

MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
AUGUST 18, 2014

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were John Montrose, Byron Elias, Fred Kiehm, and Karen Stanislaus. Board Members absent: Lenora Murad and Tim Tallman. Also in attendance were Town Attorney Herbert Cully, Councilmen David Reynolds and James Messa, 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.

The application of **Mr. Bruno Aploks and Ms. Dena Zacharewicz, 4 Fieldwood Road, New Hartford, New York** who would like to add a roof over a porch in the front of their home. Zoning in this area is Low Density Residential, and this average prevailing setback is 32'. The applicants are seeking a 6' average front yard setback Area Variance. Tax Map #339.009-1-11; Lot Size: 130' x 140'; Zoning: Low Density Residential. Mr. Michael Shepardson, contractor, appeared before the Board. (Mr. Aploks was not in attendance at this time).

Mr. Shepardson was asked if he wanted to proceed without Mr. Aploks in attendance – Mr. Shepardson said yes, as he is familiar with the project.

The project is for a two (2) columns in the front porch with a roof and a small gable off the entrance. It is not going to be enclosed. It will be about 10-12' wide. There are steps there now. The sidewalk has sunk in and it needs to be repaired to help divert water. The furthest part of this structure from the house is 6'.

Chairman Bogar stated that most of the houses in this area have some type of structure in the front entrance. Also, this will help drain the water from the house.

Chairman Bogar asked if there was anyone present to address this application – no response. There were no calls or letters received. 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 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 Karen Stanislaus – yes	Board Member Lenora Murad – yes
Board Member Tim Tallman - yes	

Motion was approved by a vote of 7 – 0.

The application of **Mrs. Jessica Pasqualicchio, 25 Lower Woods Road North , Utica, New York (Town of New Hartford)**, who would like to place a front and back yard fence on her property. The applicant is seeking a 37' front yard Area Variance to place a fence in her front yard. This property is located at the corner of Lower Woods Road North and Robin Road). Zoning in this area is Low Density Residential, which does not allow a fence in a front yard. Tax Map #329,020-8-8; Lot Size: 104' x 125'; Zoning: Low Density Residential. Mr. & Mrs. Pasqualicchio appeared before the Board.

Mrs. Pasqualicchio stated she would like a 4' or 6' white vinyl fence off the side of her home and follow the shrubs to join the fence in the back. She is open to any type of fence this Board would like. She prefers a 4' fence across the front and also on the Robin Road side.

Chairman Bogar explained what would be allowed for a fence on the property without a variance. They want to extend the fence in this area as they have two (2) dogs and a child. This would allow them more play area and perhaps a pool in the future. They have a survey of their property. Mrs. Pasqualicchio said they went through the neighborhood advising neighbors of their request; one person had asked for additional shrubs to hide the fence from her view. She said the existing bushes would hide most of the fence and the fence will not be brought all the way to the front of the house (Lower Woods Road side).

Mrs. Pasqualicchio was asked if she would be opposed to putting in shrubs along the fence – she said no.

Board member Tallman asked if they had a problem bringing it off the back instead of the middle of the house. Mrs. Pasqualicchio said they would like more land fence in on their property.

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

-Mrs. Ann Nicotera, 4 Robin Road. She doesn't want to look out her window at a fence. She thought there was an invisible fence there now. She is the neighbor who would notice the fence the most. A 4' high fence is better than 6'. She questioned why the Ordinance was put in place with no fences allowed in the front, She mentioned the applicants are nice people but she doesn't want to look at a fence.

It is her duty to protect what she feels is right. She questioned whether plowing would be a problem as Robin Road is a narrow street – it was stated the fence is behind the existing bushes.

-Gorney, 24 Lower Woods Road North. He was concerned about the size of the fence but that has been clarified. He explained he didn't think there was any room for a pool because of the terrain. He prefers not to see a fence in the front yard.

-Mrs. Nicotera asked that the Board and people participating with discussion to speak louder and address the people sitting in the room so she could hear what is being said.

-Mr. William Yetman, 4 Wheatley Circle – he is not in favor of the fence.

Board Member Murad suggested a green chain link fence to blend in with the bushes, especially at Mrs. Nicotera's side. Mrs. Pasqualicchio questioned the color green.

Board Member Kiehm doesn't feel this application meets the criteria.

Chairman Bogar asked how long they have lived at this property. Mrs. Pasqualicchio said they moved in at the end of June this year.

There being no further input, the Public Hearing closed 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: 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.

Chairman Bogar opened the meeting at 6:50 P.M. and asked the applicant how big the gates were: the applicant said 8'-10' – 2 doors. The Public hearing closed again at 6:51 P.M.

Motion was made by Board Member Lenora Murad to grant this application but for a 4' chain link dark green fence so you don't see the fence on Lower Woods Road and Robin Road and shrubs in front of the fence spaced 3-4' on center. There was no second.

The motion of Board Member Lenora Murad was amended to read to grant the application of Mrs. Pasqualicchio to allow for a 4' dark green chain link fence. No mandatory bushes – it is up to the applicant; and the gate remain at 8'; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Byron Elias.

Chairman Randy Bogar - no
Board Member John Montrose – yes
Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes

Board Member Fred Kiehm - no
Board Member Byron Elias – yes
Board Member Tim Tallman – no

Motion was approved by a vote of 4 – 3.

The application of **Mr. Stephen Merren, 109 Viburnum Lane, New Hartford, New York**. Mr. Merren is seeking an 8' front yard Area Variance to place a 6' high fence into his front yard. Zoning in this area is Low Density Residential, which does not allow a fence in a front yard. Tax Map #340.001-2-59; Lot Size: 125' x 190'; Zoning: Low Density Residential. Mr. Merren appeared before the Board.

Town Attorney Cully explained to Mr. Merren that the property owner selects what is a back and side yard on a corner lot. It was stated that usually the back yard is opposite the front door.

Mr. Merren stated his neighbor has presented him with an opportunity to tie into his fence. He has lived there for 23 years. At his own expense, he will take it from his fence to one side of his yard. He has an existing fence but has deteriorated. This is the opportunity to get rid of an eyesore. His fence will be complete privacy in the back. His neighbor has a survey and they put the posts exactly on the line. His problem is from the front to the back of house he current has a picket fence and it covers a couple of air conditioning units. He wants to take the fence and move it out 2' further and tie into his neighbor's fence. He needs a variance from the front to the back of the house about 20' to be able to tie it in. This gives him the chance to fix his property up and remove the old fence. He presented some pictures of the property. He and his neighbor have come up with a plan to make both properties look nice. The existing fence is 5' high but he would like to go 6'. It would not tie into his neighbor's fence unless he went with the 6'.

Chairman Bogar mentioned that the 4' fence covers the air condition units. Mr. Merren said yes, but it would seem odd to go 6' where it is legal than 4' the rest of the way. It wouldn't look aesthetically pleasing to the neighborhood. It was mentioned repairing it. He doesn't know how to put anything up less than 6' when his neighbor is coming off his line 6'.

Discussion ensued regarding coming out the 2' towards the road. Mr. Merren said no one is being impacted going out 2' more. The purpose of tying into his neighbor's is to make it square. Mr. Merren felt the notice that was sent out to the neighbors wasn't clear as to exactly what he is asking.

Board Member Montrose asked Mr. Merren if he would consider starting from the back of the house. Mr. Merren said he doesn't want to. There is a window that looks into his living room. The 4' fence is covering part of that window now. Mr. Merren said he contacted some of his neighbors.

Mr. Merren said he has no problem with cutting the section then the fence would go the same way it is right now. He will pick up a little more away from where the fence is now as it gets closer to his neighbor's.

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

-Mr. Avramidis, 107 Viburnum Lane: We all have kids and no fences. His existing fence is an eyesore. However, he feels this new fence doesn't fit the area. It was stated that a 4' fence is more pleasing.

It was stated where Mr. Merren could put a 6' fence because it is legal.

There being no further public input, the Public Hearing closed at 7:25 P.M.

The Board Members felt the 4' fence would better suit the area as the existing 4' fence could be repaired and it is existing.

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: yes;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: yes;
- 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: yes;
- 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.

Chairman Bogar reopened the Public Hearing at 7:30 P.M. Mr. Merren said he has put too much into this to go with a 4' fence. He wants to go 6' to blend in with his neighbor's or else it wouldn't look right. He won't go with the 4' fence.

Board member Tallman mentioned that if the fence is towards the side of the house, it is indeed encroaching on the front yard.

The Public Hearing closed again at 7:35 P.M.

Motion was made by Chairman Randy Bogar to **deny** the application of Mr. Merren as presented this evening as it does not meet the criteria; seconded by Board Member Fred Kiehm. 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 to **deny** was accepted by a vote of 7 - 0.

The application of **Mr. Martin Lewis, 9499 Sessions Road, Sauquoit, New York**. His property is located in an RA zone, which requires 150' of road frontage. Applicant wishes to subdivide a parcel without road frontage. Therefore, the applicant is seeking a 150' frontage Area Variance. Tax Map #350.000-1-21.2; Lot Size: approximately 16 Acres; Zoning: RA (Residential/Agricultural). Mr. Marty Lewis appeared before the Board with his son.

Mr. Lewis stated his son wants to buy the house he is living in now, which is located in the back of the property. There is a common driveway. He owns the front, middle and back houses on this property – this land dates back to the early 1900's. – this used to be a big farm. Mr. Lewis wants to subdivide this parcel to his son.

Chairman Bogar stated that Mr. Lewis can't subdivide it and go to the Planning Board for approval unless he gets the variance because there is no frontage.

The question arose as to how to address this and could it be approved. Discussion ensued about the applicant putting in a Town dedicated road, which creates the frontage, but it is costly. Also, this property was probably grandfathered in many years ago.

It was stated, is a shared driveway legal – the answer is yes.

Chairman Bogar to Town Attorney Cully: if we granted this, at some [point in time would he have to come back to subdivide it further – answer is yes. Every time he subdivides, he is creating an illegal lot and the Planning Board can't approve it.

Mr. Lewis said he just wants to give his son 1 ½ acres; electric and water go to the site. The house has been there for 100 years.

Town Attorney Cully asked Mr. Lewis if he had any kind of drawing to show exactly what he intends to do – Mr. Lewis said no. He also stated he doesn't have a survey. He would have to see if he had a plot plan.

Town Attorney Cully feels this Board should see exactly what Mr. Lewis wants to do so we can see what we are approving.

Board Member Elias had a concern about the procedure for granting this type of variance.

Town Attorney Cully stated he would get Mr. Lewis a tax map and he could plot on it what this Board is looking at. He suggested tabling this until the next meeting.

Mr. Jeff Sears approached the Board in favor of Mr. Lew's application as he shares a property line in the back – he has no issues.

Motion was made by Board Member Karen Stanislaus to table this application for the next meeting; seconded by Board Member Lenora Murad. All in favor.

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Minutes of the July 21, 2014 Zoning Board meeting were approved by Board Member Tm Tallman; seconded by Board Member John Montrose. All in favor.

There being no further input, the meeting adjourned at 8:00 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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