

**City of Schenectady  
Board of Zoning Appeals  
Meeting Minutes  
March 2, 2022**

**I. CALL TO ORDER**

Mr. Connelly called the meeting to order at 6:46 p.m.

After calling the meeting to order Mr. Connelly 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:** David Connelly, Vice Chairman, Fred Clark, Brendan Keller, Helene Lester, Avi Epstein, Zoning Officer, Andrew Koldin, Corporation Counsel, Chris Marney, Assistant Corporation Counsel, and Sylva Jimison, Department of Development Staff

**ABSENT:** James Gleason, Chair and Mary D'Alessandro-Gilmore (excused)

**III. CONFLICT OF INTEREST**

None.

**IV. APPROVAL OF MEETING MINUTES**

Motion by Mr. Connelly, seconded by Mr. Keller, seconded to approve the Minutes of the January 5, 2022 meeting as submitted.

*Motion carried unanimously.*

## **V. APPLICATIONS**

- A. Live in Schenectady, LLC**, requests area variances for 1128, 1132, 1136, 1140, and 1144 Barrett St (39.65-2-45, 39.65-2-46, 39.57-4-9.11, 39.57-4-61 & 39.57-4-62), located within the R-2 Two Family zoning district, to allow for a subdivision that would create five (5) parcels with a frontage of 20.52ft and two (2) parcels with a frontage of 23.65ft, where a minimum of 40ft is required and two (2) 0ft side yard setbacks, where a minimum setback of 5ft is required pursuant Schedule C of the zoning ordinance

Alice from MJ Engineering represented Live in Schenectady, LLC. Alice stated the project had been approved back in 2016 and we are looking at the units in the R-2 zoning district that will be taking 5 lots and converting them into 7. Pictures of the lots were shown on the monitor of what the new lots will become. In 2016, an area variance for front and back yard setbacks were approved. The variances being requested this time are for the frontage and side yard setback for parcels that will be created via a subdivision.

Mr. Connelly asked, about existing units, frontage across the street and if the units are comparable. Avi Epstein, Zoning Officer, stated the frontage is 20-25 feet, and the applicant stated that these units will be very similar.

Mr. Keller asked the applicant when they applied for the original variances. The applicant replied she didn't know exact date.

Mr. Connelly asked if there were any further questions from the BZA members. Hearing none, Mr. Connelly, opened the public hearing and asked if there were any members of the public that would like to speak in favor or in opposition to application.

### **PUBLIC COMMENTS IN FAVOR**

None.

### **PUBLIC COMMENTS IN OPPOSITION**

Ms. Elizabeth Mastrianni, stated she's not necessarily in opposition to the project but wants more clarification. She lives at 119 Park Place and stated there is an alley behind the subdivision that is in very rough shape. The alley is almost non-existence, and maybe 10 feet in width, making it hard to get down. When its snowing, it never gets plowed.

Mr. Connelly, asked who owns the area? Ms. Mastrianni stated, I believe the city does, and there is no garbage collection in the back. Neighbors will have to wheel their garbage cans around for pick-up.

Mr. Connelly closed public comments for board to discuss the project. Ms. Lester looked at property on her cell phone with Mr. Clark. Andrew Koldin, Corporation Counsel, and stated alley is outside the purview of this variance request.

## **CONTINUED DISCUSSION**

Mr. Connelly added, I vaguely remember looking at both sides of the street this is a variation of 6 years ago. I don't think we had any issues. The applicant will talk to engineering about the condition of the alley, and it does not affect the variance.

## **SEQR RESOLUTION**

Motion by Mr. Keller, seconded by Ms. Lester, to declare this project a Type II SEQR Action.

*Motion carried unanimously.*

## **AREA VARIANCE APPROVAL**

Motion by Mr. Keller, seconded by Ms. Lester, to approve the area variance based on the following:

1. No undesirable change will be produced in the neighborhood. Similar development has already been approved in this neighborhood.
2. The benefit sought by the applicant cannot be achieved by another method. Townhouses are a permitted use but wouldn't be feasible without the requested area variances.
3. The variance is not substantial.
4. There will not be an adverse effect on physical or environmental conditions in the neighborhood. The properties will still have plenty of green space and impervious surface to offset any potential water runoff concerns.

*Motion carried unanimously.*

- C. Agnes Davis, President of Senga World, LLC**, requests a zoning interpretation of 264-40(C), 264-43 and 264-44 regarding off-street parking requirements, as it relates to the property located at 203 Union St (39.63-2-45.1), which directly abuts 2 North Ferry St (39.63-2-46.21).

Mr. Cotch and Attorney Kurz presented the application. Mr. Cotch stated he is married to the owner, Ms. Agnes Davis, but that she was not able to attend the meeting because of staffing issues. Attorney Kurz represented Ms. Davis and presented information for the zoning interpretation of Schedule C.

Attorney Kurz stated Ms. Davis has owned the property since 2004 and he believes she is one of few Black owners of properties in the Stockade and she would like to complete the 5 units she owns. The work has been halted. The applicant appreciates there is a citizen oversight of the building and zoning departments and will take an independent look at the 2 submitted applications. The applicant requested to present the applications out of order and to present the second application first, regarding off street parking requirements.

Mr. Connelly, read into the record, that the applicant was referring to a request of a zoning interpretation of 264-40(C), 264-43 and 264-44 regarding off-street parking. Item C on the agenda will be proceeding first and item B will be presented last.

Mr. Steven Cotch submitted a large size map because he said 8x11 copies are difficult to follow. He also submitted the 1986 Denison Survey, an off-color survey from the county office.

Mr. Cotch provided the board members with pictures of the parking that had been included with the application. He stated the pictures were of the rear of the building before 1986 and included when the landing and stairs were part of the unit. The second picture presented to the board included covered roof and the area that existed June 5, 2020. Also, prior to the demolition there were plants that act as edging, according to Mr. Cotch. There were 63 inches of steps that went out to the old steps. The 1987 easement was granted between the Schneiderwind's, for the right to maintain and construct stair and steps. In October 1987 a 5 foot easement was granted, and the 1986 Denison Survey shows property line with the Schneiderwinds.

Mr. Keller asked what the easement specifically states and what is the language in the easement?

Mr. Kurz noted the easement states it's for the purpose of reconstruction and construction. The landing was there when it was constructed. The focus is for the parking issue and the Schneiderwinds' acknowledge every right to retain that improvement.

Mr. Keller, stated, he just wanted to be careful about stating exactly what the permits, applications and easements actually say.

Mr. Kurz, asked Mr.Cotch to locate the document while he showed pictures of the parking area that the Schneiderwinds had removed to improve their parking area. He indicated that the Schneiderwinds violated the code by expanding the parking.

Mr. Keller wanted to know when the vegetation was put in and Mr. Cotch replied, the vegetation was there when he got involved with the property in 2017.

Mr. Kurz stated that zoning code 264-40(C) provides that preexisting off-street parking areas and lots which are nonconforming with respect to any of the design standards specified in § [264-43](#) may be lawfully continued, provided that such nonconforming parking area is not enlarged or altered in a way which increases its nonconformity. Where the premises served by such nonconforming parking area are substantially improved, the parking area shall also be improved in compliance with the design standards specified herein. Why Agnes Davis is appealing the interpretation becomes apparent if you look at 4<sup>th</sup> picture in the series provided. You can see that the cars are parked very close to the house and the structure.

Mr. Kurz proceeded to describe the photos that were passed around. The next picture also demonstrates how vehicles are parked and impedes the ability for use [parking cars] and this becomes a lifesaving issue if someone can block the entrance of a building. This could be a lifesaving problem and we want to protect life.

The pictures showed parking in front of concrete slab and people would park against the stairway. Another picture showed the Schneiderwind's car that is overhanging the property line and parking had been altered by taking out vegetation; code requires a 4 feet distance and they are parking over the 4 feet requirement.

Mr. Connelly asked to see the survey map for the lot lines. There is 3.12 feet from the building to the lot line and by looking at the survey this becomes a little confusing. Mr. Connelly asked if the wooden steps go out 5 feet. Mr. Kurz said no, the wooden steps extend to easement area. Mr. Cotch added, the original lot line that is pie shape was part of the 1987 easement.

Mr. Kurz, went onto next picture he presented to the board, which he says showed there is ample parking space that does not encroach the Schneiderwind's right away. This was to provide safe egress for the occupants to bring large objects into the building and that's why it is constructed the way it is.

Mr. Kurz continued to state that the next picture shows parking right up to the building which is not permissible. He stated, this is a deliberate act to cause harm to the tenants. He also stated that there was a little party that was held in this area. As neighbors they are being malicious. I don't think the city wants that and Ms. Davis wants to create a better place for people to live and that is why she has filed a complaint with Zoning Officer.

Mr. Kurz went on to say, the Zoning Officer cited the correct provision of the code but ignored the facts and without dispute the Schneiderwind's have altered their parking area and must confirm to the current code, because they are endangering the people who reside in the building. Mr. Kurz stated that Ms. Davis, the owner of the building, cannot have her tenants be at peace, if the Schneiderwind's want to park the way they are.

Mr. Cotch added he contacted code enforcement and they informed him it was a civil issue and the police were called and would not address it because it's a civil issue. The city does not have a fire Marshall and I am a code guy, you cannot block a fire way. Mr. Lunn was also notified of the issue and he indicated it's a zoning issue. Mr. Lunn is responsible for enforcing zoning issues. The Zoning Officer said he was not responsible for interpreting easements, per the email he sent.

Mr. Connelly, at the end of the presentation asked if the board had any questions.

Mr. Keller wanted to know how long had the landscaping been at the property?

Mr. Cotch, I got involved in 2017 and that would be a question for Ms. Davis.

Mr. Keller said, we have no way to find out if the lot was extended or did the lot exist in its present condition?

Mr. Kurz stated he was trying to understand the question and there has been a change to the area which triggers code compliance.

Mr. Cotch added, before the steps were demolished, I want to give you a history of what is known about the property in its present condition.

Mr. Keller, asked again, if there was not landscaping present back in the 80s and 90s wouldn't that mean nothing has changed?

Mr. Kurz disagreed because there is nothing in the code about reducing the size of a parking lot, but to expand it is an issue.

Mr. Cotch went on to say, look at the Denison survey, the original lot line came off the corner 203 union, 5 feet from the corner of the house to the edge of the wooden stairs and in 1987 there was a chain fence.

Mr. Keller stated, looking at the survey there was no landscaping in 1986.

Mr. Keller wanted to know when the lot was created and was it being used as its being used now.

Mr. Epstein stated he wasn't aware of the exact dates. From the best he could tell the property has been using that parking area since the 1980s if not prior.

Mr. Keller indicated that landscaping in the middle of the lot would triggered the expansion of the non-confirm use of the property.

Mr. Cotch, explained that he really didn't know what had changed about the property and would need to get Ms. Davis on the phone to tell what has changed about the property. He added, Ms. Davis attempted to be a good neighbor to the Schneiderwind's when their shrubs were destroyed during a construction project. Ms. Davis offered to replace the shrubs and paving stone that prevented parking when he demoed the stairs. The parking got closer to the parking line and parking is not a violation.

Mr. Connelly asked Andrew Koldin, Corporation Counsel, if the projects are interrelated would it be best to clear one first? Andrew Koldin's response was it makes sense to do that and create a separate record for the other project.

Mr. Connelly, asked if anyone else had anything to add.

### **PUBLIC COMMENTS IN FAVOR**

None.

### **PUBLIC COMMENT IN OPPOSITION**

Ms. Schneiderwind of 203 Union Street opposed the setback requirements. She stated that she did not know what to expect, so she brought a letter that could be read to the board. As she began to read the letter, Mr. Connelly informed her that we were still on the parking issue and if she would like to make a comment on that application.

Ms. Schneiderwind stated that she has pictures of the property with a chain link fence and the property has been in the family since 1918. She also had a picture taken in 1997 with her in it and she passed the photos around for board members to view to see that there was nothing in the parking area.

Andrew Koldin, requested that staff make copies of the photos and to return the originals to her.

Ms. Schneiderwind also presented a 1988 appraisal report and pictures that showed the parking area with 4 parking spots and the rear can see steps going to North Ferry Street. It was stated that in the photos you can see original steps in 1988 after the easement was approved. She also added that the plants were destroyed by Mr. Cotch. The plants had been put in for good will for her husband who had cancer.

Ms. Schneiderwind claimed that the planting area was destroyed by Mr. Cotch's helpers. She offered to put tarps down, but he refused, and the area was already demolished. Also, at that same time a coffee can of nails was collected, and we emailed Mr. Cotch not to do it again. Copies of the email were made available. She asked Ms. Davis in 2020 when she married Mr. Cotch that it doesn't happen again.

Ms. Schneiderwind also reported that Mr. Cotch put in a chain link fence that prevented her family from parking in the area. She had to contact the Schenectady Police Department and they came to the property. She requested a liaison from the city and has been to the Department of Development to speak to the Zoning Officer, Avi Epstein. She indicated not much could be done.

She also stated the easement that the lawyer completed on November 2, 1987, said the parcel was subject to maintenance agreement, ingress and egress be allowed in the area.

Copies of emails were provided to the board to read because Ms. Schneiderwind said she doesn't speak the way the emails were written.

Ms. Schneiderwind went on to say that her husband is blind and that her family was denied access to the parking area. Mr. Cotch interjected that was not correct. Ms. Schneiderwind continued to say that the lady at the desk said there was not a parking permit.

Ms. Schneiderwind said stairs and steps in the pictures from the 1940's to the 1980's was able to get into the parking area and the easement did not change safety or fire concerns as parking goes. Also, the cars never set there in the parking area because the family is often in and out. She proceeded to show a picture of the wooden steps being removed and a concrete path was poured to match the property line.

Ms. Schneiderwind added that Ms. Davis must abide by the new codes and the new construction causes inconvenience for parking and they have to maneuver around things put in their way to park the car. Ms. Davis offered to pave the area and replace the plants that were destroyed, but the offer was refused because they did not want to feel obligated and would have to be careful about parking two cars.

Andrew Koldin, Corporation Counsel, stated certain records are being passed around by Ms. Schneiderwind that includes an appraisal report, and for the documents to be admitted as copies. The board would not retain the original documents and copies will be made of her documents.

Mr. Connelly asked if the board had any questions for Ms. Schneiderwind

Ms. Lester asked Ms. Schneiderwind how long she has lived at the property? Ms. Schneiderwind replied, since 2002 or 2003, but we have always parked in the spots.

Charlie Schneiderwind, added the cars must be parked at an angle. In 2004, Ms. Davis acquired the property, and we maintained the property to 2017.

Mr. Connelly, asked again, if any other questions.

Andrew Koldin asked, have you have been parking in the back area of the property to date and have there been expansions? Ms. Schneiderwind responded that yes they've been parking that way and no the parking area has not expanded.

Mr. Connelly closed the public comment portion. He continued to state his concern was that there was a lot of discussion regarding matters that the BZA has no purview over, such as the easements.

Mr. Cotch interrupted the board discussion, to state that he wanted everyone to realize the Ms. Schneiderwind's put lawn furniture in the way of the easement and took paving marking paint where the asphalt end, during the process while he was working in an rear apartment. He also indicated he had an altercation with the other son.

Mr. Connelly informed Mr. Cotch that he cannot interrupt the Board Members and to please sit down.

### **MOTION TO AFFIRM THE ZONING INTERPRETATION**

**The Board of Zoning Appeals affirmed the zoning interpretation made by the duly authorized administrative official based on the following findings of fact:**

1. The preexisting off-street parking area and nonconforming lot have existed in their present condition since at least the 1980s, which was shown on the record by documentary and photographic evidence, and that said preexisting off-street parking area was established prior to the enactment of Sections 264-40, 264-43 and 264-44 of the Zoning Code.
2. The addition or removal of incidental landscaping and/or vegetation does not constitute an expansion of a legal preexisting off-street parking area and nonconforming lot, which increases its nonconformity, under Section 264-40(c) of the Zoning Code for the City of Schenectady.
3. As a legal preexisting off-street parking area and nonconforming lot under Section 264-40(c) of the Zoning Code, compliance with Sections 264-43 and 264-44 are not required. In light of the foregoing, the correct decision was reached by the duly authorized administrative official.

***Adopted by the following vote:***



**Uphold:** Clark; Connelly; Keller; Lester

**Reverse:**

**Modify:**

**Table:**

**Absent:** Gleason; Gilmore

**Motion to Affirm:** Mr. Keller **Second by:** Ms. Lester

**B. Agnes Davis, President of Senga World, LLC**, requests a zoning interpretation of Schedule C and the required minimum rear yard setbacks as it relates to the property located at 2 North Ferry St (39.63-2-46.21).

Attorney Kurz presented on behalf of Ms. Agnes Davis, Senga World, LLC, for request of a zoning interpretation Schedule C. Also present was Ms. Davis's spouse Mr. Cotch.

Mr. Kurz presented pictures to the board to illustrate that the construction pre-dates the zoning code. He also stated that the easement interferes with Ms. Schneiderwind's parking. Mr. Kurz directed the board to look at Exhibit 3 that does not reserve the Schneiderwind's right to park on the five-foot easement and any encroachment on the easement is a violation of the building code. Mr. Kurz went on to say the Zoning Officer denied her the building permit, see Exhibit 7. The building permit was submitted August 17, 2020.

Mr. Kurz continued to say that the Zoning Officer took the position that the landing and stairway did not meet the minimum requirements. He directed the board to review Exhibit 7 (building permit application Ms. Davis submitted). Ms. Davis submitted the application to make substantial repairs to the building to make it more habitable for people who live there.

As seen in the picture, interior construction of the deck and stairs were not installed and were reserved until the end in which the application expired before the work was completed.

The building permit that was filed in 2021 could have been worded better in the application. It did not reference a landing, however, an inspection was completed for the landing and stairs which were not part of the building permit. Mr. Lunn said a new application was needed to include the landing and steps because it was referred to as a deck and not a landing.

Mr. Kurz went on to say, he replied to Mr. Lunn's request of a new application that was submitted with a drawing 9/2021. When the application was submitted there was never any concerns raised about the project. However, once the inspection was done, Mr. Lunn noted the sonotubes needed to be addressed, so he did not approve construction for the project.

Mr. Kurz directed the boards attention to Exhibit 12 of a sketch stamped by an engineer that shows a landing which was submitted to the Codes Department. The deck was 3x3 feet but its

really not a deck, but rather a landing. Mr. Kurz instructed the board to turn to Exhibit 18 to show there is no maximum size for a landing and the landing has to be the width of a door.

Mr. Keller stated the permit had expired so what was the inspector relying on to make the determination. Mr. Kurz responded, the permit was with the Codes Department to rebuild the steps.

Mr. Kurz placed a document in front of the board members to show what was in existence before the setback requirements.

Mr. Connelly asked if there were any questions.

Andrew Koldin asked what the dimension of the steps in a photo were. Mr. Cotch replied, 55 inches, 2 feet onto the easement, the old landing dimensions were approximately 7x8 feet, 72 inches wide and 65 inches deep.

Andrew Koldin reiterated that the easement is not relevant and it's fair to say previously there was 5.5 feet and it has expanded beyond that.

Mr. Connelly asked if there were any more questions.

Andrew Koldin asked a clarifying question to Mr. Cotch about the landing having a minimum and no maximum size. Are you saying it could be 100 feet if there is no maximum? Mr. Cotch responded, the minimum width is 36 inches for stairs, 1 foot from rear door and could not meet New York state building code max width of 3 feet.

Mr. Keller noted that the structure is being replaced by a significantly larger structure.

### **MOTION TO AFFIRM THE ZONING INTERPRETATION**

**The Board of Zoning Appeals affirmed the building permit denial and zoning interpretation made by the duly authorized administrative official based on the following findings of fact:**

1. The previous structure shown on the historical photographs and survey maps submitted was a legally permitted preexisting nonconforming structure which Applicant states was approximately 6'-00" by 5'-05". The new structure built by the Applicant, which was stated to be approximately 7'-06" by 10'-06", is not "grandfathered" as a preexisting nonconforming structure. By Applicant's admission, and as shown on the record with both photographic and documentary evidence, the structure built by Applicant was enlarged and is found by the Board of Zoning Appeals to be approximately 138% larger than the footprint of the preexisting nonconforming structure. The enlargement of the structure is in violation of Section 264-87 of the Zoning Code.
2. The Zoning Code does not specifically define a landing, which is term used in the New York State Building Code. The Zoning Code does, however, define a deck in Section 264-2 as the following:

A roofless outdoor space built as an aboveground platform projecting from the wall of a principal building or accessory structure.

3. The structure that was built meets the definition of a deck found in Section 264-2 of the Zoning Code and the Board of Zoning Appeals finds that structure is a deck and not merely a landing.
4. The Board of Zoning Appeals finds the Applicant's argument that the substantially enlarged deck is a lawfully continuing "grandfathered" preexisting nonconforming *landing* is without merit. Since the structure is a deck under the Zoning Code and was substantially enlarged from the footprint of the documented original preexisting nonconforming structure, it is subject to the minimum setback requirements specified in Schedule C of the Zoning Code. As such, the correct decision was reached by the duly authorized administrative official to deny the building permit application.

*Adopted by the following vote:*

**Uphold:** Clark; Connelly; Keller; Lester

**Reverse:**

**Modify:**

**Table:**

**Absent:** Gleason; Gilmore

**Motion to Uphold:** Mr. Keller    **Second by:** Mr. Connelly

## **V. OTHER BUSINESS**

None.

## **VII. MOTION TO ADJOURN**

Motion by Ms. Lester, seconded by Mr. Keller, to adjourn the meeting.

*Motion carried unanimously.*

The meeting was adjourned at 9:35pm.