

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS**

**JUNE 16, 2008**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were John Montrose, Fred Kiehm, Kristen Shaheen, and new Board Member Kimberly Carolan-Faga. Board Members absent: Bob Schulman and Tim Tallman. Also in attendance were Codes Enforcement Officer Joseph Booth and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting. He explained that this Board has two (2) members that are not in attendance and it is the applicant's decision whether to proceed or not. Chairman Bogar welcomed Kimberly Carolan-Faga to the Board; and also recognized former Board Member Steve Welty for his many years of service to the Town.

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**UPDATE: The application of Charlene Vehoski, 3332 Church Street, Chadwicks, New York and Heather Payne, 3334 Church Street, Chadwicks, New York**, who are each requesting a 5' side yard setback Area Variance for an aboveground pool. Zoning in this area is Medium Density Residential, which requires a 5' side yard setback from the property line, thus, necessitating a 5' side yard setback Area Variance for each applicant. Tax Map #'s Vehoski: 350.017-1-32; Payne: 350.017-1-33; Lot Size: 69' x 113'; Payne: 34' x 124'. Zoning: Medium Density Residential. (Mrs. Vehoski will update the Board Members regarding the status of her pool as she was given until spring 2008 to determine how she would proceed with the pool). (Residents within 500' were re-notified). Mr. & Mrs. Vehoski appeared before the Board and also Ms. Heather Payne.

Mr. Vehoski stated that he had been in touch with Town Attorney Gerald Green regarding the possibility of a reciprocal easement agreement. They contacted an attorney who wrote them a reciprocal agreement and he stated that they have a \$1 million dollar liability for each of them (both neighbors). This agreement has not been executed yet pending decision from this Board. He stated that every insurance carrier they contacted would not list the Town of New Hartford as an additional insured. (There were no documents left with their application file).

Chairman Bogar referred to a memorandum from Town Attorney Green addressing this issue and his interpretation – Mrs. Vehoski asked to see this and it was presented to her.

Board Member Shaheen felt that if something happened, the involved parties could sue both homeowners and the Town – all three (3) parties would be named. Discussion ensued regarding liability/trespass issues.

Chairman Bogar referred to the minutes of September 17, 2007 where Mrs. Vehoski stated the pool company was willing to move the pool – Mr. Vehoski stated that it could be moved but at a cost. Chairman Bogar also discussed the possibility of the transfer of property where the pool is on one single lot and explained the setback requirements. If they wanted to proceed with this option, they would need to contact a lawyer for possible subdivision, land transfer, deed changes, etc.

Mrs. Vehoski related to the Board that they were not aware of a Building Permit for this pool and as neighbors they thought this would be a good idea to place the pool where it sets – nothing was done intentionally. The Board Members recognized this.

Chairman Bogar asked if there was anyone present to address this application – there was no reply. Their being no further input, the Public Hearing closed at 6:45 P.M.

The Board Members reviewed the past and current correspondence on this application and the comments from the Town Attorney. It was felt that liability is a big issue, and a violation exists at the site. At this time, the Board Members reviewed the criteria:

- 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 – the five (5) Board Members responded yes;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance –the five (5) Board Members responded yes;
- The requested variance is substantial –the five (5) Board Members responded yes;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the five (5) Board Members responded yes;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – the five (5) Board Members responded yes.

Motion was made by Board Member Fred Kiehm to deny the application of Mrs. Vehoski/Ms. Payne as it has not met the criteria, and liability was a major concern for this Board; seconded by Board Member Kristen Shaheen. Vote taken:

Chairman Randy Bogar – yes

Board Member Fred Kiehm – yes

Board Member Kristen Shaheen – yes  
Board Member John Montrose - yes

Board Member Kimberly Faga – yes

Motion to **deny** was passed by a vote of 5 – 0.

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The Use Variance application of **Faxton-St. Luke's Healthcare, 1710 Burrstone Road, New Hartford, New York**. The applicant is requesting to place a temporary one-story 84' x 68' modular structure on their property located off Burrstone Road. HUD approved units are not allowed in any zone other than a Planned Development Mobile Home zone, thus, the applicant is seeking a Use Variance request for this temporary structure. Tax Map #317.000-2-25; Lot Size: 3.5 Acres; Zoning: Planned Development Institutional. Legal Notice was published in the Observer Dispatch on June 6, 2008 and properties within 500' were notified. Mr. John Gaetano and Ms. Sharon Palmer appeared before the Board representing Faxton-St. Luke's.

Mr. Gaetano explained the necessity for this modular trailer. Faxton-St. Luke's is doing some renovations with new medical/surgical rooms. Some offices are being displaced and they need a temporary location for these offices. They hope to have it on site for about twenty-four (24) months. The unit is brought in, skirted, leveled and removed when ready. Mr. Gaetano referred to a sketch as to the location of the proposed modular unit and that it cannot be seen from the road. There will be no hook ups, i.e. sanitary, but some electricity.

Board Member Montrose asked how many people would be using this temporary facility – Ms. Palmer said there is a total of 20 people, but most of them are part-time – probably six (6) people every day. The training classes are two-hours. He also explained how people would walk to this site and most of the people being trained already park on the hospital lot.

Codes Enforcement Officer Booth asked about the proximity of the restrooms to the facility. He explained the location of existing restroom facilities nearby, approximately 47' – 50' away.

Board Member Shaheen referred to Codes Enforcement Officer Booth in that the existing restroom facilities are within travel distance and the units will be handicap accessible. Mr. Booth stated he did not see this as an issue.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Oneida County Planning 239 was received with no comments. There being no further input, the meeting adjourned at 7:00 P.M.

The Board Members reviewed the material submitted and went through the criteria necessary for a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – the five (5) Board Members responded yes, as they presented financial data to support their application;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – the five (5) Board Members responded yes;
- The requested variance, if granted, will not alter the essential character of the neighborhood – the five (5) Board Members responded yes and that it cannot be seen from the road;
- The alleged hardship has not been self-created – the five (5) Board Members responded yes.

Motion was made by Board Member John Montrose to approve the application of Faxton-St. Luke's as it has met the criteria; that this modular unit be removed within two (2) years of approval date; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar – yes	Board Member Fred Kiehm – yes
Board Member Kristen Shaheen – yes	Board Member Kimberly Faga – yes
Board Member John Montrose - yes	

Motion to **approve** was passed by a vote of 5 – 0.

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The application of **Ms. Deanna Johnson, 4 Oakdale Avenue South, New Hartford, New York**, who is requesting to construct an in ground swimming pool on her property. Zoning for this property is Medium Density Residential, which limits coverage of the lot to 30%. Ms. Johnson is seeking to cover 33% of her lot, therefore, she is requesting a 3% Area Variance on maximum lot coverage. Tax Map #328.012-1-13; Lot Size: 60' x 137'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on June 6, 2008 and residents within 500' were notified.

Ms. Johnson did not appear.

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The application of **Mr. Arthur Mercado, 23 Oakdale Avenue South, New Hartford, New York**, who has placed a decorative roof over an existing porch in the front of his

residence. Zoning in this area is Medium Density Residential, which requires a 30' front yard setback. Applicant is seeking a 7' front yard setback Area Variance. Tax Map #328.012-1-43; Lot Size: 60' x 157'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on June 6, 2008 and residents within 500' were notified. Mr. & Mrs. Mercado and their contractor, Mr. Shane Nicholson, appeared before the Board.

Mr. Mercado said they are in the process of renovating their home and decided to place a decorative roof over the porch (he noted that the porch will not be enclosed). They were not aware of the Codes involved by roofing this existing porch - the roof will extend about 1' beyond the porch. Mr. Nicholson said he had to reconstruct the roof and had to put the overhang on it.

Mr. Mercado also said that the porch gets slippery and for safety reasons wants to place a roof over it. The house will be resided and he feels it will be aesthetically pleasing for the neighborhood. He submitted two (2) letters from adjacent neighbors who support their application:

- Ms. Sylvania Banas, 21 Oakdale Avenue, New Hartford
- Mrs. Patricia Butler, 25 Oakdale Avenue, New Hartford

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:10 P.M.

The Board Members reviewed the application. At this time, the Board Members 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 – the five (5) Board Members responded no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – the five (5) Board Members responded no;
- The requested variance is substantial – the five (5) Board Members responded no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the five (5) Board Members responded no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – the five (5) Board Members responded no.

Motion was made by Board Member Fred Kiehm to grant the approval of this application as presented as it has met the criteria; that the porch not be enclosed; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Kimberly Faga. Vote taken:

Chairman Randy Bogar – yes  
Board Member Kristen Shaheen – yes  
Board Member John Montrose - yes

Board Member Fred Kiehm – yes  
Board Member Kimberly Faga – yes

Motion to **approve** was passed by a vote of 5 – 0.

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The application of **Mrs. Kristine Putrelo, 9273 Grange Hill Road, New Hartford, New York**, who is requesting to construct a roof over an existing ramp at this location. Zoning in this area is RB4 (Neighborhood Business) which requires a 30' front yard setback. The applicant is seeking an 11' front yard setback Area Variance. Tax Map #349.020-1-5; Lot Size: 1+ Acres; Zoning: RB4 (Neighborhood Business). Legal Notice was published in the Observer Dispatch on June 6, 2008 and residents within 500' were notified. Mrs. Kristine Putrelo appeared before the Board.

Mrs. Putrelo stated that the handicap ramp has been on site for approximately five (5) years and she would like to place a roof over it, especially for safety reasons.

Chairman Bogar said it was brought to his attention about a parking lot created at the site near this ramp. Codes Enforcement Officer Booth said he received a call at the Codes Office regarding this parking lot. He said there is to be no parking there; it has to be 15' off the public right-of-way. Mrs. Putrelo asked where the 15' is established from – Mr. Booth said the property line. She stated that they placed gravel there – Mr. Booth said it had to be removed and that they could plant grass.

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

-Mr. & Mrs. Paul Toomey, 9286 Grange Hill Road. They stated that they support this application.

There being no further input, the Public Hearing closed at 7:20 P.M.

The Board Members reviewed the application and addressed 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 – the five (5) Board Members responded no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – the five (5) Board Members responded no;
- The requested variance is substantial – the five (5) Board Members responded no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the five (5) Board Members responded no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – the five (5) Board Members responded no.

Motion was made by Board Member Fred Kiehm to approve the application of Mrs. Putrelo as it has met the criteria; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Kristen Shaheen. Vote taken:

Chairman Randy Bogar – yes	Board Member Fred Kiehm – yes
Board Member Kristen Shaheen – yes	Board Member Kimberly Faga – yes
Board Member John Montrose - yes	

Motion to **approve** was passed by a vote of 5 – 0.

Mrs. Putrelo asked the Codes Enforcement Officer what the procedure/time frame is for the removal of this parking area. Mr. Booth explained that he would be sending her a letter shortly regarding this issue.

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The application of **Mr. Guy Danella (Danella Photographic)** who is requesting to place a second free standing sign (4' x 8') on property located at **8636 Seneca Turnpike, New Hartford, New York**. Code Section 118-54 B8 requires that only one free standing sign is allowed per site. Therefore, the applicant is seeking an Area Variance to allow for this second sign. Tax Map #328.016-3-31; Lot Size: 1.5 Acres; Zoning: Planned Highway Business. Legal Notice was published in the Observer Dispatch on June 6, 2008 and residents within 500' were notified. Mr. Guy Danella appeared before the Board.

Mr. Danella explained that Mr. Tom Riley owns the property, but gave him permission to appear with this request (a letter stating so has been made a part of the file). Mr. Danella wants to use the existing frame that is there now. He provided the Board Members with pictures of what exists on the site and what he is proposing for a sign. It will be a two-

sided sign with no illumination and just located on the Seneca Turnpike side of the property.

Board Member Kiehm explained how the property had been three (3) separate parcels and now combined into one, and that is why multiple signs are not allowed.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Oneida County Planning 239 was received with no comment. The Public Hearing closed at 7:30 P.M.

The Board Members reviewed the file as presented, and addressed 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 – the (5) five Board Members responded no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – the five (5) Board Members responded no;
- The requested variance is substantial – the five (5) Board Members responded no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the five (5) Board Members responded no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – the five (5) Board Members responded no.

Motion was made by Board Member Kristen Shaheen to approve the application as presented as it has met the criteria; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar – yes	Board Member Fred Kiehm – yes
Board Member Kristen Shaheen – yes	Board Member Kimberly Faga – yes
Board Member John Montrose - yes	

Motion to **approve** was passed by a vote of 5 – 0.

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The application of **Mr. Donald Lawrence, 1 Kellogg Road, New Hartford**, who is requesting to repair and also construct a second story addition to the existing home at this location. Zoning in this area is Medium Density Residential, which requires a 10' side

yard setback and a 30' front yard setback. Applicant is seeking a 4' left side yard setback Area Variance and a 13' front yard setback Area Variance. Tax Map #339.011-2-50; Lot Size: 60' x 100'; Zoning: Medium Density Residential. Legal Notice was published in the Observe Dispatch on June 6, 2008 and residents within 500' were notified. Mr. Donald Lawrence appeared before the Board.

Mr. Lawrence said he wants to build up onto this home – the only change in the footprint is the porch which is now 4' x 4' and he would like a 5' x 8' porch. The roof will be over the porch and that is part of the variance request. The roof line will come up about 18" from the roof line there now. He stated that the whole house will be resided. Mr. Lawrence was asked if he planned on living there – he said that he plans on living there, but the house is not livable yet.

Mr. Lawrence also stated that water run off is a problem and he is trying to correct it for this site. He will try to pitch the property so it doesn't get into the house.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Oneida County Planning 239 was received with no comments and a letter was received from Oneida County DPW with comments. There being no further input, the Public Hearing closed at 7:40 P.M.

The Board Members reviewed the application and felt that the request is an improvement for what exists there now. The Board Members 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 – the five (5) Board Members responded no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – the five (5) Board Members responded no;
- The requested variance is substantial – the five (5) Board Members responded no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – the five (5) Board Members responded no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – the five (5) Board Members responded no.

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Motion was made by Board Member Fred Kiehm to approve the application of Mr. Lawrence in that he has met the criteria; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Kimberly Faga. Vote taken:

Chairman Randy Bogar – yes	Board Member Fred Kiehm – yes
Board Member Kristen Shaheen – yes	Board Member Kimberly Faga – yes
Board Member John Montrose - yes	

Motion to **approve** was passed by a vote of 5 – 0.

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There being no further business, the meeting adjourned at 7:50 P.M.

Respectfully submitted,

Dolores Shaw, Secretary  
Zoning Board of Appeals

dbs