

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

AUGUST 18, 2008

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Fred Kiehm, Bob Schulman, Tim Tallman and Kimberly Carolan-Faga. Board Members absent: Kristen Shaheen and John Montrose. Also in attendance were Codes Enforcement Officer Tom Rowlands, and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members, explained the procedures for tonight's meeting, and mentioned that two (2) Board Members were not in attendance in the event applicants would like to postpone.

The application of **Mr. Edin Kulosman, 636 Pleasant Street, Utica, New York (Town of New Hartford)**, who is requesting to install a 5' fence on his property at the corner of Pleasant Street and Valley View Road. The proposed fence exceeds 4' in height limitation for a front yard. Applicant is seeking a 1' height Area Variance. Tax Map #330.012-8-1; Lot Size: 100' x 182'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on August 8, 2008 and residents within 500' were notified. Mr. Kulosman appeared before the Board.

Mr. Kulosman stated that he would like to erect cement pillars with black wrought iron in between, and install decorative lamps on the top of the pillars for his fence. (He got the distance between the wrought iron and pillars from the Codes Officer as he wants to install an in ground pool). He will also plant trees/shrubs either inside or outside of the fence to provide privacy. Mr. Kulosman do the work himself. The pillars will be stucco and will match the color of his home. He feels this will be aesthetically pleasing and privacy will be provided to him and his neighbors – all work will be done on his property.

Chairman Bogar asked how far apart the pillars will be – Mr. Kulosman said every 8'. He also said the pillars are 5' high and the fence is less than 5' in height. He spent considerable time planning this and advised the Board Members that it will look good.

Chairman Bogar asked if there was anyone present to address this application – there was no reply. County 239 Planning had no comments, and there were no calls or letters. The Public Hearing closed at 6:45 P.M.

The Board Members reviewed the construction and layout of the proposed fence. Board

Member Kiehm asked to address the applicant, therefore, the Public Hearing was reopened at 6:50 P.M. Board Member Kiehm asked the applicant the size of the columns – Mr. Kulosman said 16' x 16'. Board Member Kiehm also referred to the proposed lamps – Mr. Kulosman said he doesn't know how he wants to place these yet.

The Public Hearing closed again at 6:55 P.M. 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 approve the application as presented allowing the 5' columns; the lamps not to exceed an additional 16" on top; the columns to be stucco to match the house; and to check with the Codes Department on whether a Building Permit is needed; seconded by Board Member Bob Schulman. Vote taken:

Chairman Randy Bogar – yes
Board Member Bob Schulman – yes
Board Member Tim Tallman – yes

Board Member Fred Kiehm – yes
Board Member Kim Faga – yes

Motion **granted** by a vote of 5 – 0.

The application of **Ms. Jacquelyn Garro, 601 French Road, New Hartford** is requesting a drive-thru for her new restaurant/coffee shop business. Zoning in this area is Retail Business 3, which does not allow for a drive-thru restaurant/coffee shop, therefore, the applicant is seeking a Use Variance to allow for this request. Tax Map #317.000-2-10; Lot Size: 100' x 130'; Zoning: Retail Business 3. Legal Notice was published in the Observer Dispatch on August 8, 2008 and residents within 500' were notified. Ms. Garro appeared before the Board.

Board Member Kiehm wanted to make it clear as to why this is an application for a Use

Variance. It was discussed and explained. Board Member Schulman had discussed this with Codes Officer Booth and was told that the zoning allows for a restaurant but excludes the use of a drive-thru, therefore, this review is for a drive-thru only. Ms. Garro said she will be taking the existing house down and putting up a 25' x 30' two-story chalet. It will be a gourmet coffee shop with pastries, sandwich wraps, take out salads – she doesn't want to do much cooking at the site.

Chairman Bogar felt this is more than a coffee shop – Ms. Garro explained that food/pastries helps with selling espresso/coffee. The downstairs will have Wi Fi, a children's area; the upstairs will have a conference room, fireplace and couches. Both floors will have a bathroom.

Board Member Kiehm asked if Ms. Garro had seen the Town Planning Staff regarding this application. Ms. Garro said yes. She also stated that there is enough parking: 14 parking spaces and 1 handicap for a total of 15.

Chairman Bogar referred to an inquiry from Mr. Brian Gaetano, adjacent property owner, who is asking for buffering between 102 Business Park property and Merrill Lynch building – Ms. Garro said she told Mr. Gaetano she would do buffering if requested (Mr. Gaetano's letter has been made a part of the file). Chairman Bogar also stated that Mr. Gaetano said she inquired about an easement for additional parking. Ms. Garro said she found out that Mr. Gaetano doesn't own Remet and she is waiting to hear from someone who does. If her business goes well, she would like an easement for overflow parking. If not, she'll work with what she has.

Board Member Tallman referred to the location of the dumpster and how a truck would be able to make the turn. Ms. Garro said the plan is what Boulder Consultants sketched.

Chairman Bogar stated that Town Planner Schwenzfeier advised him: 1) anything we approve is subject to Town Staff review/approval, and 2) this is in a GEIS area and must have a Pre-development Agreement. This application does not go to the Planning Board.

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

-Ms. Judy Stanulevich, 609 French Road. She owns a business nearby and is concerned about traffic and backup, ingress and egress, green space and parking and how it affects her. There are ingress/egress problems now. Her major concern is people turning left which cause a backup on French Road.

Chairman Bogar explained that County 239 Planning has no comments regarding this application, but did mention that the applicant would need a permit from NYSDOT for the proposed reconfiguration of the access point onto French Road. Ms. Garro said she is

aware of this. Chairman Bogar said there was no written response from NYSDOT.

There being no further input, the Public Hearing closed at 7:20 P.M. The Board Members reviewed the application and felt that a drive-thru is necessary for this type of business. However, they would like Town Staff to address some concerns.

At this time, the Board Members went through the criteria necessary for the granting of 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;
- 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;
- The alleged hardship has not been self-created – the five (5) Board Members responded yes.

Motion was made by Board Member Bob Schulman to approve the application for the drive-thru with the recommendation that this application be addressed by Town Staff for review and approval as follows:

- 1) Review request of Mr. Brian Gaetano for buffering on the south side of his adjacent property (see request in file);
- 2) Dumpster location as there is concern that a truck cannot get the dumpster emptied – check traffic pattern as shown on sketch in file;
- 3) Check ingress and egress; and review parking;
- 4) Review and prepare Pre-development Agreement

and that a Building Permit be applied for within one (1) year of approval date; seconded by Board Member Kim Faga. Vote taken:

Chairman Randy Bogar – yes
Board Member Bob Schulman – yes
Board Member Tim Tallman – yes

Board Member Fred Kiehm – yes
Board Member Kim Faga – yes

Motion **approved** by a vote of 5 – 0.

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There being no further business, the meeting adjourned at 8:00 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals
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