

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
JUNE 17, 2013**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Bogar. Board Members present were John Montrose, Fred Kiehm, Byron Elias, Tim Tallman, Lenora Murad, and Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, 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.

Chairman Bogar also introduced newest Board Member, Byron Elias. He mentioned Mr. Elias' past experience with this Board and welcomed him. Chairman Bogar also congratulated Board Member Fred Kiehm for his reappointment to this Board; and also recognized former Board Member Taras Tesak for his input and service to this Board for the last year.

The application of **Mr. Richard Owens** who is proposing to construct a single-family home on property he owns on Oxford Road. A driveway needs to be 3' from a property line. The proposed driveway is going to cross side property line necessitating a 3' right side-yard Area Variance. Tax Map #349.000-4-16.1; Lot Size: approximately 78 Acres; Zoning: Agricultural. Mr. Scot Owens appeared before the Board for his parents.

Mr. Owens explained that the new drive would be connected to the existing farm drive. His brother owns a piece of the property also. At one time it was all part of the parent parcel. Because his parents are building a home at this location, a driveway needs to be extended. There is no other way to place the driveway anywhere else. Board Member Elias said there is access for a fire truck to get to the site.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:10 P.M. County 239 Planning and County DPW responses came back with no significant impacts.

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 he feels the applicant has presented the need; and a Building Permit be obtained within one 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 Byron Elias – yes
Board Member Karen Stanislaus – yes

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

The application of **Mr. Eric Newman, 1911 Sherman Drive, Utica, New York (Town of New Hartford)**, who is requesting to have his fence 7 ½' in height. This exceeds the height limitation of 6'. Therefore, the applicant is requesting a 1.5' height Area Variance for his fence. Tax Map #340.012-1-17; Lot Size: 123' x 180'; Zoning: Low Density Residential. Mr. Eric Newman appeared before the Board.

Mr. Newman explained that the variance is for one corner of the fence only. The fence on the other side is 6' in height. He submitted a list of nearby residents who support his application (which has been made a part of the file).

Board Member Murad felt the variance should be granted to make the fence look more uniform. Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at approximately 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 Fred Kiehm to approve the application as presented as he feels the applicant has presented the need, especially because of the contour of the property; and a Building Permit be obtained within one year of approval date; seconded by Board Member Karen Stanislaus. 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 Byron Elias – yes
Board Member Karen Stanislaus – yes

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

The application of **Mr. Michael Sheridan for Mr. Robert Cunningham (Cunningham Coins), 4520 Commercial Drive, New Hartford, New York.** The applicant is located in a Retail Business 1 zone which requires one parking space per 200 sf of building. Applicant is required to have 32 parking spaces but provides 18. Therefore, the applicant is seeking a 14 parking space Area Variance. Tax Map #328.008-1-12; Lot Size: .73 Acres; Zoning: Retail Business 1. Mr. Michael Sheridan appeared before the Board.

Mr. Sheridan explained why he was back before this Board again. The building has been developed and they want to develop in the rear of the property but lack parking. There is existing parking there now. About 2' of those parking spaces encroached on NYSDOT property. NYSDOT wanted about \$5,000 a year for the use of that portion. Therefore, his clients are amending their application. The parking in front they have modified – changed to parallel parking which does not encroach on NYSDOT property. They can provide 18 parking spaces of the 32 required. They are locked by property and also the hill in the rear.

Codes Officer Booth said the parking spaces were figured on use and occupancy of the building. He asked Town Attorney Cully, is the use of the building locked in by the use stipulated on the plan – Town Attorney Cully said no.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:28 P.M. County Planning 239 had no comments.

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 he feels the applicant has presented the need; and a Building Permit be obtained within one 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 Byron Elias – yes
Board Member Karen Stanislaus – yes

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

The application of **Mr. Frank Margot for property owned by C. Louis Ablove, 3385 Oneida Street, Chadwicks, New York.** Mr. Margot is seeking an Interpretation on whether or not his business is classified as an automobile service station or body shop at this prospective location. Zoning is Retail Business 2 (RB2) and Neighborhood Business (RB4). Tax Map #349.020-1-69; Lot Size: approximately 3 Acres. Mr. Frank Margot appeared before the Board.

Attorney Cully asked Secretary Dory Shaw to look for previous files on Mr. Ablove. He researched this and found that on April 17, 1986 with Clarence Reynolds as Chairman and Herb Cully as a member of the Zoning Board, Mr. Ablove was granted a variance for a full service body shop. He feels this gentleman thinks this comes within a full service body shop usage. A condition was that an 8' fence or other size applicable with Codes was to be installed and two (2) lights on the building. Both the lights and fence would be maintained. If any body work was done, it was to be done in the building and also not done at night. The variance runs with the property and this property already has this variance subject to those conditions.

Mr. Margot said this property has been neglected for a long time. His use is a little different than a body shop – he does frame work, He would put up the fence and lights - Town Attorney Cully said this would be between Mr. Margot and the property owner. Mr. Margot is purchasing the property from Mr. Ablove. He asked where this fence is to be located.

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

He remembers the fence was to be along the rear property line.

-Mr. Paul Toomey, 9286 Grange Hill Road. Mr. Ablove was suppose to put up a fence. The only place there is one is along the properties on Oneida Street and up grange Hill. The reason was because of the junk that was there at the time. The lights were requested to protect the cars. He addressed water problems at the site also.

It was stated that the water situation was not a part of this variance review. However, Board Member Elias asked Mr. Margot if he was going to do anything with the drainage. Mr. Margot said he wants to open up the other driveway as there is a swale there. With the removal of the berm it should be better. Mr. Margot knows this Board doesn't have jurisdiction over drainage.

-Mr. Ed Wiatr. He thanked the Zoning Board for their expert work. He agrees with Town Attorney Cully that this gentleman already has the variance. He feels the water issue isn't relevant. If Mr. Margot agrees with the 8' fence and lights, then that's it. However, Codes Officer Booth may find something else. He feels if Mr. Margot agrees to those original terms, this application is null and void.

Board Member Stanislaus asked if she could see the original stipulation for the fence. Mr. Toomey said it was in the back.

Town Attorney Cully read from the variance of 1986 where Mr. Abelove was going to finish a portion of the lot with a stockade fence to shield the residents from the automobiles.

Mr. Margot said he will not have any outside storage. He mentioned all of the cars are removed except for two left in the building and three out back – but they will be removed.

Board Member Stanislaus asked if Mr. Margot could do body work – answer was yes. Town Attorney Cully said Mr. Margot can withdraw the application and stand with the variance or comply with the terms of the previous stipulation.

Both Chairman Bogar and Town Attorney Cully asked Mr. Margot if he was going to withdraw his application and work with Codes Officer Booth on the issues regarding the 8' fence and lights. Without the Interpretation he has to put the 8' fence along the back side of the property wherever the fence exists now on Oneida Street and Grange Hill. The other option is to get rid of the 8' fence and put in 6' – we can enforce those conditions. But because the previous variance says 8', it has to be.

Mr. Margot said he still wants to go through with the Interpretation request as he feels he is not a body shop. He straightens frames. Codes Officer Booth said this is included in a body shop.

Discussion ensued with the public regarding the location of the fence and why.

Board Member Tallman feels from his experience this falls under a repair shop.

Board Member Elias asked Mr. Margot what he plans to do with the property. Mr. Margot said fix the front of the building and clean up the yard. He would remove old buildings in the back, and the lawn needs mowing. He will clean the place up.

-Resident at 9292 Grange Hill Road. The fence there now is run down – he wants to make sure it doesn't get worse.

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

Chairman Bogar said this Board needs to decide on an Interpretation on whether this is a service station or body shop. If it is a body shop, he already has that variance which was approved in 1986. Board Member Tallman feels this is better for the people in the area. Board Member Elias said if he operates as a body shop, he has to conform to the conditions. Codes Officer Booth said the only reason Mr. Margot is here is a body shop includes frame work.

The Public Hearing reopened again at 6:53 P.M. At this time, Mr. Margot withdrew his application for an Interpretation. The Public Hearing ended again at 6:55 P.M.

Mr. Margot will conform with the conditions of the 1986 variance for the fence and lights.

The application of **Mrs. Jennifer LaVere, 11 Wheatley Circle, Utica, New York (Town of New Hartford)**. The applicant lives on a through lot with two (2) front yards. She is seeking a 72' and 4' front yard Area Variances to place a 6' tall fence. Tax Map #330.013-1-21; Lot Size: 318' x 170'; Zoning: Low Density Residential. Mr. LaVere appeared before the Board. (Correction to show 8' not 4', and it was republished in the Observer Dispatch and residents re-notified).

Mr. LaVere presented a petition of neighbors who support his application (which has been made a part of the file). His lot is unique. He would like a safe area for his children to play and also for his dog. He and his family love the area and want to stay in this location. There is no visibility problem and he will keep with the beauty of the neighborhood. He will be coming out 8' from the front of the house. He feels this fence will not change the character of the neighborhood. If the fence was shorter, it would defeat the purpose of safeguarding his family. Mr. LaVere did not have a picture of the proposed fence but he said it would be wooden, a flat slat with the corners cut off (something like a picket fence) – about 2" between slats. He drew a picture for the Board's review. He said it would look like the neighbor's across the street.

Chairman Bogar asked if there was anyone present to address this application – no response. Chairman Bogar stated a call came in today from a resident who had concerns and asked that the applicant have a survey to make sure they stay on their own property - also, a concern about visibility. The Public Hearing closed at 7:05 P.M.

Discussion ensued about location of the fence – it will not be placed on the property line – Mr. LaVere has a survey map.

The Public Hearing reopened at 7:10 P.M.

The fence will be in about 18"-21" from the line. Board Member Elias asked Codes Officer Booth if a fence can be placed on the property line – Mr. Booth said yes. However, Mr. Booth is concerned whether Mr. LaVere could locate the pins from the survey – Mr. LaVere said yes.

Board Member Stanislaus asked Town Attorney Cully if there were any problems with the property line or trees, would Mr. LaVere have a separate course of action – Mr. Cully said yes. The existing trees would not be touched (these trees are on the property line). The Public Hearing closed again at 7:15 P.M.

Board Member Kiehm feels this fence would alter the character of the neighborhood and he only supports a fence that is in compliance. Codes Officer Booth said Mr. LaVere is not allowed a fence in this area.

The Public Hearing opened again at 7:18 P.M. Board Member Tallman asked Mr. LaVere if a shorter fence would do - Mr. LaVere said no. He is concerned about the safety of his children. The Public Hearing closed again at 7:20 P.M.

The Public Hearing opened again at 7:25 P.M. Discussion ensued between the Board Members and Mr. LaVere on whether the 6' fence is necessary and whether he would be willing to place shrubs along the fence line. Mr. LaVere said the 6' fence would provide the safety and privacy his family needs. He also referred to the signature he submitted from his neighbors who support his application. Mr. LaVere stated he has lived there for five (5) years. The Public Hearing again closed at 7:32 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;
- 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: difference of opinion;
- 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.

Motion was made by Board Member Byron Elias to approve the application as presented with amendments to include bushes 3' high and 5' apart to buffer the fence at the 72' x 56' side; that the fence be the same type of fence as Mr. LaVere's neighbor (as stated by Mr. LaVere); and a Building Permit be obtained within one year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - nay
Board Member John Montrose - nay	Board Member Byron Elias – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus – yes
Board Member Tim Tallman – yes	

Mr. LaVere asked if he was willing to go along with all of the conditions – Mr. LaVere said yes. However, the fence across the street has a scalloped look and he wants it straight. Board Member Stanislaus said straight is fine with her. The Board agreed.

Motion was **approved** by a vote of 5 - 2.

The application of **Mr. Kevin Cough, 5 Old Willow Road, New Hartford, New York**. The applicant is located on a corner lot in a Low Density Residential zone. He is seeking a 5' rear yard Area Variance to construct a roof over his deck. Tax Map #339.005-2-15; Lot Size: 139' x 125'; Zoning: Low Density Residential. Mr. Kevin Cough appeared before the Board.

Mr. Cough explained that he wants to place a roof over his deck. It may extend beyond the existing deck about 6". He feels it doesn't detract from anything, as it is located in the rear of his property.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 7:40 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 Lenora Murad to approve the application; and a Building Permit be obtained within one year of approval date; seconded by Board Member Karen Stanislaus. 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 Byron Elias – yes
Board Member Karen Stanislaus – yes

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

Chairman Bogar addressed the application of Mr. Peter Tal, Commercial Drive, New Hartford. This application was presented at the May 20, 2013 Zoning Board meeting for a Use Variance for a drive-thru cigar store. His engineer, Mr. Alex Forte, has sent an email withdrawing the request for a Use Variance for his client, Mr. Pall, at 4780 Commercial Drive.

Minutes of the May 20, 2013 meeting were received by each Board Member. Motion was made by Board Member Fred Kiehm to approve the minutes as written; seconded by Board Member Tim Tallman. Vote was 6 – 0 to approve (Board Member Byron Elias abstained as he was not in attendance).

Respectfully Submitted,

Dolores Shaw
Recording Secretary
Dbs