

BALDWINSVILLE ZONING BOARD OF APPEALS
16 WEST GENESEE STREET, BALDWINSVILLE, NEW YORK
Approved June 8, 2015

The regular meeting and public hearing of the Baldwinsville Zoning Board of Appeals was called to order on May 11, 2015 at 7:00 p.m. by Chairman Corrigan.

Present: Brian Corrigan, Chairman; Kevin Beverine; George LePorte; Connie Taft
Also Present: Mayor Dick Clarke; Bob Baldwin, Village Attorney; Steve Darcangelo, Village Engineer; Susan LaQuay, Secretary
Guests: Mr. Warren Beck (Applicant, 26 River Street); Ms. Marilyn Buschle (Applicant, 13 Downer Street); Mr. Kevin Shea (neighbor at 19 Wilkinson Place); Ms. Sue McManus (resident, regarding 120 East Genesee Street) Mr. Chuck Marshall, Mr. Dave Muraco, and Mr. Nick DelCostello (regarding 120 Oswego Street, Stewart's Shops)

Chairman Corrigan called for approval of the April 9, 2015 meeting minutes. Upon motion by G. LePorte and second by C. Taft to approve the minutes as corrected (grammatical errors). **Carried.**

Chairman Corrigan called for approval of the resolution regarding 64 Oswego Street (First Presbyterian Church) regarding signage dated April 9, 2015. Upon motion by Chairman Corrigan and second by K. Beverine to approve the resolution as submitted. **Carried.**

OLD BUSINESS

Chairman Corrigan noted that all public hearings for the applications being discussed tonight were closed at the previous meeting.

Continuation of discussion/decision regarding 13 Downer Street - Ms. Marilyn Buschle
Ms. Marilyn Buschle, the Applicant, is present. The Public Hearing was opened and closed on April 13, 2015.

K. Beverine noted the following Findings of Fact for the property located at 13 Downer Street, Baldwinsville, New York:

- The variance request is in regards to 13 Downer Street. The house is a 1- ½ story cape.
- The Applicant is Ms. Marilyn Buschle, who stated all the houses in the neighborhood are of an "older style."
- Ms. Buschle would like a 20 x 6 - ½ foot (20 x 8 feet on the application) front porch.
- Ms. Buschle submitted a picture showing a porch similar to what she wants.
- A neighbor from 53 Syracuse Street, Mr. Richard Doran, was present and in favor of the request.
- There was no one present against the variance application.
- The application was amended to request a porch width of 6-½ feet instead of 8 feet at the request of the applicant.
- A list of signatures from 15 residents of Syracuse Street and Downer Street was provided in support of the request.

- Letters were sent to notify nearby property owners of the variance request.
- The resident of 13 – ½ Downer Street was in favor of the request.
- The cost of the project is approximately \$7,000. Materials include treated lumber and art-deco shingles.
- The area variance was submitted to SOCPA, OCPB 2-15-92 for nonconforming lot coverage and setback for a 1- ½ story house.
- SOCPA had no significant findings.
- The house was purchased by the Applicant in November of 2013.
- An updated survey was submitted dated October 29, 2014.
- The Village Engineer expressed no issues but stated that any damage to the sidewalk during construction will be the responsibility of the Applicant.
- The home was built during the 1940s.
- The house was at one time the present resident’s father’s home.
- All Board Members are familiar with the property.
- Various photos were submitted as well as a satellite view of the street and house in question.
- Gregg Humphrey, Codes Enforcement Officer, had no comments regarding this application.

Moved by C. Taft and second by G. LePorte to accept the findings of fact as stated. **Carried.**

Chairman Corrigan noted the following resolution to grant the area variance for 13 Downer Street requested by Ms. Marilyn Buschle, with the application having been amended at the Public Hearing held on April 13, 2015 as to the size of the proposed front porch, as:

- The requested area variance would not produce an undesirable change in the character of the neighborhood.
- There would be no substantial detriment created to nearby properties.
- There are no other feasible methods available to the Applicant to pursue to achieve the benefit being sought other than to seek the requested variance.
- The requested area variance, although it is substantial as to the Code, it is not out of character with other residences in the area.
- The proposed variance would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district.
- Although this is self-created, it should not stop this Board from granting the variance as requested and amended.

Moved by G. LePorte and second by C. Taft to approve the wording of the resolution as stated. **Carried.**

Chairman Corrigan asked if the Board wanted to discuss the issue further prior to voting. Hearing none, he called for a vote to approve the resolution and, therefore, grant the variance request.

Vote to accept the resolution and **APPROVE** the variance request –

C. Taft – YES G. LePorte – YES K. Beverine – YES B. Corrigan - NO

Chairman Corrigan noted that the variance is **granted.** The Applicant can begin work on the project and should work with the Codes Enforcement Officer.

Continuation of discussion/decision regarding 26 River Street – Mr. Warren Beck

Mr. Warren Beck, Applicant, is present. The Public Hearing was opened and closed on April 13, 2015.

K. Beverine noted the following Findings of Fact for the property located at 26 River Street, Baldwinsville, New York:

- The Applicant is requesting an AREA variance to construct a new 2-family residence. Code § 345-9 (A-E) are applicable to this application.
- The original structure was built in approximately 1890.
- The Applicant purchased the home in 1993 for \$40,000.
- The rental income from this home allowed the owner to get through college.
- The original structure was lost to fire on February 11, 2014.
- The house is considered a total loss and will be demolished.
- The house had no structural/mechanical problems prior to the fire.
- The Applicant would like to build a new house of the same size/lot coverage.
- A survey shows the car port/porch are located within the street line.
- The Applicant stated the survey needs to be updated.
- There are no variances on the property in question.
- The Applicant resides at 19 Charlotte Street, Baldwinsville.
- The house at 26 River Street had 2 rental units. The upstairs apartment rented for \$650/month. The downstairs apartment rented for \$625/month.
- Utilities averaged approximately \$200.00 per month
- There is currently no debt on this property.
- The insurance policy included replacement cost.
- The Applicant does not have demolition coverage.
- The replacement cost is approximately \$206,200 and the cost of demolition will have to come from that.
- The Applicant has never resided at the property.
- The proposed house rebuilt will be approximately 1,600-1,700 square feet.
- Two tenants lived in the house, one for 19 years and the other for 9 years.
- Parking was in the street – 7 spaces in the wintertime.
- The house is placed on the survey 2.3 feet up to the road.
- The survey submitted was by George Venditti, Jr., LS dated April 11, 2015.
- A porch may be put on the 2nd floor, which needs a fire escape, and the applicant will need access from the porch to the ground floor.
- The Village Engineer would prefer the house be moved back to the end of the property away from the road.
- There was no public comment for or against the application.
- Off-street parking is 1.5 spaces per unit.
- Neighboring property owned by the Applicant will allow parking via written statement.
- The perimeter of the west side of the house will be straightened.
- Traffic on River Street is one-way and the volume is low and the speed is slow.
- The Village Engineer stated a safe distance is 10 feet back.
- If the backyard is unusable the tenants will be forced to use the front yard as an outdoor area, which will be less safe.
- The former structure was legally nonconforming.
- Other houses in the area are the same approximate distance from the road, 2.5 feet to 7 feet.

- The Applicant expressed a willingness to rebuild back another 2.7 feet for a total of 5 feet from the road.
- The carport will not be rebuilt.
- No offers for purchase have been made on this property.
- The Applicant is not pursuing selling the property at this time.
- The original survey the owner acquired in 1993 at time of purchase was not contested in relation to the street line.
- The Applicant was not required to purchase Title Insurance in 1993.
- Mr. Frank Papalia, resident of Baldwinsville, was present and was in favor of the application.
- There was no public present against the application.
- The rebuilt home would be wood structure with vinyl siding and an asphalt shingle roof.
- The roof on the home that was destroyed was approximately one (1) year old.
- No adjoining property owners have replied against this application.
- Professor Ethel Fine, who owns 11 Charlotte Street, is in favor of this Application.
- All Board Members are familiar with the property.
- Also submitted into evidence was a map that the Village of Baldwinsville had on record for the property in question which showed that the front of the residence actually rested on the street line in the right of way and that dated back to the early 1900s.

Moved by G. LePorte and second by C. Taft to accept the findings of fact as stated. **Carried.**

Chairman Corrigan noted the following resolution to grant the area variance for 26 River Street requested and amended by Mr. Warren Beck III at the public hearing dated April 13, 2015 with the *condition* that the front of the house facing the Seneca River (the south side) will be no less than 5 feet from the street line as determined by the survey presented by the Applicant at the public hearing, which will require, if the Applicant does not make the length of the rebuilt house shorter, that the house as initially submitted will move into the back yard that additional 5 feet, as:

- The requested area variance would not produce an undesirable change in the character of the neighborhood.
- There would be no substantial detriment created to nearby properties.
- There are no other feasible methods available to the Applicant to pursue to achieve the benefit being sought other than to seek the requested variance.
- The requested area variance is substantial in regard to lot coverage and this should be weighed in the decision making process of this Board.
- The proposed variance would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district.
- This condition is not self-created as it is the result of a fire, the origin of which is unknown to this Board.

Moved by K. Beverine and second by Chairman Corrigan to accept the wording of the resolution as stated. **Carried.**

Chairman Corrigan asked if the Board wanted to have a discussion regarding this application prior to voting on the resolution. Mr. Bob Baldwin reminded the Board that there was discussion at the April meeting regarding the parking conditions. The Applicant indicated that he would routinely allow parking on the property next door, which he also owns. This allowance will need to be provided in a written agreement. However, the Applicant does not wish to provide a written agreement as he is concerned it may affect the market value of the property. However, Mr. Baldwin stated this needs to be in recordable form.

Chairman Corrigan called attention to § 345-28 (B) regarding required off street parking spaces, which states the following:

- “ B. Required off-street parking spaces.
[Amended 9-1-2011 by L.L. No. 2-2011]
 (1) The following off-street parking spaces shall be provided and maintained on the same lot with the building, structure or use:

Building Structure or Use	Parking Spaces Required
Residential	1 parking space for each dwelling ”

§ 345-28(A) defines an off-street parking space as, “A parking space located solely within the boundaries of the property, and shall not include spaces located in the public right-of-way either on the street pavement or between the street pavement and a property's front line.”

Chairman Corrigan stated that even though 1.5 spaces were included as the requirement in the Findings of Fact, the code requires 1 parking space per DWELLING. § 345-51 defines a dwelling as, “A building designated or used exclusively as the living quarters for one or more families.” If the entire building fits the definition as dwelling, is only one parking space required?

Chairman Corrigan stated that, technically for discussion purposes, if this resolution is granted there is still a parking issue. The parking space must be located within the buildable section of the lot but there is no further buildable area for this lot. He noted that an application regarding this parking issue is not before this Board currently and this issue would be for the CEO to address.

B. Baldwin noted that the definition of “dwelling,” § 345-51, can be interpreted that, for example, only one space would be required for a 60-unit apartment building and this area of the code should be corrected.

Chairman Corrigan asked if the Board wanted to discuss the issue further prior to voting. Hearing none, he called for a vote to approve the resolution and, therefore, grant the variance request.

Vote to accept the resolution and **APPROVE** the variance request -

C. Taft - YES G. LePorte - YES K. Beverine - YES B. Corrigan - NO

Chairman Corrigan noted that the variance is *granted*. The Applicant can begin work on the project and should work with the Codes Enforcement Officer. He reminded the Applicant to be mindful of the conditions of the variance, particularly the condition to have the house built at least 5' from the street line.

Continuation of discussion/decision regarding 120 Oswego Street – Stewart’s Shops

Mr. Chuck Marshall, Mr. Dave Muraco, and Mr. Nick DelCostello are present on behalf of the Applicant, Stewart’s Shops. The Public Hearing was opened on March 9, 2015 and closed on April 13, 2015.

K. Beverine noted the following Findings of Fact regarding the **USE VARIANCE** for the property located at 120 Oswego Street, Baldwinsville, New York:

- Chuck Marshall, Real Estate Agent, is present representing the Applicant.
- Stewart’s Shops currently has 330 stores in the area.
- 275 of the stores have gas.
- The first store in Onondaga County is located at Buckley and Morgan Road in the Town of Clay.
- All new stores require gas locations.
- The business model requires gas for the store to be competitive in the current market.
- The store is approximately 3,795 square feet with 4 gas pumps.
- The diesel is for car and light truck only.
- Page S-2 of the plan submitted shows the pumps and building structure for the proposed Stewart’s location.
- There was previously a gas station at this location (Texaco in the 1960’s).
- Village Resident Sue McManus of 78 Oswego Street was present at the public hearing and was against the application. Her concerns were spills and leaks of fuel, the fact that there are a lot more homes in the area than there used to be, and the nature of the neighborhood, which is residential, and the presence of more commercial use sites is unnecessary.
- Village Resident Frank Papalia of 3 Edgewood Drive was present at the public hearing and expressed concern about students walking to school and crossing this busy intersection as well as seniors walking around this area. He is concerned about gas tanks being located so close to the wetlands and also is concerned about the exterior lighting. The resident on the opposite side of Oswego Street expressed concerns about traffic congestion.
- The cost of the building was discussed.
- Mr. Dave Muraco, the current owner of the property, was present at the public hearing.
- The property is in a B-1 zone.
- The approximate cost of the project \$816,000 to \$916,000.
- Building construction, copies of the underground storage tanks were provided at the meeting.
- The tanks have double walls with a brine solution to protect.
- The Applicant is to provide a copy of the underground storage tanks.
- Big Mama’s Restaurant leases the property currently and the interior lease is about \$15,000.00 in revenue.
- The purchase price for the property was \$600,000 originally..
- The original mortgage was \$1.2 million for the property.
- Oswego Street traffic is approximately 7,500 cars per day.
- Less than 10% of traffic is during peak hours.
- 65% of the traffic at Stewart’s was already on the road.
- 35% of the traffic is specific for Stewart’s Shops only.
- Letters were sent on February 26, 2015 to existing neighbors.
- Chuck Marshall provided exhibits.

- Exhibit 1
 - copies of traffic flow through Baldwinsville. The traffic through the area was approximately 4,341 cars.
- Exhibit 2 -
 - project cost increase of \$100,000 from original plans submitted
 - cost increase was to accommodate NYS DOT curb cuts
- Exhibit 3
 - Pictures of 120 Oswego Street and indicates a loss of \$9,866.84 in 2014 –see example. These were submitted Profit/Loss for the property and tax plans.
- Exhibit 4
 - Traffic survey, which estimates AM cars = 40 (17%); PM cars = 33 (9%)
- Exhibit 9
 - Specs for fuel tank details
- Stewart’s Shops approached Mr. Muraco in 2013.
- Mr. Muraco contacted 10 prospective car washes to utilize the existing property with no success.
- Chuck Marshall – Rebuttal – no alteration of curbs (from proposed plan)
- Smokey Hollow Road curb cut will be moved down away from the corner
- The building of the Stewart’s Shops will help the local economy and bolster business around town center.
- This Board did ask the Applicant for further substantial financial records in regards to the individual property (120 Oswego Street) and those documents were supplied for this Board to review and consider in their deliberations as to a financial hardship.
- Testimony was provided by Mr. Muraco as to contact with other businesses and advised that none were interested in resuming use of the building as it was.
- Mayor Dick Clark also testified that he had contacted other businesses, specifically supermarket chains, in attempts to revitalize that area and there were no interested parties.
- The Onondaga County Planning Board (OCPB) provided their determination dated March 25, 2015. Their concerns had to do with curb cuts and that the sidewalks remain through the driveway portions of any entrances or exits to the property in question.
- All members of the Board are familiar with the property.
- Also submitted as part of the application process were the draft drawings and schematics as to the location.
- Notification were sent to adjacent property owners and based on the turnout at the hearing there has been quite a bit of discussion for and against the variance request.

C. Taft asked if this application for a use variance can be voted on with only 4 of 5 Board Members present. B. Baldwin stated that 4 members is sufficient, particularly as all 4 members were present for the hearings. It is up to the Board if they want to vote on this tonight. However, he wanted the Board to be mindful of the requirement in the Village law that determinations be made by a Zoning Board of Appeals within 60 days. However, there are no punishments if that timeframe is not adhered to. The Board and the Applicant can agree to extend that time.

Chairman Corrigan asked if a super-majority is required to grant a USE variance. B. Baldwin stated a super-majority is required only in the event that the Board is overriding a SOCPA determination, which is not the case here. G. LePorte appealed to the Chair to move forward this evening. Chairman Corrigan agreed.

Moved by C. Taft and second by G. LePorte to accept the findings of fact as stated. Carried.

B. Baldwin stated that certain conditions may be appropriate to include. First, it is subject to site plan review by the Planning Board and it would be subject to Special Permit to be issued by the Board of Trustees. If the Board wishes, the ZBA could say that the Board of Trustees should in the special permit determine the hours of operation and the hours of deliveries. Chairman Corrigan agreed those conditions should be included.

Chairman Corrigan noted the following *resolution* to grant the USE variance requested by Sedgewick Properties Association, LLC for the property located at 120 Oswego Street based upon the testimony and evidence submitted to this Board at the public hearing and with the application, and with the following *conditions*: 1) the property is subject to Site Plan Review by the Planning Board, and 2) the property is subject to Special Permit to be issued by the Board of Trustees, and 3) the Board of Trustees in its Special Permit should determine the hours of operation and the hour of any deliveries to the retail side, as:

- The Applicant, based upon what was submitted, has been and would be deprived of economic use or benefit from the property unless this request is granted.
- The hardship created is unique and does not apply to a substantial portion of the district or neighborhood.
- The variance would not alter the essential character of the neighborhood, which is customer-oriented retail establishments.
- The hardship experienced by the property was not self-created by the present property owner, but more so created by the economic conditions.

Moved by C. Taft and second by K. Beverine to accept the resolution as stated. Carried.

Chairman Corrigan stated that prior to discussion and voting, the Board needs to address the SEQR determination. Part of the testimony provided by the Village Engineer was that, based upon the SEQR application that was submitted, there were no detrimental issues uncovered. Further, SOCPA provided the Village with their response. This Board needs to determine if the USE variance will have a positive or negative environmental impact. B. Baldwin clarified that a negative declaration means there is no environmental impact and positive declaration means there is an environmental impact. Chairman Corrigan noted all items are answered in the negative.

Chairman Corrigan noted a resolution to declare a negative declaration for the use variance that has been requested.

Vote to accept the resolution and declare a negative declaration:

C. Taft – YES G. LePorte – YES K. Beverine – YES B. Corrigan - YES

Chairman Corrigan would like to have a discussion prior to voting on the resolution with conditions regarding the USE variance. He stated that Codes are always evolving and changing with the communities they serve. The Code speaks about gas stations (§ 345-18) and filling stations (§ 345-33) separately and there are slight nuances to their definitions. They are sometimes used interchangeably. At a gas station, you can get repairs done. A filling station is just a place to fill your vehicle with gas and mechanics are separate. Chairman Corrigan recommended that the Village Board of Trustees consider the wording regarding this issue gas stations and filling stations.

Chairman Corrigan noted he is very familiar with Stewart's Shops and has found them to be well run in his experience.

Vote to accept the resolution for Stewart's Shops regarding USE variance and **APPROVE** the variance request:

C. Taft - YES G. LePorte - YES K. Beverine - YES B. Corrigan - YES

The **USE** variance is granted.

K. Beverine noted the following Findings of Fact regarding the **AREA VARIANCE** for the property located at 120 Oswego Street, Baldwinsville, New York:

- The Applicant is requesting an area variance of §268-3 (B5) for construction of a large freestanding sign.
- The application is to install a free-standing sign of approximately 70 square feet (35 square feet per side), which is 2.9 times greater than the Code allows.
- The square footage calculations do not include the monumental stone base or the roof structure. If the roof structure were included, it is roughly 9 feet and including the monumental base the sign would be 140 square feet (70 square feet per side) per the drawing submitted with the application.
- This is an externally illuminated with goose neck lighting.
- The LED monument sign is for gas prices only.
- The structure will be asphalt shingles with a stone base
- Chuck Marshall, real estate agent, is representing the Applicant and provided the Board with testimony regarding the location as well as a schematic, which was entered into the record, regarding the sign.
- The hours of operation for the shop will be 5 am - 11 pm.
- All Board Members are familiar with the property.

Moved by G. LePorte and second by K. Beverine to accept the findings of fact as stated.

Carried.

Chairman Corrigan asked if the Board wanted to discuss the issue further prior to putting forth a resolution. S. Darcangelo asked that the Board consider making it a condition of approval that the variance is for specifically THIS sign in question. B. Baldwin stated that variances typically do go with the land. However, the Board can make it a condition that in the event the use of the property changes that the owner will have to come back before the ZBA for review or make it a condition that the variance is limited to the sign in question and would, therefore, require another variance if the sign were changed.

Chairman Corrigan noted the following resolution to grant approval of the AREA variance requested by Sedgewick Properties Association, LLC for the property located at 120 Oswego Street, the application being for signage for the proposed Stewart's Shops with the following conditions: 1) as per testimony provided, the business hours of operation are to be 5 am to 11 pm and the sign not will be illuminated outside of those hours; and, 2) the application is specifically for this Applicant and is for signage for Stewart's Shops. Should the property change use or if the sign were to be replaced, the ZBA would need to review at that time; as:

- The requested variance would not produce an undesirable change in the character of the neighborhood.
- There would be no substantial detriment created to nearby properties.
- There are no other feasible methods available to the Applicant to pursue to achieve the benefit being sought other than the requested variance.
- The requested area variance is substantial; however, this should not be the sole-ruling factor in consideration.
- The proposed variance would not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district.
- Though this variance request is self-created, it should not be the sole-governing factor to not grant the request.

Moved by K. Beverine and second by G. LePorte to accept the resolution as stated. Carried.

Chairman Corrigan asked if the Board wanted to discuss the issue further prior to voting on the resolution. He noted that he is a big proponent of "bigger is not always better." The ZBA was faced with another business requesting a sign that was substantially larger than the Code allows and he was not in favor of that sign. This sign as requested, including the monumental base, would be 5.8 times the current code. Village Code states that the dimensions must include not only the lettered portion of the sign, but also the frame and/or base that the sign is built upon. Chairman Corrigan noted that years ago, Eckerd's on Downer Street requested a large sign with a monumental base. This actually turned out to be a good looking addition to the area.

B. Baldwin reminded the Board that one of the requirements in granting an area variance is that the Board grant the minimum relief necessary to preserve the character of the neighborhood. Therefore, if the Board determines that the sign is too large they have the opportunity to grant a smaller-sized sign rather than deny the variance. Chairman Corrigan asked if the Board Members would be interested in seeing a different sized sign for this property. Another option would be to deny the variance request and the Applicant could return with a different proposal.

C. Taft asked if there are any signs in the Village of comparable size to the proposed sign. Chairman Corrigan noted the sign is 9 feet tall. He stated the closest would be Eckerd's on Downer Street, but this proposed sign has a roof structure as well as a monumental base and gooseneck lighting.

G. LePorte stated he is concerned about the size given the proposed location of the sign. Mr. Marshall indicated the location on the plan. C. Taft stated she is concerned with line of sight. B. Baldwin noted that the Planning Board will address this in site plan review. He suggested that the ZBA can refer this issue to the Planning Board for their opinion and hold the vote until that

opinion is received. G. LePorte stated he is in favor of this. He is also concerned about the line of sight issues, particularly turning onto Smokey Hollow Road.

Chairman Corrigan noted that the sign size in the original findings did not include the dimension of the base and roof structure. This was discovered during discussion.

S. Darcangelo noted that the USE variance was granted and this will allow the Applicant to proceed to Site Plan Review with the Planning Board and proceed to the Board of Trustees for the Special Use Permit.

The ZBA will ask the Planning Board for their opinion regarding the sign size and location, especially as it relates to line of sight. The vote regarding approval or disapproval will be tabled until the June meeting.

The meeting was adjourned at 8:40 p.m.

The next meeting is scheduled for Monday, June 8, 2015 at 7 pm.

Respectfully submitted,

Susan A. LaQuay

Zoning Board of Appeals Secretary