

**MINUTES OF THE SPECIAL MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
RODGER REYNOLDS MEETING ROOM
MAY 2, 2011**

The Special Meeting was called to order at 6:10 P.M. by Chairman Randy Bogar. Board Members present were Fred Kiehm, Julius Fuks, Jr., Tim Tallman, John Montrose and Karen Stanislaus. Board Member absent; Bob Schulman. Also in attendance was Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, Planning Board Chairman Elis DeLia, Lis DeGironimo, Consulting Engineer/TONH, and Dory Shaw, Recording Secretary. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting. He further explained that one (1) Board Member is absent this evening and it was the decision of the applicant whether to proceed. Four (4) votes are needed for approval of an application.

Also, Chairman Bogar explained that the Hamlin and Rahn applications were postponed at the April 25, 2011 regular Zoning Board of Appeals meeting and rescheduled to this evening.

The application of **Mrs. Mary Hamlin, Hamlin Properties, LLC, 147 Genesee Street, New Hartford, New York**. Mrs. Hamlin's property is zoned Professional Office, which requires a 10' side-yard setback. She is seeking a 3' left side-yard setback Area Variance for an existing apartment at this property. Prior variance was issued to this building for a Professional Office only, thus, necessitating the Area Variance request. Tax Map #329.013-3-8; Lot Size: 57' x 275'; Zoning: Professional Office. Mrs. Hamlin appeared before the Board

Mrs. Hamlin wanted to proceed with her application. She explained what transpired with the surveyor of her property a few years ago and the mistake made on their part. She needed an Area Variance for the building. In 2007 her husband had put in an apartment at the lower level of the building for someone they knew and needed a place to live. The original variance did not include an apartment. There is no change in the building size, but she needs a variance for the apartment. Mrs. Hamlin submitted photos of the apartment.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Dory Shaw received a call as to time and date of meeting – no message was left

County Planning 239 was received with no comment. The Public Hearing closed at 6:20 P.M.

At this time, Board Members reviewed the file and went thru 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, all in agreement;

- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in agreement;
- The requested variance is substantial – response: no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no, all in agreement.

Motion was made by Board Member Karen Stanislaus to approve the application as presented; and that the applicant needs to contact the Codes Enforcement Officer about what she needs from the Codes Department for this apartment; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar – yes
Board Member John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Julius Fuks, Jr. - yes
Board Member Karen Stanislaus – yes

Motion **approved** by a vote of 6 – 0.

The application of **Mr. Brian Rahn, 8 Alexandria Road, New Hartford, New York**, who is requesting to place an above ground pool on his property (corner of Alexandria Road and Osborne Road). Zoning in this area is Medium Density Residential, which requires an accessory structure to be setback from the front property line a minimum of 30'. The applicant is seeking a 20' front yard setback Area Variance. Tax Map #328.016-2-28; Lot Size: 108' x 33'; Zoning: Medium Density Residential. Mr. Brian Rahn appeared before the Board.

Mr. Rahn displayed an aerial photo of his property. He received an Area Variance for his fence in 2003. The entire back yard is fenced in, and the pool will be within this fence. From the street level view, the pool can't be seen. He also presented photos of the surrounding neighborhood. Mr. Rahn stated there may be some decking around the pool at some point. He can use part of the house as a barrier.

Chairman Bogar asked if there was anyone present to address this application – there was no response. A letter was received from a resident at 31 Clinton Road who opposed the Area Variance request. This letter has been made a part of the file.

There being no further input, the Public Hearing was closed at 6:25 P.M.

At this time, Board Members reviewed the file and went thru 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, all in agreement;

- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in agreement;
- The requested variance is substantial – response: no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no, all in agreement.

Motion was made by Board Member John Montrose to approve the application as presented; 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 John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Julius Fuks, Jr. - yes
Board Member Karen Stanislaus - yes

Motion **approved** by a vote of 6 – 0.

Mark Levitt, Esq. appeared before the Zoning Board of Appeals regarding the following:

Introductory meeting with new tenant for operation of convenience store and gas station at the former FasTrac at the intersection of Burrstone and French Roads to include conceptual overview of installation and replacement of antiquated structures and fixtures, creation of green space, and for general upgrading of property.

Discussion of necessity for any variances seen necessary by this Board and continuation of same use of property.

Current permit sought for repair/replacement of canopy, removal of which is being required by New York State Department of Conservation.

The Board discussed the request of Attorney Levitt who attended the meeting with Mr. Keith Bushinger and Mr. James Clifford.

Attorney Levitt presented an aerial photo of the site which dates back to 1953 or 1954. He gave a brief history of what transpired at that site, it was a shell gas station until 2001 then it was operated by Bull Brothers. At that time Bull Brothers wanted to have it as FasTrac. It was to be remodeled and brought up-to-date; however, that did not occur. The existing canopy is 30 years old. In December 2010 the owner of the property received a letter that the current tenant was not going to renew their lease. In 2011, discussion ensued between owner and tenant with no resolution. Another tenant expressed interest to rent the property, keep it a gas station/convenience store, and bring it up-to-date with more modern facilities. In the course of

discussion, it was discovered that the canopy, under the Town of New Hartford Ordinance, requires a Building Permit. Some discussion also took place regarding a demolition permit and responsibilities of the current tenant or property owner.

Chairman Bogar referred to whether this canopy is a building or structure. The Board Members discussed this issue and it was the consensus of all Board Members in attendance that this is a structure as it is not enclosed by walls.

When the current tanks were going to be removed, some leakage was found. They were contacted to take down the canopy. Attorney Levitt said as soon as they found out about the problem and as long as it is mandated by a State authority, they felt it is a mandated demolition and to replace the canopy in the same location should be deemed nothing more than a repair. He presented an architect's rendering of what they would like to do, it showed the 30 year old canopy and replacing it with a slightly larger one. They would like to move the old 50-year building from the back of the property right up to the property line. The Bushinger green house is next to it with some green space in between. They would like to put in a more modern building, add some greenery, cut out one of the entrances to have only one (1) entrance on French Road and one (1) entrance on Burrstone Road. They feel they will take a dilapidated structure and make it more modern, and better parking. With designated parking spaces.

Chairman Bogar asked Codes Officer Booth if this needs to go to the Planning Board. Attorney Levitt said there is no formal application yet to the Planning Board, but he would like to parallel any application at the Zoning Board with the Planning Board if necessary.

This request doesn't change the neighborhood, it will be better than what is there now, and it cleans up an environmental problem – everything will be state of the art and this is being done at the new developer's expense.

Chairman Bogar addressed setbacks. Codes Officer Booth explained this property is zoned Planned Highway Business. This use is not an allowed use – no specified setbacks from the property line. Discussion ensued regarding a Use Variance or determination of a grandfathered-in use. Attorney Levitt referred to a case for a grandfathered-in use.

Board Member Kiehm asked if anything could be done without moving the tanks. Attorney Levitt stated the tanks are out. NYSDEC is watching this and they will test it.

Chairman Bogar asked when they will come in for a demolition permit for the canopy – Attorney Levitt said tomorrow.

Attorney Levitt is seeking some kind of conceptual approval of the replacement of the canopy at this location, guidance and then come back when necessary. He would meet with Codes Officer Booth to see what goes to the Zoning Board, and Planning Board if necessary to come out with a restored property going through the proper procedures.

Board Member Tallman said he understands the need for the canopy and approval tonight. It is important to the applicant's plans to get this approved.

Board Member Fuks addressed the grandfathering activity and explanation if necessary.

Chairman Bogar felt this Board should address the canopy this evening as the first step then work with them and Planning Board to get the process moving forward.

Mr. Clifford stated that this new layout improves parking and traffic flow on site. There are 165 parking spaces now with the new plan. They will have the same number of pumps there now (4) but spread out more evenly. He also said the canopy is expanded out about 12' to spread those pumps out better. There is ample room to get to the site. The store is bigger because of the way they are built today. Attorney Levitt displayed a survey map of the property and also a plan dated April 15, 2011

Board Member Fuks felt this Board should address repair or replacement. Codes Officer Booth said the non-conforming statute does not apply to structures. There is a delineation between the building and structure. All non-conforming statutes are in regard to buildings – no direction on how to proceed and he suggested they come to this Board for clarification. Board Member Fuks also asked if there is anything mentioned in the Code to appurtenances as it applies to use and buildings – Mr. Booth said no.

Board Member Montrose asked if there has to be a canopy over those pumps – Codes Officer Booth said yes. He checked with the Town Attorney and it is not a building – this is a repair/replacement of the existing canopy. The Board Members all agreed.

Attorney Levitt said the canopy is absolutely needed, and the Codes Officer had shut them down.

Mr. Clifford addressed the dumpster enclosure area and it will be fenced in.

Attorney Levitt asked for the Board's input and whether a Use Variance would be contingent upon Planning Board approval to build what they want to build.

At this time, Planning Board Chairman Elis DeLia felt it hasn't been determined whether an application is coming to the Planning Board. It would be up to this Board, but sees no requirement to send to the Planning Board. If it was an allowed use it would go to the Planning Board.

Board Member Fuks agreed with Mr. DeLia and asked if this Board could determine the setbacks – Codes Officer Booth said yes.

Mr. Clifford addressed setbacks – it is 4' against the Bushinger property but it is all Bushinger property, and will remain that way. The Board reviewed the plan and discussed possible guardrails, green space, etc.

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Board Member Fuks felt because they are so close to the property line, information should be sufficient enough to determine what is on the property even though it is the same owner.

Attorney Levitt said there is a survey of the greenhouse property and they will check on that.

Chairman Bogar asked their time frame. Attorney Levitt said they don't have the site (property) back until July (when the lease is up with the other tenant). NYSDEC gave FasTrac until June 29th 2011 to get this corrected. They will start July 1, 2011 and start some site work and then proceed.

Board Member Fuks referred to NYSDEC – completion by June 29th – is it from their consultant to have it repaired. Attorney Levitt said he talked to Mr. Mark Tibbee of the NYSDEC and they are on the site every day. The NYSDEC wants this site certified and closed by June 29th, 2011 – this is the last date they gave FasTrac.

At this time it was determined by the Zoning Board members that the applicant needs to seek a Use Variance and to follow through with the Zoning Board for what they need/require.

The Board Members received a copy of the April 25, 2011 draft Zoning Board of Appeals minutes. Motion was made by Board Member Fred Kiehm to approve these minutes as written; seconded by Board Member Julius Fuks. All in favor.

There being no further business, the meeting adjourned at 7:00 P.M.

Respectfully submitted,

Dolores Shaw
Recording Secretary

dbS