

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
SEPTEMBER 15, 2014**

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

Chairman Bogar also mentioned that we are down two (2) Board Members this evening and it is up to the applicants whether to proceed.

Chairman Bogar read from a letter received by Mrs. Amidon requesting to table their application until the October 20, 2014 Zoning Board of Appeals meeting as they are out of the country. Motion was made by Chairman Randy Bogar to table this application until October 20, 2014; seconded by Board Member Byron Elias. All in favor.

- 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. This application was tabled at the August 18, 2014 meeting.

Mr. Lewis referred to his Residential/Agricultural zoning and how it has changed since he bought his farm. He couldn't understand how he lost his Agricultural type use regarding building on his property, etc. It was explained to him that his property is now legal, non-conforming. Anything he would like to do on this property, i.e., additions, garages, required a variance before this Board. He continued that this property has been this way for over 75 years before zoning. Mr. Booth explained that he didn't lose the Agricultural use, but anytime he wants to expand on that property, would require a variance.

Town Attorney Cully also explained he can work on his houses but he can't expand because they are non-conforming. The reason why he is here is because 75 years ago someone built those houses and somewhere around 1951 Zoning took place, and then the zoning laws changed. Mr. Lewis stated all he wants to do is update his properties and add garages. Board Member Elias stated he can still use the Agricultural zone for farming, etc. but whenever an addition or expansion is desired, it requires a variance. He also asked about access to this property.

Board Member Tallman explained that this is the same with other zones.

Codes Officer Booth asked, if Mr. Lewis gets this variance and subsequent subdivision, he can then add on to this building in conformance with the Zoning Law – Town Attorney Cully said yes. Also, he has to have a deeded right-of-way to get in and out, or an easement as long as it runs with the land.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:15 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 Byron Elias to approve this one application as presented with this 1.5 acre lot as shown on the tax map displayed and that he provide a deeded access or easement for access to this property; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes
Board Member Byron Elias – yes
Board Member Tim Tallman - yes

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

Motion was **approved** by a vote of 5 – 0.

The application of **Mr. Stephen Merren, 109 Viburnum Lane, New Hartford, New York**. Mr. Merren is located in a Low Density Residential zone, which does not allow fences in front yards. The applicant is seeking an 8' Area Variance to place a 6' tall fence within the front yard along Juniper Lane.

Tax Map #340.001-2-59; Lot Size 125' x 190'; Zoning: Low Density Residential. Mr. Merren appeared before the Board with his attorney, Michel DeBottis, Esq.

Attorney DeBottis explained that this is a new application for Mr. Merren depicting exactly what he is planning to do with the fence, Every Board Member received colored photos of the existing and proposed fencing. There is 59' from the corner to the fence. On the back end of the fence by Mr. Miscione's fence there is about 77' from the point of intersection. Mr. Merren's fence is about 4'- 6' behind the corner of the house and Mr. Miscione's house is recessed. Therefore, the fence in its entirety is behind the house.

Attorney DeBottis referred to sections of our Code relating to front yards and interpretations. He doesn't look at it the way Staff interprets it. He also read from the section regarding fences, especially on a

corner lot. He is not even sure this application requires a variance in opinion. He referred to the photos, which showed the current condition of Mr. Merren's existing fence and where the two (2) fences come together. He feels the new fence will enhance the area.

Board Member Kiehm asked Attorney DeBottis the distance from the property line – Attorney DeBottis did not know. Board Member Kiehm asked if he still wanted the 6'; - Attorney DeBottis said yes. Town Attorney Cully explained that is a different application from the last submittal.

Attorney DeBottis wanted it noted that on the SEQR form it should read Juniper Lane on the side of the house. He also noted that this sketch provided is about as accurate as you can get other than a survey.

Board Member Elias referred to our Town Attorney and what he has heard differently from Attorney DeBottis. Town Attorney Cully said his response is consistent with Codes Officer Booth's interpretation in that a corner lot has to meet two (2) front yards. He respects what Attorney DeBottis has to say, but he doesn't agree.

Attorney DeBottis continued stating that this fence doesn't obstruct anyone's view and will be an asset to the neighborhood. The fence is quite a distance from the road.

Discussion ensued regarding interpretations, fence location, distance from the road, etc.

Codes Enforcement Officer Booth stated that if Mr. Merren wanted to put an addition on his house, he can go up as far as the fence – he would have to meet the average setback. He can put an addition on and come closer to the road, which is about 30'. Attorney DeBottis said they are still well beyond the 30'.

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

-Mr. Paul Miscione, 18 Juniper Lane. He just put up a new fence, and addressed Mr. Merren's old fence. He gave Mr. Merren some room for a fence. He is the person most affected by this application. If Mr. Merren doesn't get this variance, then he has to look at an old, dilapidated fence of 4' attached to his new 6' fence. Other neighbors in the area have 6' fences. If it is left the way it is, it makes an impact on him. He feels it would be undesirable to not have the fence uniform with his. He wants to work with Mr. Merren and give him 3' of his property to do this. He wants this Board to look at the aesthetics of this proposal.

Chairman Bogar asked Mr. Miscione if he would be happy with a 4' fence – Mr. Miscione said no. There would be no uniformity. He actually talked Mr. Merren into doing this. This fence would impact no one.

Board Member Elias said he doesn't have a problem with this, but you would have a wall about 100' long. He feels that would be an eyesore to the neighborhood. However, he would like to see some bushes planted so you wouldn't be looking at a long wall.

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

Board Member Kiehm understands this application better. Chairman Bogar said this is a different application for us to review. He is always concerned about fences, but the neighbor most affected is in favor of 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; but they would like to see bushes put in;
- 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; as long as bushes are put in;
- 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.
- 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; the existing fence is in need of repair.

Board Member Elias asked to reopen the Public Hearing at 6:46 P.M. He addressed Mr. Merren and Attorney DeBottis. The problem he had was looking at a long wall. He would be in favor of it with some bushes planted along the long wall. He also stated that a neighbor, Mr. Pearlman, stopped him and said he was in favor of this application. Mr. Merren said he can't determine how many bushes, but he doesn't have a problem with this request. Mr. Miscione said he would even help. The Public Hearing ended again at 6:48 P.M.

However, the Public Hearing was reopened again at 6:50 P.M. Mr. Miscione said he has a water problem from his house line to the, end it is only 22'. He'd like some bushes put in on the side of the house – that would be fine with him. The Public Hearing closed again at 6:52 P.M.

Motion was made by Board Member Byron Elias to approve the application with the fence in the same spot as shown in the picture presented to this Board with the addition of some evergreens to grow at least 5' tall going down 40' and the evergreens would be about 10' apart (for a total of approximately four or five bushes); seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes
Board Member Byron Elias – yes
Board Member Tim Tallman - yes

Board Member Fred Kiehm
Board Member Karen Stanislaus – yes

Motion was **approved** by a vote of 5 – 0.

Mr. Miscione thanked the Town Attorney, Codes Officer Booth and the Board Members.

The application of **Mr. Steven Karrat**, who is requesting to build a single family home on a vacant lot on **Stratford Drive** in the Town of New Hartford. The applicant's lot is not located on a public street and has zero frontage. Zoning in this area is Low Density Residential, which requires 100' of frontage. Mr. Karrat is seeking a 100' frontage Area Variance. Tax Map #328.006-3-70; Lot Size: 171; x 120'; Zoning: Low Density Residential. Mr. Karrat appeared before the Board.

He stated that Stratford Drive is an existing road but has never been developed. It would be his obligation to put in a private driveway that he would maintain and wide enough for any emergency vehicles. He

does not own the property to Midland Place. There is a 50' parcel that Oneida County owns that will be going up for auction and he would like to obtain it.

Board Member Kiehm asked how he was going to get to Midland. Mr. Karrat demonstrated where Midland Place is and Stratford. He would create a private drive with access to his house.

Mr. Karrat said his father is elderly and needs assistance, and he wants to build his house near him to be able to help. His family members own many of the properties around this parcel.

Discussion ensued on how he was going to have access to his driveway. Mr. Karrat said he would create a private driveway on the existing Town road. He spoke with Highway Superintendent Rick Sherman who said he was okay with it. (Mr. Sherman was not in attendance at tonight's meeting). He also had a few discussions with Codes Officer Booth and he is willing to do what he has to do to put a house.

Board Member Elias asked who came to this Board in this area last time – Mr. Karrat said his sister. Board Member Elias remembered that what we said to her was if she wanted to go any further, she would have to put in a road. If you continue to develop, he feels a Town dedicated road needs to be put in. Mr. Karrat said this would be the last house to be put in.

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

-Mr. John Dwyer, 3 Park Boulevard. The rear property line runs into his lot. He owns the undeveloped part on Stratford Drive. The area where they want to build was previously a marsh. He wonders about the legality of this lot and who owns it. Mr. Karrat said the family pays taxes on three (3) lots. Mr. Dwyer said there is not wetland designation in this area as he and Mr. Booth checked it. He hopes all of this property is being surveyed. Mr. Karrat said yes, that he placed a call to Delta Engineering to do a survey. He wondered if utilities and rights-of-way have been addressed.

Board Member Elias asked Codes Officer Booth, do you need a survey to build a house. Mr. Booth said one doesn't have to be provided at the beginning, but one is required before a Certificate of Occupancy is issued. We recommend one at the beginning, but they are not obligated.

Board Member Elias wanted to look at the tax map – if we don't know who owns the street (paper road), it becomes a different issue. He is concerned about giving permission to cross something and not knowing who owns it.

Mr. Karrat referred to the tax map and who owned some properties, etc.

Town Attorney Cully asked Mr. Karrat how he is going to get to the property. Mr. Karrat said he would go about 180' with a stone driveway to a home. He was asked who owns lots 7 and 18. Mr. Karrat doesn't know. It was stated to Mr. Karrat that you can't cross someone else's property to get to his own. Mr. Karrat said he will get an easement if he has to.

Mr. Karrat was asked who owns lots 29.1 and 29.1 – he said it is owned by Karam Trust.

Where is sewer and water coming from? Mr. Karrat said he would have to get a road cut permit for water.

-Mr. Jeffrey McDonald, 2 Midland Place. Will you maintain the road – Mr. Karrat said yes. Who owns the driveway part – Mr. Karrat said that has to be worked out. Mr. Karrat said it is not labeled a road. He has to do some research as to who owns it, whether it belongs to the Town or an individual then get permission to use it.

Discussion ensued regarding this issue.

Town Attorney Cully addressed the Board. How are you going to grant him a variance if he doesn't have access. It probably isn't a Town road. He has to prove it and would have to have a deeded access.

Board Member Elias recommended that Mr. Karrat hire a surveyor and he will have maps and follow the deeds to find out what happened. If it is a Town road then you won't have to maintain it. He suggests tabling this until he talks to a surveyor and actually put it together for him. The County will have the records on how the property was subdivided.

Mr. Karrat asked the Board Members if they feel this wouldn't get approved. Board Member Elias doesn't have a problem with this but needs clarification as we don't know who owns what.

Motion was made by Board Member Fred Kiehm to table this application until the applicant returns with the information requested at no additional cost to Mr. Karrat for reappearing; seconded by Board Member Byron Elias. All in favor.

The application of Mr. Robert Kelsey, 8 Tamarack Drive, New Hartford, New York, who is requesting to build a larger front porch on his house, 22' x 8'. Zoning in this area is Medium Density Residential, which requires a home to meet the average setback in the front yard. Mr. Kelsey is seeking a 5' front yard average setback Area Variance. Tax Map #328.015-4-51; Lot Side: 105' x 170'; Zoning: Medium Density Residential. Mr. Robert Kelsey and his contractor, Sam Edwards, appeared before the Board.

Mr. Kelsey stated that his house sets lower than the road and he has a water problem. He wants to put a drain in his driveway and a larger front porch with a roof to divert the water. The porch will be higher to keep the water from the front wall. He talked to his neighbors and they have no problem with his request.

Chairman Bogar asked if there was anyone present to address this application – no response. 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 Mr. Kensey has demonstrated a 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 Byron Elias – yes
Board Member Tim Tallman - yes

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

Motion was **approved** by a vote of 5 – 0.

Minutes of the August 18, 2014 Zoning Board meeting were approved by motion of Chairman Randy Bogar; seconded by Board Member Tim Tallman. All in favor.

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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