

**MINUTES OF THE REGULAR MEETING**  
**MARCH 20, 2006**

The Regular Meeting was called to order by Chairman Randy Bogar at 7:00 P.M. Board Members present were Tim Tallman, Fred Kiehm, Kristen Shaheen, Bob Schulman, John Montrose and Steve Welty. Also in attendance was Councilmen David Reynolds and Robert Payne, Codes Enforcement Officer Jerry Back, and Dolores Shaw, Secretary. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting.

The application of **Mr. Michael Heumann, 1224 Pleasant Street, Utica, New York (Town of New Hartford)**, who is requesting to install an 8' gate at his driveway. Zoning allows for a maximum height of 4' in the front yard for a gate/fence, therefore, Mr. Heumann is requesting a 4' height Area Variance. Tax Map #331.017-4-33; Lot Size: 4.1 Acres; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on March 10, 2006 and residents within 500' were notified. Mr. Heumann appeared before the Board.

Mr. Heumann stated that his driveway is mistaken as a road and he would like some privacy for his family. He is proposing to place the gate at the entrance of the driveway in an area with trees – it will set about 30' back from the road. He addressed several other gates in his vicinity. The gate will be mahogany wood and it would be about 15' wide. The sides of the gate are about 5 ½' high and the center would be about 7-7 ½' high – with spindles. Mr. Heumann mentioned that at some point he would like to make this an electric gate and he has been in touch with the Police and Fire Departments to get an answer on their thoughts about this, i.e., in the event of a fire or robbery – he has not heard from them yet. Further, Mr. Heumann said there would not be a visibility problem as it sets back.

Chairman Bogar asked if there was anyone present to address this application:

-Resident of 7 Hingham Road. She feels it is against the character of the neighborhood and it is a visual interference for her. She reviewed the plan for the gate.

There were no additional comments, letters or telephone calls concerning this application. The Public Hearing closed at 7:10 P.M. The Public Hearing was reopened again at 7:13 P.M. and closed at 7:14 P.M. to address a question.

The Board Members discussed the appearance and location of the fence. At this point, the Board reviewed the criteria necessary for the granting of an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no – the gate will enhance the property.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no because people use his driveway as a road and he wants to place it in the most aesthetically place on the lot.
- The requested variance is substantial – response: no.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the response was no as it will enhance the area.
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no.

Motion was made by Board Member John Montrose to approve the height Area Variance as requested and that the gate be located in the front of the driveway approximately 30’ back from the road (no closer); that cars not be parked in an inconvenient place in the driveway so as cars would be stacked and cause a visibility problem; and that Mr. Heumann has met the criteria; seconded by Board Member Kristen Shaheen. Vote taken:

Chairman Randy Bogar – yes  
Board Member Kristen Shaheen – yes  
Board Member Bob Schulman – yes  
Board Member Steve Welty – yes

Board Member John Montrose – yes  
Board Member Tim Tallman – yes  
Board Member Fred Kiehm – yes

Motion was **approved** by a vote of 7 – 0.

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The application of **Mr. William Locke, 1709 Sherman Drive, Utica, New York (Town of New Hartford)**, who is requesting to install an 8’ gate at his driveway. Zoning allows for a maximum height of 4’ in the front yard for a gate/fence, therefore, Mr. Locke is requesting a 4’ height Area Variance. Tax Map #331.017-4-2; Lot Size: 2.3 Acres; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on March 10, 2006 and residents within 500’ were notified. Mr. William Locke appeared before the Board.

Mr. Locke stated that he will have a wooden fence the same as Mr. Heumann, however, there will be two (2) stone pillars on both sides where the gate will hang – it will also be about 15’ wide. He will stain the fence brown to match his house. The gate will be opened most of the time. He has a substantial deer problem and he needs to address this issue. People also think his driveway is a road and that creates a safety problem. This gate will also set about 30’ back from the road and it will open in.

Chairman Bogar asked if there was anyone present to address this application – there was no response. There were no additional comments, letters or telephone calls concerning this application. The Public Hearing closed at 7:22 P.M.

The Board Members discussed the appearance and location of the fence and reviewed the criteria necessary for the granting of an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no – the gate will enhance the property.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no because people use his driveway as a road and he is concerned about the safety of his family.
- The requested variance is substantial – response: no.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the response was no as it will enhance the area.
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no.

Motion was made by Board Member Bob Schulman to grant the height Area Variance of Mr. Locke for the gate as requested; that the gate be 30’ back from the road (no closer); that cars not be parked in an inconvenient place in the driveway so as cars would be stacked and cause a visibility problem; and that Mr. Locke has met the criteria; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes  
Board Member Kristen Shaheen – yes  
Board Member Bob Schulman – yes  
Board Member Steve Welty – yes

Board Member John Montrose – yes  
Board Member Tim Tallman – yes  
Board Member Fred Kiehm – yes

Motion was **approved** by a vote of 7 – 0.

Comment from Chairman Randy Bogar: Mr. Locke mentioned erecting another fence at sometime. He was advised about the height requirements for a fence in the front and if the height exceeded 4', he would need a variance. Mr. Locke is aware of this.

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The application of **Mr. Paul Morris, 28 Bradley Road, Utica, New York (Town of New Hartford)**, who is requesting to construct a 24.25' x 44.30' entrance way onto the front of his home. Zoning in this area is Low Density Residential which requires a 30' front yard setback and the structure will set 26' back from the property line, therefore, the applicant is requesting a 4' front yard setback Area Variance. Tax Map #339.008-4-6; Lot Size: 70' x 100'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on March 10, 2006 and residents within 500' were notified. Mr. & Mrs. Morris appeared before the Board.

Mr. Morris stated that he has a lot of ice problems falling from the roof. He presented plans for the addition and the entrance way will be built directly over the original existing slab. He will place a new door and two (2) side windows – materials will match the existing home. He presented photos for the Board's review.

Chairman Bogar asked if there was any other way to build this without seeking a variance – Mr. Morris said no because he wants to utilize the existing slab.

Chairman Bogar asked if there was anyone present to address this application – there was no response and there were no letters or calls received. The Public Hearing closed at 7:28 P.M.

The Board Members reviewed the criteria necessary for the granting of an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no – the addition will enhance the property and there are other homes in the area with an entrance way.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no because they want to use the existing slab.
- The requested variance is substantial – response: no.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the response was no as it will enhance the area.

- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no.

Motion was made by Board Member Bob Schulman to grant the Area Variance of Mr. Morris with the condition that the new materials match the existing home and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes	Board Member Bob Schulman – yes
Board Member Tim Tallman – yes	Board Member Steve Welty – yes
Board Member Kristen Shaheen – yes	Board Member Fred Kiehm – yes
Board Member John Montrose – yes	

Motion was **approved** by a vote of 7 – 0.

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The application of **Ms. Laraine Yager, 32 Root Street, New Hartford, New York**, who is requesting to construct a 25' x 30' garage addition onto her existing garage. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback and the garage will be 10.5' from the side property line. Therefore, the applicant is requesting a 4.5' side-yard setback Area Variance. Tax Map #339.006-1-66; Lot Size: 100' x 133'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on March 10, 2006 and residents within 500' were notified.

Mr. Larry Roth (Ms. Yager's father) addressed the Board with a statement that his daughter came to live with him and his wife to take care of them and she will be living in the home. Mr. Tom Fenton, the contractor, was also in attendance.

Mr. Fenton stated that this structure is strictly a garage and will be attached to the existing home. Ms. Yager has a PT Cruiser, an RV and another car that she would like to store in this structure. Materials will match the existing home. Further, Mr. Fenton said if they reduced the size of the garage by 5', they wouldn't need a variance, but they need the addition square footage because of the RV.

Chairman Bogar asked if this could be constructed by any other means – Ms. Yager and Mr. Fenton said no because the property slopes in the rear. Reference was made to the existing garage and doors. This is a two-stall garage with one (1) 9' door and one (1) ten foot door. The Board reviewed the plans as submitted.

Chairman Bogar asked if there was anyone present to address this application:

-Ms. Lenora Danella, 27 Root Street. She has lived there for 30 years. She presented photos of the property for the Board's review. She is concerned about the huge, beautiful trees that would have to be torn down (trees are owned by Ms. Yager). These trees provide privacy for the neighbors and have been there for years. She stated that this structure is too large for the lot/area and it would obstruct her view. The structure would be to house her vehicles and what if she ever moved – the permanent structure would still be there. This area has smaller homes with a one-stall garage. She has to look at the RV setting there every day and she feels it can be placed somewhere else when not in use. She has seen Ms. Yager trying to park the RV and trying to manage traffic while parking it. Ms. Danella feels this large structure would depreciate her property. She would like to see some type of resolution/ordinance addressing the parking of RV's and trailers.

Chairman Bogar advised Ms. Danella to contact her Councilman regarding the ordinance issue.

-Ms. Rosann Mino, 25 Root Street. All she would see from her home is this large structure. She feels it will look too commercial in this residential area. She questions what would happen if they ever move from the site. She is also concerned about the height of the garage. Ms. Mino stated that this is a nice, landscaped neighborhood and feels this structure would be an eyesore. She stated that the RV is left there all the time and wonders if it could be stores when not used. She stated this structure would take up most of the driveway.

Reference was made to a two-stall garage there previously – Mr. Fenton said there was never a two-stall garage – only a one stall. Mr. Fenton said the garage will not be as high as the house roof.

Chairman Bogar asked if there any calls or letters. Secretary Dory Shaw stated that she received a call from the following:

-Mr. Joseph Bolton, 34 Root Street. He is presently in Afghanistan but called about this application after he talked to his wife. He felt that the structure is too big for the area and does not fit the character of the neighborhood. It would destroy the view of the adjacent properties. Also, if they moved, what would happen with this structure – as it would be permanent. He also questioned if Ms. Yager owned the property. Further, he wondered why Ms. Yager didn't contact his wife about this application as they live next door. He opposed this variance.

There being no further comment, the Public Hearing closed at 7:55 P.M.

The Board Members reviewed the application, plan presented and photos. Discussion ensued about the structure being too large for the lot, other options for the RV, and reducing the size of the structure so as not to seek a variance. They also took into consideration the neighbor's concerns. Board Member Kiehm would rather see the RV parked in the garage than setting out.

The Board went through the criteria necessary for the granting of an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: yes, because most of the homes are small and have a single-stall garage, however, there is a difference of opinion.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: yes, but there is a difference of opinion.
- The requested variance is substantial – response: yes, but there is a difference of opinion.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the response was yes, because of the size of the structure, however, there is a difference of opinion.
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: yes.

Board Member Shaheen felt that this is a nice area and she feels this structure would change the character of the neighborhood. Board Members Welty and Montrose understood why the applicant would want to house their vehicles, but questioned the size of the structure and the area. Discussion ensued.

Motion was made by Board Member Steve Welty to deny the application of Ms. Yager as it did not meet the criteria; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes  
Board Member Tim Tallman – yes  
Board Member Kristen Shaheen – yes  
Board Member John Montrose – yes

Board Member Steve Welty – yes  
Board Member Bob Schulman – yes  
Board Member Fred Kiehm – no

Motion to **deny** was by a vote of 6 – 1.

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The application of **Mr. Michael McGlynn/MJM2 Realty, 25 Eagle Ridge Drive, New Hartford, New York**. The new home constructed at 25 Eagle Ridge Drive sets back 26' from the front property line. Zoning in this area is Low Density Residential, which requires a 30' front yard setback, thus, Mr. McGlynn is seeking a 4' front yard setback Area Variance. Tax Map #328.020-2-7; Lot Size: 78' x 174'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on March 12, 2006 and residents within 500' were notified. Mr. McGlynn and Attorney Don Parker appeared before the Board.

Board Member Bob Schulman abstained from this application/discussion as he resides in this neighborhood.

Attorney Parker brought the Board up-to-date on what transpired with this property. He said that when Mr. McGlynn purchased this property from the developer, the approved/filed subdivision map dated 1990 had a front setback of 25' from the front property line. Since that time, the Zoning Law changed in 1999 which now required a front setback of 30'. His client was not aware of the change in the law and only had what was given to him, the map showing 25'. However, his client decided to place the home on the lot 30' back to give the home an additional setback (still not knowing that the setback had changed) when his contractor recommended that he place the home 25' back because of the layout of the property – it dropped off to the rear. His contractor convinced him to do this, and since he thought he was in compliance, brought the house 25' back. The ends of the house meet the side setback, it is only a portion of the front that does not. Attorney Parker stated that his client learned about this setback issue when he furnished the Codes Department with a survey and that is why they are here this evening. Attorney Parker said there is no cure for this other than to move the home and that would be a tremendous expense and his client did not know about this change. The couple who purchased the home cannot move in until this variance is approved.

Board Member Welty asked Mr. McGlynn if this was a spec house and how long he has been a realtor. Mr. McGlynn stated that this is the second home that he's built and he is new to the business.

Board Member Shaheen asked Attorney Parker, your client had no knowledge about the setback being changed – Attorney Parker said his client did not know.

Chairman Bogar referred to the recommendation of the contractor to move the home forward – Attorney Parker said this was done between the two of them as he thought he was in compliance. Chairman Bogar referred to the Building Permit for this home which indicated a front setback of 30'. Mr. McGlynn said he wanted 30' for the home to set back further and that was his original intent. This home sets on the cul-de-sac and he

doesn't feel it is an intrusion to the development and again, he was not aware of any change.

Chairman Bogar asked if there were any discussions with the Codes Enforcement Officer that the home was too close to the road. Mr. McGlynn said the front setback was never discussed. Mr. McGlynn had the survey months ago but didn't know there was a violation.

The Board Members discussed how mistakes can happen and how to rectify this. Board Member Kiehm stated he is not happy with this situation. Board Member Tallman asked Codes Enforcement Officer Back what the average setback is in this area – Mr. Back said on that side of the road it is about 35' from the front property line. Codes Enforcement Officer Back also explained how a subdivision gets approved and what the developer shows on the map for that particular zone.

Board Member Welty asked Mr. Back about the Building Permit showing 30' for a front setback. Mr. Back stated that several months ago he initiated a policy that when a foundation is put in, the contractor/developer needs to submit an as-built survey to the Codes Department before framing so as to avoid incidents like this. He feels this applicant made an honest mistake and with this new policy it shouldn't happen again.

Chairman Bogar asked if there was anyone present to address this application – there was no response and no calls or letters were received. The Public Hearing closed at 8:35 P.M.

The Board Members discussed the application and layout of the house on the property. The Board also discussed how this mistake occurred and what would be done in the future to avoid situations like this.

The Board went through the criteria necessary for the granting of an Area Variance.

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no as it is a nice looking home.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no because the house is built and it sets on a cul-de-sac.
- The requested variance is substantial – response: no.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the response was no as it will enhance the area.

- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: yes.

Motion was made by Board Member Tim Tallman to grant the variance to Mr. McGlynn because he felt he made an honest mistake and that this was error was not caught by the applicant or Codes Office based on what was discussed/submitted; and that Codes Enforcement Officer Back stated that he also felt this was an honest mistake; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar – yes	Board Member Tim Tallman – yes
Board Member John Montrose – yes	Board Member Steve Welty – yes
Board Member Kristen Shaheen – yes	Board Member Fred Kiehm – yes

Motion was **approved** by a vote of 6 – 0. (Board Member Bob Schulman abstained).

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Chairman Bogar reminded the Board Members that the next meeting is **April 24, 2006**.

There being no further business, the meeting adjourned at 9:00 P.M.

Respectfully submitted,

Dolores Shaw  
Secretary/Zoning Board of Appeals

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