The Special Use Permit IS NOT expected to impair the public health, safety, convenience, aesthetic quality, or environmental quality of the surrounding neighborhood, because of the conditions that the applicant has agreed to.

Conroy YES    McCann YES                  McLaren YES                  Normile YES                  Pavlic YES  
In favor 5      Opposed 0

A motion by Normile, seconded by McLaren, to APPROVE the AREA VARIANCE for a front setback deficiency of 5 feet, passed, based on the following findings of fact:

- The requested area variance IS NOT substantial, because it is in keeping with the character of the surrounding area.

Conroy YES    McCann YES                  McLaren YES                  Normile YES                  Pavlic YES  
In favor 5      Opposed 0

The meeting was adjourned at 8:40 P.M.