

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
OCTOBER 21, 2013**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy 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 Officer Joseph Booth, Highway Superintendent Richard Sherman, Councilman Paul Miscione, and 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. Douglas Brown/Mr. Raymond Chanatry, 11 Briarwood Lane, New Hartford, New York**. The applicants are proposing to add a 700 sf addition onto the rear of their existing home. Zoning in this area is Low Density Residential, which requires a 15' side yard setback. The applicants are seeking a 2' right side-yard setback Area Variance. Tax Map #339.005-3-44; Lot Size: 105' x 213'; Zoning: Low Density Residential. Mr. Jamie Zalewski, Contractor and Messrs. Brown and Chanatry appeared before the Board.

Mr. Zalewski presented a sketch of the proposed first floor master bedroom. A survey was done on the property and found they didn't meet the 15' setback. The original Building Permit had incorrect dimensions. The applicants would like to spend the rest of their lives at this home and would like the master bedroom on the first floor to avoid having to go upstairs. They also have elderly parents who visit and who could use the first floor room when necessary. Also, Mr. Zalewski said the pine trees would stay. The new siding would match existing and window details would match.

Mr. Brown presented a letter from Mr. & Mrs. Erie Yoss, 13 Briarwood Lane, who would be most affected but who are in support of this application. This letter has been made a part of the file.

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; 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 Lenora Murad - yes

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

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

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The application of Mr. Craig Tesler/Premier Signs. for **Metro Mattress, 4640 Commercial Drive, New Hartford, New York**. The applicant is seeking an Area Variance of 56.5 sf to install a 100 sf storefront sign. Zoning is Retail Business 1, which allows 43.5 sf of signage on the storefront. Thus, the Area Variance request. Tax Map #328.008-1-6.1; Zoning: Retail Business 1. Mr. Al Meilutis, Executive Vice President, COO of Metro Mattress, appeared before the Board.

Mr. Meilutis explained that his business needs more exposure. He indicated the percentage of lost sales since he moved to this site. He doesn't feel the signage is an intrusive request. Mr. Meilutis said when sales are down they look at ways to fix it – this is one store out of 47 in Upstate New York. Some businesses have larger signs in the area and he feels his request doesn't change the character of the area.

Board Member Elias asked Mr. Meilutis if he thinks his request is adequate – Mr. Meilutis said yes. Board Member Montrose asked about lighting. Mr. Meilutis said the sign would be illuminated and turn off about 11 or 12:00 P.M.

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

Oneida County Planning 239 and NYSDOT had no adverse comments on this application.

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 that the structure be sided; also, 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 Karen Stanislaus – yes	Board Member Tim Tallman – yes
Board Member Lenora Murad - yes	

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

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The application of **Mr. Albert Roberts, 43-45 Clinton Road, New Hartford, New York**. Mr. Roberts is seeking a Use Variance for a veterinary clinic at 43-45 Clinton Road. Zoning in this area is RB4 Neighborhood Business and a veterinary clinic is not a permitted use in this zone; therefore, necessitating the Use Variance request. Tax Map #328.016-2-61; Lot Size; 0.27 Acres; Zoning: RB4 Neighborhood Business. Mr. Albert Roberts and Dr. Blackmore appeared before the Board.

Mr. Roberts explained that he has a veterinarian who is interested in operating his cat clinic at 43-45 Clinton Road. This is for cats only, there will be no overnight boarding, no cremations, no dogs, kennels, etc. This is strictly cat care only. Dr. Blackmore started the Paris Hill Pet Clinic years ago and would like to operate out of this house. He would be open a couple of days a week to begin with then perhaps four days a week; hours are approximately 8 AM to 4 PM; Saturdays in the morning only for people who can't get there during the week – no Sundays..

There will be no change to the house; it would be no more than someone living there owning a few cats. He wants to put in a small parking lot for six (6) cars in the front of the building. Mr. Roberts referred to the other businesses in the area, pointing out Aceti Landscaping next door and a closed Central Asphalt business.

Mr. Roberts feels this is a good fit for the area since there will be no change to the existing home. He may have to locate a tree and he'll do some landscaping. He has tried to rent the house but had no success because of the asphalt plant. That business has relocated and traffic has been reduced.

Mr. Roberts referred to the other types of uses that could go into this site under the RB4 zone, which are much more intrusive, i.e., restaurant, auto service station, etc. Chairman Bogar read the uses for the public.

Board Member Tallman asked, this is for cats only? Mr. Roberts said yes. Board member Montrose asked what would happen if the doctor wanted to expand the services. Mr. Roberts said no, and it could be written into any approval.

Codes Officer Booth stated the zoning proposed for this area would allow a veterinary office without kennels in the future.

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

-Mr. Thomas Aceti/Aceti Landscaping, 47 Clinton Road. He asked if the house and barn will both be used for the clinic. Mr. Roberts said currently, strictly the house as the detached barn is 2000 sf – the house is at 43 Clinton Road. He mentioned that 43-45 Clinton Road is one tax map number/one property. Mr. Aceti also asked if someone else took this over, could it be used for a dog kennel. He was advised that any change in use would have to come back before the Zoning Board.

Mr. Roberts stated he is fine with any stipulation that the cat clinic is for the house only. Roberts also stated that he will put a berm with buffering between this house and Mr. Aceti's. Mr. Roberts also stated that this use is a quiet as you can get, especially if the rezoning takes place for this area.

-Mr. Robert Savage, 42 Clinton Road. He referred to the definition of a veterinary clinic; what is the difference between clinic and hospital. The way it is defined allows for kennels and cremation. This upsets him. Veterinary clinics are allowed in a retail zone and his area is not a retail zone. He feels this creates an undesirable area. His area is neighborhood business, which provides services to the local neighbors. This clinic would draw customers from all areas. Also, he is concerned about property values and traffic. More people would be driving in and out of that driveway.

-Mr. Ken Kostolecki, 44 Clinton Road. He represents neighbors, including Mr. Savage. He presented a petition with 47 signatures opposing the clinic. He referred to the definitions of a veterinary clinic where there are numerous services, including kennels and cremation. His neighbors do not want this kind of activity. He feels Mr. Savage has addressed the issues.

There being no further comment, the Public Hearing closed at 6:45 P.M.

Mr. Roberts reiterated that there would be no kennels, no overnight boarding for cats or dogs, no dogs, no reptiles, no cremations – facility for cats only.

The Public Hearing was reopened at approximately 6:50 P.M.

-Mr. Richard Matthews, 28 Clinton Road. He feels the residents are sensitive to this request because of the proposed pet cemetery (which is a permitted use). Chairman Bogar stated this Board is sensitive to these types of things also.

-Mr. Robert Savage, 42 Clinton Road. He still feels this type of use has an adverse impact on his neighborhood. This could be the first step in getting another variance, which would make the property more adverse. He feels this use shouldn't be placed in a neighborhood – there are 100 homes across the street.

-Mr. Tom Aceti, 47 Clinton Road. He doesn't see anything wrong with this as it is a commercial area and he is the one most affected. – he supports this request.

Mr. Roberts said nothing is changing, the house will stay the same. He is not putting up a strip plaza.

Mr. Ken Kostolecki, 44 Clinton Road. He is in view of Mr. Roberts property. Mr. Aceti has a nice business. Mr. Roberts did side the house and it looks nice, but he has had trouble with Mr. Roberts before with garbage accumulation, etc. He has cleaned the property up somewhat but it's still messy.

-Ms. Lydia Savage, 42 Clinton Road. She referred to the definition of clinic, how broad is that term. IS clinic being used to get avoid other uses. She feels the term clinic should be defined more clearly in our Code.

Chairman Bogar reiterated what Mr. Roberts stated previously about boarding, cremation, etc. Absolutely none of these.

-Dr. Blackmore feels the traffic will be minimal with his type of use and much less than a convenience store.

Mr. Roberts said this is zoned for a two-family house also. With a two family home there would be at least 3 or 4 cars there all the time. This use is much less traffic.

The Public Hearing closed again at 6:55 P.M. Opened again at 7:05 P.M. Board Member Elias addressed the public asking if it would really make a difference regarding cremation. Discussion ensued.

-Mr. Ken Kostolecki referred to the condition of Mr. Roberts property again. He would like to see landscaping and the back cleaned up and kept that way. Would he blacktop the drive – he feels the neighbors would like this. This would enhance the property. He feels this application should be rejected.

-Mr. Robert Savage: Mr. Roberts has ignored restrictions on this property before, i.e., cleaning up the area.

Board Member Elias asked if Mr. Roberts would consider blacktopping the front of the property for cars to park and do some landscaping. Mr. Roberts said he would blacktop, but the time is short for doing this. He will landscape and build a berm between him and Mr. Aceti. He can't understand why the neighbors would be opposed as he felt it would be a good fit for this area considering what could go on this property and other businesses down the street.

Mr. Kostolecki feels the driveway is too short; Mr. Savage wants to know if Mr. Roberts has an ingress and egress plan.

Chairman Bogar read from the NYSDOT and County Planning 239 with no adverse comments. The Public Hearing closed again at 7:10 P.M.

Discussion ensued between Board Members regarding the type of use, I traffic, any change in character of neighborhood. However, this is a Use Variance; Board Member Stanislaus would like to see more

financial information regarding this property from Mr. Roberts as she feels it is a crucial part of the Use Variance request. Board Member Tallman would like to see upgrades to the property before any tenant moves in.

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: the Board hasn't seen much evidence – would like to see more;
- 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: the Board felt it is unique;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: - there is a difference of opinion; some members felt it would change the character;
- The alleged hardship has not been self-created – response: no.

Motion was made by Board Member John Montrose to table this application pending the applicant providing whatever information he can submit regarding financial on #A of the application; 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 to table this application was passed by a vote of 7 – 0.

Board Member Elias explained to Mr. Roberts why the additional information is required under the Use Variance request.

Mr. Roberts will have the additional information to this Board by the November 19, 2013 meeting.

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The application of **Molly Dooker Development LLC**, who is requesting a 5' Area Variance to locate a parking lot 10' from a public road (**4796 Commercial Drive, New Hartford, New York**) for a retail/restaurant with drive-thru. Zoning in this area is Retail Business 1, which requires a parking lot to be set back 15' from a public right-of-way; therefore, necessitating the Area Variance request. Tax Map #317.013-3-18.3; Lot Size: approximately 1.2 Acres; Zoning: Retail Business 1. Mr. James Trasher, PE, CHA Companies and Mr. Brian Donovan, Donovan Real Estate, appeared before the Board.

Mr. Trasher stated he has been working with the Town on this property. As part of this development, they have shown cross access and cross easements. There is a traffic improvement signal being done. In terms of storm water and site lighting, they will go through this with the Planning Board. They are proposing a retaining wall with a vinyl fence along the rear of the property. Mr. Trasher said because of the improvements being done, that is why they need the variance and to allow for parking spaces.

Board Member Montrose asked about the parking, property layout, and water. Mr. Thrasher said they will have 29 parking spaces, and will have a storm water system that discharges into the creek. Rip rap will be installed.

Chairman Bogar referred to the comments received from NYSDOT, in particular, parking spaces. They are concerned about spilling out onto Commercial Drive. Mr. Thrasher said he will work with NYSDOT. He will work out mitigation with some of those concerns. Board Member Elias asked if the signal is at that driveway – Mr. Thrasher said yes but it needs to be configured. Snow removal would be to six parking spaces as shown on the map. It won't be pushed into the creek. They will lose six parking spaces during the winter months? Mr. Thrasher said it still meets Codes for parking even with the loss of the six parking spaces. They have a wide area for plowing and Commercial Drive won't be affected. Mr. Thrasher said this project will have to go through Site Plan Review at the Planning Board. This is the last piece of property by the creek to be developed. Their property stops at Mud Creek.

They will be employing about 20 people at this site.

Board Member Stanislaus asked if anything is changing in the channel. Mr. Thrasher said this area has been significantly improved. The map he is presenting this evening hasn't been seen by NYSDOT but the only difference is cross access/easements and dumpster enclosures, and they moved the site back.

Mr. Thrasher was asked what they would do if they didn't get the variance. Mr. Thrasher said they could move the building back.

Chairman Bogar asked if there was anyone in attendance to speak on this application:

-Councilman Paul Miscione. He represents the people on Royal Brook Lane. He mentioned that he did a report on this and surrounding areas. Mr. Miscione talked about storm water drainage and how it affects Royal Brook Lane. He has talked previously with the developer and there is no retaining wall or grade elevation suppose to be done on the project. He feels now because there is a retaining wall, it will actually pass the water to the residents on Royal Brook Lane even more than before. That should be equal grade to the residents of Royal Brook Lane not to impact any more flooding. Currently, the property where they want to put the wall floods. He feels the criteria isn't met for this property especially that they didn't have a hardship and their engineer said if they don't get the variance they can move the building back. Also, we'll give them more land to develop that is going to be elevated above the residents on Royal Brook Lane causing more flooding issues. Mr. Miscione also referred to the June 26, 2013 flooding in this area.

Mr. Thrasher said they will do the same thing as Olive Garden to control runoff. They would mitigate any peak discharge. They have met with Barton & Loguidice several times for the Town. They realize more work needs to be done. They will mitigate flows.

Mr. Miscione is requesting a storm water management study to be done before a variance. He is not against development but he feels the right studies need to be done.

Mr. Thrasher said they could take a strip of parking off and still meet what they need. They will still do all the studies. They are the most downstream component. They have to get permits from a lot of other

agencies. The developer knows what needs to be done. They will take care of other things to the satisfaction of the Town and constituents.

Mr. Miscione said the major impact is at the bend. It was stated that the NYSDEC wanted the big bend in there. If anything is incorrect, just advise. The big bend was put back in the flood route.

Mr. Thrasher said water will be released in stages by developing the property. He will have everything ready for the Planning Board with reports, especially storm water. He also stated that we can have a project on this property without coming to the Zoning Board, but they have requested the 5' setback. Not getting this doesn't hurt them. But having more parking spaces will help them.

Board Members Elias and Montrose asked how high the retaining wall will be. Mr. Thrasher said 5' from the grade there now. They stated, right now as proposed you can get the parking lot flooded also – Mr. Thrasher said yes. With or without the wall they could get flooding in the parking lot.

-Resident at 16 Royal Brook Lane: She addressed past flooding and the problems that exist. Last year's project was suppose to take care of it but it didn't.

-Mr. Charles Hobaica. He is the owner of one of the buildings next door. He said cross access easements are not in place and there have been no active talks. CHA said there has been talks.

Mr. Thrasher said Mr. Hobaica wants certain things from NYSDOT. Mr. Hobaica said there have been no talks about anything.

There being no further input, the Public Hearing closed at 8:20 P.M.

Chairman Bogar referred to the letters with comments received from NYSDOT and NYSDEC. Also, County Planning 239 had no comments. There are a number of issues that will be raised at the Planning Board level.

Discussion ensued regarding getting this matter getting to the Planning Board for their review and input.

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 – perhaps get a better solution – 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 – the Planning Board can address this further; – 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; and Grading Permit be obtained within one year of approval date; seconded by Board Member Byron Elias. Vote taken:

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

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

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The application of Mr. Anthony DePerno of Victory Signs who is requesting a 201.75 sf Area Variance to erect a 281.75 sf building sign for **Party City, 4525 Commercial Drive, New Hartford, New York** (this will replace the existing building sign). Zoning in this area is Retail Business 1, which allows 80 sf of building signage; therefore, the Area Variance request. Tax Map #328.007-1-6; Lot Size: total acreage 5 acres; Zoning: Retail Business 1. Mr. Anthony DePerno appeared before the Board.

Mr. DePerno said the existing sign has been there since they first opened and needs to be updated. Party City’s logo has changed slightly. The newly proposed sign is 25 sf smaller in length than what is there now. The new sign will be LED and more efficient.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 8:30 P.M.

Oneida County Planning 239 and NYSDOT had no adverse 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 Fred Kiehm to approve the application as presented; also, as he feels the applicant has presented the need; and that the structure be sided; also, 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 Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Karen Stanislaus – yes	Board Member Tim Tallman – yes

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Board Member Lenora Murad - yes

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

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Draft minutes of the September 16, 2013 meeting were received by each Board Member. Motion was made by Board Member Byron Elias to approve these minutes as written; seconded by Board Member John Montrose. All in favor.

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The next scheduled Zoning Board of Appeals meeting is Monday, November 18, 2013.

Respectfully submitted,

Dolores Shaw  
Secretary

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