

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
JULY 15, 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, and Karen Stanislaus. Board Member absent: Lenora Murad. Also in attendance were Town Attorney Herbert Cully, 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 stated that there is one (1) Board Member absent.

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The reapplication of **Mr. Rob Kessler for Mr. Ryan Decker, 219 Valley View Road, New Hartford, New York** who is requesting to add a 22' x 28' garage onto his 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 #330.019-1-38; Lot Size: 100' x 364'; Zoning: Low Density Residential. Mr. Robert Kessler appeared before the Board. He was at the June 17, 2013 meeting, however, he had a change and resubmitted his application.

Mr. Kessler said they had a survey done of the property and that is why the change occurred. The Board had addressed the particulars of this application at the June 17<sup>th</sup> meeting.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:10 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 year of approval date; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm - yes  
Board Member Byron Elias – yes  
Board Member Tim Tallman - yes

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

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The application of **Clifford Fuel Company, Inc., 3931 Oneida Street, New Hartford, New York**. This area is zoned Retail Business 2 which does not permit LED signs. Therefore, the applicant is seeking an exception to the Zoning Law, which only permits LED signs in a Retail Business 1 zone. Tax Map #339.016-1-73; Lot Size: .98 Acres; Zoning: Retail Business 2. Mr. John Lytwynec appeared before the Board.

Mr. Lytwynec stated they wanted to replace a double-sided sign with a new LED sign with a price on it. It will be the same dimensions as what is there now and at the same location. The gas station across the street has an LED sign. It will just show the price of gas only on both sides – no scrolling messages. This will stay lit. LED signs are now a sign of the future and easier to maintain.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:15 P.M. Oneida County Planning 239 and OCDPW comments were received with no negative 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 Fred Kiehm to approve the application as presented; also, 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 Tim Tallman. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm - yes  
Board Member Byron Elias – yes  
Board Member Tim Tallman - yes

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

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The application of **Trahwen-B, LLC (Consumer Square), 4765 Commercial Drive, New Hartford, New York**. The applicant is requesting 1) quantity Area Variance for three (3) additional freestanding signs ; 2) quantity Area Variance for number of building signs – 31; projection Area Variance for 31 wall signs of 22”; 4) height Area Variance for one (1) freestanding sign of 26’. Tax Map #317.013-3-23.61; Lot Size: 20+ Acres; Zoning: Retail Business 1. Mr. Matthew Oates, Civil Engineer, Benderson Development Company, appeared before the Board.

Mr. Oates explained the proposed signage at the Consumer Square site. He also explained they are working on a new traffic signal at the north entrance, which will be a full service entrance. In addition, they replaced the internal traffic signal and working with NYSDOT for better use of the outside signal. The signs and new signals will help encourage pedestrian access to the site. The pylon sign will help identify the plaza; it will be slightly lower. The second sign will be 150' further to the north and will help with visibility at main entrance. They are looking to mix up the stores for other tenants. The Planning Board approved three (3) new buildings for this plaza; two for out parcels and the new signage will provide better visibility for future tenants. The third sign is by Judd Road/Route 840. It is 24' below the pavement by Judd Road. It is 51' high but only about 38' above Judd Road. They have utility easements. They can't move any closer to the right-of-way up the hill. This will face Route 840 and it is about 15' off the right-of-way and about 20'-25' off the pavement. From edge of pavement about 35' – it can't be put back any further because of the water main, etc. Further, pedestrian signs – they are about 8' high and attached to the building and coming out 2' 6". The sign size is about 1' 5" to help identify tenants. These will be internally lit - proposed for each retail tenant.

Mr. Oates addressed the criteria and how he feels this application meets the requirements.

Attorney Cully gave a history of what transpired at the site a few years ago regarding a traffic accident, illegal turns, etc. Benderson has been working with NYSDOT to try to alleviate those concerns. The Town, Benderson and NYSDOT have been working together and now there will be a light at the Panera's entrance. There will be better traffic flow as a result of their endeavors. There will be no change at the current light. NYSDOT has control of the signals so that as traffic patterns change, it makes it easier for NYSDOT to monitor the situation. Also, they are adding a cut thru from Wal-Mart lot.

Board Member Stanislaus wanted better clarification of the 51' sign. Board Member Kiehm had an issue with the Route 840 sign; Board Member Montrose had concerns with the mounted signs.

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

Mr. Ed Wiatr. With regard to Board Member Kiehm's comment regarding Route 840 sign – the existing buildings already have signs. On the rear of the buildings they have the name of the retail store. It is redundant. There is a sign on the side also – Best Buy. Mr. Wiatr asked who is paying for the signal.

Attorney Cully said the Town is using mitigation fees for some portion, and Benderson is paying about \$130-150,000 but he is not sure of the amount. It is more of a safety issue for everyone. He referred to the GEIS and mitigation fees paid in lieu of offsite SEQR for improvements of which one is traffic.

Mr. Wiatr referred to the second signal, it doesn't relate to the litigation. He doesn't feel the Route 840 sign is warranted. Attorney Cully explained that based on litigation, NYSDOT is now of the mindset that there should be two (2) lights. The goal is two (2) entrances and exit areas.

Chairman Bogar stated calls were received from the following:

- Mr. Dan Tobiaz, Commercial Drive – no objection
- Ms. Joan Mile ski, 16 Royal Brook Lane – in opposition, concerned with lighting
- Ms. Christine Blum, 24 Royal Brook Lane – in opposition, concerned with lighting

The Public Hearing closed at 6:45 P.M. County Planning 239, OCDPW, and NYSDOT responses were received with no negative comments.

The Board Members decided to review the requests individually. Concern was expressed about the Route 840 sign as there are no billboards along that route.

**A) At this time, the Board Members reviewed the criteria for an Area Variance for Panera sign location:**

- 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 for the Panera sign location, 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 Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - 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 6 – 0.

**B) At this time, the Board Members reviewed the criteria for an Area Variance for Main entrance:**

- 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 for the main entrance, as she 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 Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Tim Tallman – yes	Board Member Karen Stanislaus – yes

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

C) At this time, the Board Members reviewed the criteria for an Area Variance for **Route 840 Sign:**

- 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: difference of opinion;
- 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 Byron Elias to approve the application for the Route 840 sign as proposed; there was no second.

Motion was made by Board Member Tim Tallman to deny the Route 840 sign application, without prejudice; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Tim Tallman – yes	Board Member Karen Stanislaus – no

Motion to **deny** was granted by a vote of 5 – 1.

D) At this time, the Board Members reviewed the criteria for an Area Variance for **Pedestrian Signs:**

- 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;
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- 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 for the pedestrian signs, 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 Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - 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 6 – 0.

Mr. Oates asked what the Board would like to see regarding the Route 840 sign if he came back. Chairman Bogar explained that there is a concern about the sign being on Route 840 and also the size.

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The application of **Mr. Steven Franchell, 3570 Snowden Hill Road, New Hartford, New York** who is requesting to construct a 16' x 16' bedroom addition onto his existing home. Zoning in this area is Agricultural which requires a 50' front yard setback. The applicant is seeking a 14' front yard setback Area Variance. Tax Map #349.000-4-79; Lot Size: 150' x 150'; Zoning: Agricultural. Mr. Don Shetler, contractor for Mr. Franchell, appeared before the Board.

Mr. Shetler stated this is a basic 256 sf addition. The siding and roofing will be the same as the existing home. There is a septic system on the property and this is the only location to have the addition. He presented photos of what the addition would look like.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed 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: 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 year of approval date; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - 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 6 – 0.

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The application of **Mr. Robert Volz, 3 Oakdale Avenue North, New Hartford, New York** who is proposing to construct a 10' x 22' roofed front porch. Zoning in this area is Medium Density Residential, which requires a 30' front yard setback. The applicant is seeking a 10' front yard setback Area Variance. Tax Map #328.012-1-17; Lot Size: 70' x 120'; Zoning: Medium Density Residential. Mr. Volz appeared before the Board.

Mr. Volz presented photos and a sketch of the proposed project. He will actually go out 7' from the front of the house, which isn't as far as he thought. He will be doing a peak roof and will maintain the same roofline. He feels this project blends in with the neighborhood.

Chairman Bogar asked if there was anyone present to address this application – no response. Chairman Bogar stated that two (2) neighbors submitted letters in support:

-Peter Hayes, 1 Oakdale Avenue North  
-John and Cassandra Gleason, 5 Oakdale Avenue North

The Public Hearing closed at 7:20 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 Karen Stanislaus to approve the application as applied and if Mr. Volz wanted to make the setback less, he may do so; also, a Building Permit be obtained within one year of approval date; seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - 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 6 – 0.

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The application **Mrs. Karen Barlow, 14 Golf Avenue, New Hartford, New York** who is proposing to construct an 8' x 24' porch onto the front of her existing home. Zoning in this area is Medium Density Residential, which requires a 30' front yard setback. The applicant is seeking an 8' front yard setback Area Variance. Tax Map #329.013-2-73; Lot Size: 35' x 180'; Zoning: Medium Density Residential. Mr. & Mrs. Barlow appeared before the Board.

Mrs. Barlow stated there is an existing porch in need of repair. She submitted pictures for the Board's review as well as drawings. The stairs won't come out the front – the roof will be over them. They are not coming any closer to the road than what is there now. It will be constructed of pressure treated wood. It will remain natural for a year then they will stain it.

Chairman Bogar asked if there was anyone present to address this application – no response. Mr. Barlow said he spoke to his neighbors and they have no opposition. The Public Hearing closed 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 Fred Kiehm to approve the application as presented, 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 Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - 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 6 – 0.

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**CORRESPONDENCE:** Request for an extension by L & D Builders for the open MRI at 4693 Commercial Drive, New Hartford, New York. The applicant has until July 28, 2013 to remove the mobile MRI unit from this site. They are requesting an extension due to delays. Tax Map #328.008-1-3; Lot Size: 19.6 Acres; Zoning: Retail Business 1.

A letter was received from QPK design asking for an extension of 180 days as they had financing issues and couldn't move forward as fast as they had hoped. Motion was made by Board Member Fred Kiehm to grant an extension of 180 days for this open MRI at 4693 Commercial Drive; seconded by Board Member John Montrose. All in attendance in favor.

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Draft minutes of the June 17, 2013 Zoning Board meeting were received by each Board Member. Motion was made by Board Member Karen Stanislaus to approve these minutes as written; seconded by Board Chairman Randy Bogar. All in favor.

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There being no further business, the meeting adjourned at 7:30 P.M.

Respectfully submitted,

Dolores Shaw  
Secretary/Zoning Board of Appeals

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