

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
MAY 20, 2013**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Bogar. Board Members present were John Montrose, Fred Kiehm, Taras Tesak, Tim Tallman, Lenora Murad, and Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, Highway Superintendent Richard Sherman, Councilman David Reynolds, and Recording 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.

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The application of **Mr. Arthur Randall, 159 Bolton Road, New Hartford, New York**. Mr. Randall is requesting to construct a 30' x 8' garage addition to be attached to the existing garage. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback. Mr. Randall is requesting a 9.1' right side-yard setback Area Variance for the purpose of adding a new garage stall. Tax Map #339.006-3-29; Lot Size: 75' x 140'; Zoning: Low Density Residential. Mr. Randall appeared before the Board.

Mr. Randall explained that he has a growing family and he needs the additional space. He presented pictures of his home – he will not be going any further than the stakes shown on the property. He will continue with the existing roof line. There will be one overhang door.

Board Member Tesak asked Mr. Randall what his hardship is and if he has looked at other properties. Mr. Randall said he likes the neighborhood and this is a perfect place for him and his family. He has redone the inside also and he wants to stay there. He does not feel it will change the character of the area as there are a lot of homes with two-stall garages. Also, his neighbors support this.

Codes Officer Booth stated that this would be consistent with the other side of the garage.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:10 P.M.

Discussion ensued between the Board Members. Board Member Tesak is concerned that as we continue to expand, we are limiting some of that view between houses. Codes Officer Booth explained the Town is looking at decreasing side-yard setbacks in this area – there is a committee looking into it.

At this time, the Board Members reviewed the criteria for 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 Fred Kiehm to approve the application as presented as a need has been demonstrated; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Lenora Murad – yes  
Board Member Tim Tallman - yes

Board Member Fred Kiehm - yes  
Board Member Taras Tesak – yes  
Board Member Karen Stanislaus – yes

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

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The application of **Ms. Audrea Holmes-Rinaldo, 148 Bolton Road, New Hartford, New York** who is proposing a 12' x 24' addition onto her existing home. Section 118-69A prohibits the expansion of a non-conforming building. The applicant is requesting an approximate 6' left side-yard Area Variance for this expansion. Tax Map #339.006-3-17; Lot Size: 90' x 141'; Zoning: Low Density Residential. Ms. Holmes-Rinaldo appeared before the Board.

Ms. Holmes-Rinaldo stated she is squaring off her home. They are not going any further to the back or to the side. She stated they have a growing family and need to add another bedroom. All construction will match the existing home.

Board Member Tesak asked if they checked into building up. Ms. Holmes-Rinaldo said yes but the contractor said it wouldn't be feasible. She feels with the proposed construction it wouldn't change the character of the area.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:20 P.M.

At this time, the Board Members reviewed the criteria for 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 as he feels the applicant has presented the need; and a Building Permit to 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 Lenora Murad – yes  
Board Member Tim Tallman - yes

Board Member Fred Kiehm - yes  
Board Member Taras Tesak – yes  
Board Member Karen Stanislaus – yes

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

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The application of **Mrs. Jane Watkins, 5 Bolton Road, New Hartford, New York**. Mrs. Watkins is proposing a 24' x 10' addition to her existing home. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback. The applicant is seeking a 9' right side-yard setback Area Variance. Tax Map #339.006-2-67; Lot Size: 54' x 140'; Zoning: Low Density Residential. Mr. & Mrs. Watkins appeared before the Board.

Mr. Watkins presented each Board Member a copy of their survey and also a note from his neighbors at 7 Bolton Road (Brian and Wendy Sanders) who support his application. They want to make some improvements to the house, i.e., a laundry room on the main floor. He explained exactly where the addition would be to the existing home. All materials will match the existing home. They have lived at this address for many years.

Board Member Tesak asked if they could accomplish this any other way. Mr. Watkins said no because they have a second floor on the house. He also feels this addition will enhance the area.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:30 P.M.

At this time, the Board Members reviewed the criteria for 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 Lenora Murad to approve the application as presented as she feels the applicant has presented the need; and 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 John Montrose - yes  
Board Member Lenora Murad – yes  
Board Member Tim Tallman - yes

Board Member Fred Kiehm - yes  
Board Member Taras Tesak – yes  
Board Member Karen Stanislaus – yes

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

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Board Member Tesak addressed the Board Members stating he would like to speak with Councilman David Reynolds, who is present this evening, regarding the Bolton Road area in particular. He wanted Councilman Reynolds to give the Board his thoughts for this area and adjacent streets as there have been a number of variance requests.

Councilman Reynolds said this area is unique. There are two-story cape cod homes and ranch-style homes. Many young people are moving into the neighborhood. This is a nice area and close to the village. The fact that there is a committee looking into setback changes is good.

The Board thanked him for his input.

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The application of **Mr. Theodore Kuhn, 9167 Red Hill Road, Chadwicks, New York** who is proposing an 18' x 14' family room addition to his existing home. Section 118-69A prohibits the expansion of a non-conforming building. The applicant is seeking a 3' front- yard Area Variance for this addition. Tax Map #349.000-4-45; Lot Size: 100' x 125'; Zoning: Medium Density Residential. Mr. Kuhn appeared before the Board.

Mr. Kuhn has lived at this site for 45 years. He would like a bigger living room for him and his family to enjoy. The house was built in 1963. Mr. Kuhn said it will not change the character of the area in any way.

Codes Officer Booth said this addition has nothing to do with the setbacks. The house is 3' closer to the line than the Code allows and that is why he is here. The addition is in the back of the house and not the front.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:40 P.M.

At this time, the Board Members reviewed the criteria for 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 Taras Tesak to approve the application as presented as he feels the applicant has presented the need; and 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 John Montrose - yes  
Board Member Lenora Murad – yes  
Board Member Tim Tallman - yes

Board Member Fred Kiehm - yes  
Board Member Taras Tesak – yes  
Board Member Karen Stanislaus – yes

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

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The application of **Mr. William Yount, 12 Mayberry Place, New Hartford, New York**. Mr. Yount is seeking to install an 8’ high fence in a Medium Density Residential zone, which restricts the height of a fence to 6’. Therefore, the applicant is seeking a 2’ height Area Variance. Tax Map #329.013-1-70; Lot Size: 150’ x 175’; Zoning: Medium Density Residential. Mr. & Mrs. Yount appeared before the Board.

Mr. Yount stated he consolidated his lots. To the rear of his property (property not owned by him) there is debris and fallen trees. He would like this fence to provide additional privacy. He didn’t bring any detail on the fence because he wasn’t sure if he would get the variance.

Mr. Yount would like to bring up the berm about 1’, have a 6’ fence, and 1 foot of lattice on top of the fence. This would bring the total to 8’. Discussion ensued regarding exactly what Mr. Yount is requesting, berm, lattice, etc. Mr. Yount said he would come in from the property line about 3’ or 4’ to be able to maintain the property.

Board Member Tesak asked for a detail of what the fence would look like. Mr. Yount said he would probably get a gray or tan vinyl fence but he didn’t think he could get it in a 7’ height. That is why he will be building it up 1’, then the 6’ fence, and 1’ of lattice.

Codes Officer Booth stated to the Board that the fence can’t be placed on raised ground. A 6’ fence is allowed on virgin ground.

Board Member Tallman asked if he considered planting trees rather than installing a fence. Mr. Yount stated it would take a long time for the trees to grow. Also, this fence is in the back and they would like their privacy.

Chairman Bogar asked if there was anyone in attendance to speak on this application – there was none. The Public Hearing closed at 6:45 P.M.

Chairman Bogar stated Oneida County 239 Planning had no comments; also, no adverse comments from NYSDOT.

The Public Hearing opened again at 6:48 P.M. Board Member Kiehm wanted to know what we are voting on – what type of fence. Mr. Yount said it would definitely be a grey or tan vinyl fence with lattice on top. Board Member Stanislaus referred to a fence in the area. She asked Mr. Yount if he spoke to any of his neighbors regarding this fence. Mr. Yount said yes and they had no opposition. He reiterated that the debris and mess behind his property does not belong to him. Chairman Bogar asked Mr. Yount if the additional 1’ of lattice on top would give him the privacy he requests – Mr. Yount said yes.

The Public Hearing closed again at 6:50 P.M.

At this time, the Board Members reviewed the criteria for 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: difference of opinion;
- 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: difference of opinion.

Motion was made by Board Member Lenora Murad to approve the application as presented as she feels the applicant has presented the need; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - no	Board Member Fred Kiehm - yes
Board Member John Montrose - no	Board Member Taras Tesak – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus – yes
Board Member Tim Tallman - no	

Motion was **approved** by a vote of 4 - 3.

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The application of **Mr. William Jardinella, 4 Briarwood Lane, New Hartford, New York** who is requesting to attach a 12’ x 21’ carport onto his existing garage. Zoning in this area is Low Density Residential, which requires a 15’ side-yard setback. Therefore, the applicant is seeking a 7’ right side-

yard setback Area Variance. Tax Map #339.005-3-2; Lot Size: 94' x 189'; Zoning: Low Density Residential. Mr. Jardinella appeared before the Board.

Mr. Jardinella stated he thought about building on to the garage but decided on a carport with open ends (front and back) which would enable him to get to the rear yard. He can't add on to the other side because of a deck and pool. There is no other way he can accomplish this. This will match the existing garage. He will not be cutting down any trees.

Board Member Montrose asked about the back yard. Mr. Jardinella said he needs to get back there to mow. Board Member Tesak asked if the carport would occupy a car. Mr. Jardinella said yes – two in the garage and one in the carport. Mr. Jardinella said he would need a variance whether he added a garage or carport.

Codes Officer Booth stated this variance is mostly towards the front. Board Member Tesak asked Mr. Booth if he thought this would change the character of the area – Mr. Booth stated no. Board Member Tallman asked Mr. Booth if he knows of anyone else in the neighborhood that close to the property line – Mr. Booth said he doesn't know.

Board Member Tesak addressed what is located on the property at this time. Codes Officer Booth addressed impervious coverage which does not include an in ground pool or deck.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 7:10 P.M. The Public Hearing was opened again at 7:12 P.M. Board Member Stanislaus asked about materials – it will be vinyl. The Public Hearing closed again at 7:15 P.M.

At this time, the Board Members reviewed the criteria for 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: difference of opinion as it will be close to the property line;
- 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: yes – all in agreement.

Motion was made by Chairman Bogar to deny the application as presented as he feels this has not met the criteria, too close to the property line, and it would change the character of the area; seconded by Board Member Tim Tallman. Board Member Karen Stanislaus stated she would be abstaining from voting. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes

Board Member Fred Kiehm - no  
Board Member Taras Tesak – yes

Board Member Lenora Murad – no  
Board Member Tim Tallman - yes

Board Member Karen Stanislaus – abstained

Motion to deny was passed by a vote of 4 – 2 and one abstention.

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The application of **Mr. Daniel Phillips, 19 Terrace Hill Drive, New Hartford, New York**. Mr. Phillips is proposing to construct a 9' 6" x 20' 8" kitchen addition to his existing home. Zoning in this area is Low Density Residential and an expansion of a non-conforming building is not permitted. The applicant is seeking a 7.14' ± right side-yard setback Area Variance. Tax Map #339.006-1-38; Lot Size: 61' x 127'; Zoning: Low Density Residential. Mr. Dan Phillips and his contractor, Rob Luckina, appeared before the Board.

Mr. Phillips said this doesn't affect any setbacks. They have a growing family and they would like the additional space. The property has been surveyed. He stated that the neighbor supports his application. The addition will blend in with the rest of the home. They are proposing to get rid of part of the deck.

Board Member Tesak asked Codes Officer Booth to explain the setback differences in various zones. Codes Officer Booth explained the differences and what the zoning required in 1999. Some zones need to be looked into further regarding setbacks.

Chairman Bogar asked if there was anyone in attendance regarding this application – no response. The Public Hearing ended at 7:25 P.M.

At this time, the Board Members reviewed the criteria for 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 as he feels the applicant has presented the need; and 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 John Montrose - yes  
Board Member Lenora Murad – yes

Board Member Fred Kiehm - yes  
Board Member Taras Tesak – yes  
Board Member Karen Stanislaus – yes



Board Member Tim Tallman - yes

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

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The application of Mr. Al Forte, Octagon Engineering, for **Mr. Peter Tal, 4780 Commercial Drive, New Hartford, New York**. This is a commercial property and Mr. Tal will occupy the building as a retail/office use. He would like a drive-thru at this site. A drive-thru is not listed as a use in a Retail Business 1 zone. Therefore, the applicant is seeking a Use Variance for a drive-thru. Tax Map #317.013-3-18.1; Lot Size: approximately 3.5 Acres; Zoning: Retail Business 1. Mr. Al Forte and Messrs. Peter and John Tal appeared before the Board.

Mr. Forte passed out a new drawing as they moved the parking to the opposite side of the building. Also, Mr. Forte is presenting this based upon an Interpretation as to whether or not a retail drive thru is consistent with the existing Ordinance. If not, he will seek a Use Variance request – both done simultaneously.

Chairman Bogar addressed the public in the event anyone was here to look at the application.

Mr. Forte represents Peter and John Tal who own three (3) buildings at this location: Raspberries, Gallery and another building next to the Gallery. The Interpretation is for the middle building known as the Gallery. Mr. Forte stated this property will be used for a tobacco store in the front and with offices in the rear of the building to be housed by the Tal's. The Tal's sought information regarding a tobacco shop with the cigar industry and the profitability with and without a drive thru. It was indicated that sales with a drive thru were greater. They are trying to minimize the curb cuts out to Route 5A. They have met with NYS DOT and they don't have an objection to routing through the Raspberries site – entering at the Gallery site and existing at the Raspberries site. A permanent easement would be needed into the Raspberries site.

Mr. Forte stated they need more data to build the drive thru. Also, NYSDEC sent a letter with regard to the flood plain. They feel the criteria is met for the NYSDEC, but he will check further. He does not feel this property is in the flood plain, but will check into it – he would verify it with a survey. The front of the Gallery will be renovated; Mr. Forte displayed the existing layout and proposed floor plan.

Mr. Forte addressed parking for a commercial use and office use. They had eleven (11) spaces but now have seven (7). About three (3) people will work in the office. The cigar store will be a walk-in as well.

Board Member Tesak asked Mr. Forte to again explain the movement into the Raspberries site. – Mr. Forte explained. He mentioned that there will be no parking spaces removed from Raspberries. Further,

there is a disparity in elevation and they will build it up. Some grass will be removed and blacktop installed, but they still meet the permeable requirements. There will be no infringement at Raspberries.

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

-Kim Hubbard, 34 Royal Brook Lane. She wanted to know how late the drive thru would be open – it was stated 9:00 P.M. Further, she mentioned there is a flooding problem at these sites which filters near her home. There is noise from Commercial Drive and she wanted to know if they were going to construct a barrier; also, any lights proposed. Mr. Forte said he didn't want to touch the shrub barrier because of the berm. She wants the flooding to stop. She is also concerned about cigar butts on the property – Mr. Tall said he would maintain the property. Mr. Forte also mentioned erecting an enclosure for garbage, etc.

The Tal's purchased the property less than a year ago – they will work with the Town and residents regarding issues of flooding, etc.

Mr. Forte talked with Highway Superintendent Rick Sherman and there is a sanitary vent on site – they have to relocate it. This sanitary sewer connects to a manhole. He will discuss this further with Mr. Sherman.

Board Member Murad doesn't feel this discussion is part of the Interpretation.

Mr. Forte said the sign will remain, painting on pavement for the drive thru. Any lights or even fencing would be discussed further.

At this time, Board Member Tesak addressed the Interpretation for a drive thru in a Retail Business zone. In this case it is for a cigar store drive thru.

Attorney Cully stated that if we approve this, we should condition it to go before the Planning Board for Site Plan Review on this application only.

Codes Officer Booth stated that based on this current drive thru, this would never be used as a restaurant use in this current configuration. He is concerned about egress into Raspberries. Right now it is an entrance only.

Mr. Forte said the NYSDOT will not allow another curb cut. He understands this Board's concern with traffic flow and the Planning Board could address it. Mr. Forte also mentioned changing the traffic flow from Raspberries.

There being no further input, the Public Hearing closed at 8:15 P.M.

Chairman Bogar referred to NYSDOT comments, which are a part of the file, and OC Planning not received yet.

Mr. Daniel Tobiasz, adjacent property owner, supports this application.

The Interpretation is being addressed at this time: The Board Members discussed this and decided it is not an Interpretation but should be submitted for a Use Variance. It was unanimous.

The Public Hearing reopened at 8:20 P.M. Mr. Forte asked to table this application so he could re-review the plans. Mr. Forte distributed additional financial information to the Board Members. He would like to get the information together for meeting the criteria of a Use Variance.

Attorney Cully said the applicant needs to come back with financial information, income and expense statements based on projections. The applicant has to prove there is no possible permitted use for this property. He suggests an accountant or someone familiar with accounting to prepare this. Further, if granted, to send this to the Planning Board for this project only.

Board Member Tesak wanted to retract his vote as he thought about it and wants to review this as an Interpretation. Discussion ensued between Board Members and it was decided to leave the vote for the Interpretation as is – that it is not an Interpretation but an application for a Use Variance (Board Members Tesak and Murad wanted to rescind – other Board Members wanted to keep the vote as addressed).

Motion was made by Chairman Bogar to table this application for the applicant to submit further financial information for a Use Variance for this one lot known as the Gallery; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Lenora Murad – yes  
Board Member Tim Tallman - yes

Board Member Fred Kiehm - yes  
Board Member Taras Tesak – yes  
Board Member Karen Stanislaus – yes

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

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The application of **Mr. Matthew Wilsey of New York State Tool Company, 3343 Oneida Street, Chadwicks, New York**. Mr. Wilsey is proposing to construct a 1,506 sf addition to his business (New York State Tool Company). The applicant is located in a Neighborhood Business zone (RB4), which does not allow for a manufacturing factory, thus, any expansion of a non-conforming use requires a Use

Variance. Tax Map #349.020-1-58; Lot Size: .63 Acres; Zoning: RB4 (Neighborhood Business). Mr. Matthew Wilsey and Mr. Michael Bonacci (contractor), appeared before the Board.

Attorney Cully explained that anything Mr. Wilsey does on this property needs a Use Variance request. It is a non-conforming use.

Mr. Wilsey is proposing to take the existing building and extend it 20' straight back. There will be no doors on the back of this building. He mentioned that the two (2) sheds will be removed. He'd like this space for additional machines. He has plenty of parking on site and explained shift work hours. Mr. Wilsey said he cannot expand any more on this site. He would like to keep the people working and for him to purchase another building wouldn't be cost effective. He is looking into air conditioning but it depends on the cost involved.

Codes Officer Booth said there are no setbacks for this building in that zone.

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

-Mr. & Mrs. Driscoll, Oneida Street. They are concerned about noise. They appreciate what Mr. Wilsey is doing and he does try to work with them, but it gets noisy especially when the doors are open. She is also concerned about traffic as there are huge trucks that come in.

Mr. Bonacci said an engineer was at the site today regarding an air system. Mrs. Driskell said that would certainly help. Mr. Wilsey feels the new machine wouldn't create a problem at the new site.

Mr. Wilsey addressed the truck traffic and when it comes in. Trucks never come in the morning and equipment has only been delivered twice in the last 20 months.

Board Member Montrose asked Mrs. Driskell if she had concerns regarding garbage – she said no.

Board Member Tallman asked if air could be moved from the front to the back. Mr. Wilsey said manufacturing is in the back. He is working on the air system and hopes to do something if feasible.

Board Member Tesak asked if adding the new machines would create any additional deliveries – Mr. Wilsey said no. Discussion ensued regarding a possibility of changing delivery times.

Board Members Murad and Stanislaus asked the Town Attorney if he still has to deal with all the criteria for a Use Variance. Town Attorney said the use is already there. The use will be there whether we grant it or not. He still has to show the economic hardship, financials, but he has a non-conforming use.

Board Member Tesak asked Codes Officer Booth where this type of business would normally be located – Mr. Booth said in a manufacturing zone.

Board Member Tesak asked if there was any other way to expand – Mr. Wilsey said no. He would have to either buy a building or move.

-Mr. Tom Roberts. Mr. Wilsey keeps the building and area clean, and he employs at least 20 people. It helps the Town and County. He does a good job.

Board Member Tesak asked if this would change the character. Mrs. Driskell said they might see a difference. It was explained what surrounds this area.

Mrs. Nancy Kneller, Oneida Street. She doesn't have a problem with this request, and she doesn't notice the trucks. Also, she stated the Carey's, Oneida Street, couldn't come this evening but they support the application.

The Public Hearing closed at 9:15 P.M.

Board Member Tesak has concerns with adding on to non-conforming uses. He is not against the application, but tries to use a balancing act to benefit the Town and applicants.

The Public Hearing opened again at 9:20 P.M. Mr. Wilsey was asked if people park next to the building – Mr. Wilsey said no. He was also asked if he could put trees by this addition. Mr. Wilsey explained the roofline there and doesn't know if that would work. He said he has done whatever he could to minimize the noise – the Driskell's agreed.

The Public Hearing closed again at 9:25 P.M.

At this time, the Board Members went through the criteria for granting a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: 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 – response: yes;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: - it won't alter the character;
- The alleged hardship has not been self-created – response: not self-created

Motion was made by Board Member Fred Kiehm to approve the Use Variance request as presented as he feels he met the criteria for a Use Variance; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Lenora Murad – yes  
Board Member Tim Tallman - yes

Board Member Fred Kiehm - yes  
Board Member Taras Tesak – no  
Board Member Karen Stanislaus – no

Motion to **approve** was passed by a vote of 5 - 2.

Board Member Tesak asked Codes Officer Booth if we could govern what goes in there as it is a non-conforming use. Mr. Booth said he is assuming it is a legal non-conforming use. (Board Member Tesak stated this is why he voted no).

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**Correspondence:** Request from **Mr. Michael Martyniuk, 24 Benton Circle, New Hartford, New York** for an extension to his approval from the Zoning Board of Appeals on June 20, 2011. He was granted an approval for a 19' x 24' garage onto his existing home. Mr. Martyniuk is now prepared to start construction. Sunset clause on his approval was for one (1) year, thus, the request for an extension to secure a Building Permit for this project. Tax Map #339.018-4-21; Lot Size: 90' x 132'; Zoning: Low Density Residential.

The Board Members agreed with Mr. Martyniuk's request for an extension. Motion was made by Board Member Tim Tallman to extend Mr. Martyniuk's approval for his application #2011-15 for one (1) year; seconded by Board Member Taras Tesak. Vote taken:

Chairman Randy Bogar – yes  
Board Member Taras Tesak – yes  
Board Member Karen Stanislaus – yes  
Board Member Fred Kiehm – yes

Board Member Tim Tallman – yes  
Board Member John Montrose – yes  
Board Member Lenora Murad – yes

Motion **passed** by a vote of 7 – 0. Mrs. Shaw will contact Mr. Martyniuk.

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Minutes of the March 18, 2013 meeting were approved by Board Member Taras Tesak; seconded by Board Member Fred Kiehm. All in favor.

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There being no further business, the meeting adjourned at 9:45 P.M.

Respectfully submitted,

Dolores Shaw  
dbs

