

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
OCTOBER 20, 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, Lenora Murad, John Montrose, and Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, Councilman 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. Jeff Amidon, 111 Jubilee Lane, New Hartford, New York**. Mr. Amidon is proposing to construct an 18' x 2" pool house on his property. Zoning is Low Density Residential, which limits the height of an accessory structure to 15'. Mr. Amidon is seeking a 3' 2" height Area Variance. Tax Map #339.000-4-19; Lot Size: 1.81 Acres; Zoning: Low Density Residential. This was tabled at the September 15, 2014 meeting to be reviewed this evening. Mr. Mark Domenico, architect, appeared for Mr. Amidon.

Mr. Domenico referred to the drawing submitted to the Board Members. This building is three sections: game room, storage room, and breezeway. This will be used as a buffer from the nearby properties. He explained the grade level and how he arrived at this height.

Board Member Kiehm asked why he has to go higher with this building. Mr. Domenico explained the slope of the land. This won't be seen from Jubilee Estates.

Chairman Bogar asked if there was anyone in attendance for this application – no response. The Public Hearing closed at 6:10 P.M. He stated that Oneida County Planning and Oneida County DPW had no comments.

Board Member Montrose felt this structure wouldn't look out of place.

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;

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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 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 Tim Tallman - yes

Board Member Fred Kiehm - yes
Board Member Byron Elias – yes
Board Member Lenora Murad – yes

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

The application of **Mrs. Yekaterina Kashtanova, 6 Osborn Road, New Hartford, New York** who is requesting to expand existing garage to the house and enclosed the front porch. Zoning in this area is Medium density Residential, which requires a 10’ side yard setback. The existing garage is 2’ from the right side property line. She is seeking an 8’ right side-yard setback Area Variance. Tax Map #328.016-2-19; Lot Size: 60’ x 100’; Zoning: Medium Density Residential. Mr. & Mrs. Kashtanova appeared before the Board

Mrs. Kashtanova explained that their house needs to be upgraded. Also, the existing garage needs to be torn down and replaced. They would like to attach it to their home so that they don’t have to walk outside to and from their cars, especially in the winter. At this time, they also want to enclose the front porch. They won’t be infringing any further than where the house sets now – it is a legal, non-conforming property. She explained that the widening of this is toward the house, not the neighbor. The outside wall will be left where it is. They will match the siding and shingles to what is there now. They want to make the house look more aesthetically pleasing to the neighborhood.

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

-Resident (no name). She supports this application.

The Public Hearing closed at 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;

Town of New Hartford

- 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; 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 Karen Stanislaus – yes
Board Member Tim Tallman - yes

Board Member Fred Kiehm - yes
Board Member Byron Elias – yes
Board Member Lenora Murad – yes

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

The application of **Mr. Charles Grossman, 8 Sylvan Glen Road, Utica, New York (Town of New Hartford)**, who is requesting to add a 24' x 14' sunroom onto his home. The applicant is located in a Low Density Residential zone, which requires a 15' side yard setback. The home is a legal, non-conforming structure in that it is located 10' from the side property lines. Mr. Grossman is seeking a 5' left and right side yard setback Area Variance to add this sunroom on the back of his home. Tax Map #330.020-1-7; Lot Size: 100' x 200'; Zoning: Low Density Residential. Mr. & Mrs. Grossman appeared before the Board.

Mr. Grossman said they would like to add a sunroom onto their home to enjoy year round. There is an existing deck that will be removed. They have a large lot and won't be infringing on anyone. Their home is a legal, non-conforming structure. All materials will match the existing structure. The roofline will be the same – no change.

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

-Mr. Eric Wheeler: he doesn't understand the process. He questioned why this application needs a variance since there is no widening involved. Codes Officer Booth explained the non-conforming structure situation, and the process involved for seeking a variance and why.

There being no further comments, the Public Hearing closed at 6:30 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 as presented; 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 Tim Tallman - yes

Board Member Fred Kiehm - yes
Board Member Byron Elias – yes
Board Member Lenora Murad – yes

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

The application of **Mr. Michael Paniccia, 12 Alexandria Road, New Hartford, New York** who is requesting to add a roofed front porch onto his existing home. Zoning in this area is Medium Density Residential, which requires a 10' side yard setback. The building on the left side yard is 2' from the property line. Therefore, the applicant is seeking an 8' left side yard setback Area Variance to add a front porch on a legal, non-conforming structure. Tax Map #328.016-2-14; Lot Size: 101' x 128' (corner lot); Zoning: Medium Density Residential. Mr. Michael Paniccia appeared before the Board with his contractor, Mr. Rawlings.

Mr. Paniccia explained he needs the porch for protection from the elements. Once the project started, (Mr. Paniccia has a Building Permit), he decided to place a roof on the structure and that is why he needs the variance. He feels it will add to the aesthetics of the area.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:40 P.M. Oneida County 239 and NYSDOT 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 Karen Stanislaus to approve the application as presented; and a Building Permit be obtained within one year of approval date (which Mr. Paniccia has obtained); seconded by Board Member John Montrose. 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 **Ms. Sally Townsend, 9346 Sessions Road, Sauquoit, New York**. Ms. Townsend is requesting to add a roofed porch onto her home. The existing home is non-conforming to the south end of property along Cosmo Court. Zoning in this area is Residential/Agricultural and requires a 30' front yard setback. The applicant is requesting a 13' front yard setback Area Variance. Tax Map #349.008-1-15; Lot Size: 95' x 175' (corner lot); Zoning: Residential/Agricultural. Ms. Townsend appeared before the Board.

Chairman Bogar stated that the roof is already in place. Ms. Townsend said she didn't know a roof wasn't allowed when she decided to build a porch – that there were different rules. Board Member Elias also stated that this has been made handicap accessible. Ms. Townsend said her house isn't handicap accessible and she decided to make it that way for the future. She is also concerned about water damage if she didn't have the roof.

Chairman Bogar asked if there was anyone present to address this application – no response. 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: 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 the application as presented; and a Building Permit be obtained within one year of approval date (Ms. Townsend already has the Building Permit); 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

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Board Member Karen Stanislaus – yes
Board Member Tim Tallman - yes

Board Member Lenora Murad – yes

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

Bonacci Architects, PLLC, applicant for **Utica College** regarding property at **1480 Ney Avenue, Utica, New York (Town of New Hartford)**. The applicant is proposing a professional office at this location that is not permitted in a Medium Density Residential zone. Thus, the applicant is requesting a Use Variance for the professional office. Tax Map #317.012-3-42; Lot Size: 94' x 105'; Zoning: Medium Density Residential. (NOTE: This application was tabled at the February 25, 2013 meeting). Mr. Tim Ebner of Bonacci Architects and Mr. Jack Reader of Utica College appeared before the Board.

Mr. Ebner presented a sketch of the proposed project. He stated the college feels they have provided adequate parking on their property. They are proposing to have the faculty and students approach the building from the rear not the Ney Avenue side. This would eliminate parking on Ney Avenue.

Board Member Elias stated there were a number of questions asked by the residents and asked if they addressed them. In addition, Board Member Montrose asked if the driveway on Ney Avenue would be removed – Mr. Reader said the driveway would not be removed. The address will still remain the same on Ney Avenue.

Chairman Bogar asked if the proposed use was going to remain the same as requested previously – answer: yes, professional office or medical – parking requirements are the same.

Mr. Reader stated they power washed their buildings, painted their properties (unless they were vinyl), cleaned up the yards, cleared their properties to the cemetery (they didn't go further because the properties are not theirs), and they cleared the detention basin on the other side of Ney Avenue. They also put a berm in on one of their properties where there was water runoff. Further, they tried to fix the area where Ney Avenue ends and replaced the fence; some landscaping was done around homes they own. Walkways were repaved. They had torn down a garage and cleaned that area. They removed trees that had fallen during a storm last year. Everything that came to their attention they tried to address. There is an issue with a tree but it is not theirs. The college has put in a significant amount of capital to upgrade these areas.

Mr. Reader said the college owns about seven (7) homes and are in the process of purchasing two (2) more.

Board Member Stanislaus asked Mr. Reader if they had some future plan in place with the purchase of these two (2) additional homes. He mentioned again what they have done with the properties as stated above, however, some of the tenants aren't part of the college but they try to work with them. His group removes the physical aspects of the property. Board Member Stanislaus asked if their plan is to have as many houses as possible – Mr. Reader said no. They want to square off an area.

Board Member Elias asked what is currently in the unit for the variance – Mr. Reader said it is occupied right now. Any of the properties they own are occupied by people who are with the college. They are charged rent. You have to have an association with the college.

Mention was made of a complaint regarding idling buses. Mr. Reader said they try to stop the buses from idling – there are no buses from the college – it is Bernie bus. It was mentioned about idling times, fines, etc. Mr. Reader said the buses park where they do because it is close to the gym and fields.

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

-Laura Salie, 1474 Ney Avenue: If the zoning changes, it can go on and on. She's lived there for 54 years. Some items were corrected and others not. Buses park behind her house and run all the time. Also, she has water issues on her property and feels have been caused by all the work the college has done. There are logs and shrubs behind her house that haven't been touched. She wants this area to remain residential, not an office.

-Dave Hope, 1483 Ney Avenue: Concerned about the buses in the area. Also, the college has said things before that don't happen. He is concerned they'll take down the house.

Chairman Bogar explained that the request is to use that house for a professional office. They can't take the house down as that is not the request before us tonight.

Mr. Hope feels that once this is permitted, it changes their neighborhood.

-Janet Cole, 1483 Ney Avenue. If permitted, this is a business in a residential home. She feels it is not in the best interest of the neighborhood. Zoning laws are put in place to protect the neighbors. She feels this application conflicts with her rights. They have put parking where they said they wouldn't put parking, etc. She feels this infringes on her rights as a tax paying citizen. She does not want a medical facility next to her home.

There being no further comments, the Public Hearing closed at 7:05 P.M.

Board Member Elias feels this is a positive for the college, but he hasn't seen a reasonable return mentioned as part of the Use Variance request. They have to put in writing all the uses that could be permitted and why they aren't getting a reasonable return. Mr. Reader said he will defer this matter and address the requirements listed for a Use Variance, financial information, etc.

Codes Officer Back asked the Board how many times they will allow this applicant to come back.

Town Attorney Cully said there is no mention of income and statement of expenses. They haven't submitted anything that would define a reasonable return. He doesn't feel they have answered any of the questions. He referred to all the steps of a Use Variance – they need to address this. He feels the application is not complete.

Motion was made to table this application until they come back with additional information within a six-month period, by Board Member Fred Kiehm; seconded by Board Member Lenora Murad. All in favor.

For the record: Board Member Elias wanted to compliment Town Attorney Cully as he attended a matter outside of New Hartford and witnessed Attorney Cully in action. He wanted this Board to know what a great job Attorney Cully did when dealing with a case in the city of Utica.

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. NOTE: this was tabled at the September 15, 2014 Zoning Board meeting to be addressed further this this evening. Mr. & Mrs. Karrat appeared before the Board.

There was one question left unanswered from the last time regarding the Stratford Drive section. Mr. Karrat said that it was determined by the County that on an undeveloped road with a road name on a tax map that any adjacent lots is said to own ½ of that road. The road being the Town's. Mr. Karrat said he is paying for it all – utility installation. His plan is to turn the street back over to the Town as a paved road but he can't do it right away. For the first 12-18 months it will be stone and he will maintain it and then pave it and send to the Town.

Board Member Kiehm asked Mr. Karrat if he had anything in writing from the County. Mr. Karrat said no, but he talked with the County (Chris) over the telephone. Board Member Montrose asked Mr. Karrat if he was going to put in a Town road according to specs with sewer and water and pay for it – Mr. Karrat said yes.

Codes Officer Booth stated that any extension of a public road is a major subdivision, which requires Planning Board approval. Mr. Karrat said no one mentioned this before. Codes Officer Booth said that this is the first time Mr. Karrat talked about a public road.

Town Attorney Cully asked Mr. Richard Sherman, Highway Superintendent, if this is a Town of New Hartford road – Mr. Sherman said this is a paper street off a Town road – there is no deed for it. Town Attorney Cully also checked with the Assessor's Office and he asked her whether or not she had references. She said this is under a family trust. Attorney Cully doesn't see any deed or permission given to Mr. Karrat to go ahead. Attorney Cully then called Chris Berch at the County regarding what Mr. Karrat had said. Mr. Berch said he hadn't said this and doesn't recall speaking to Mr. Karrat. He is getting a different version from the County.

It was stated that Mr. Karrat would need a variance before going to the Planning Board to extend the road. However, Mr. Karrat does not have deeded access. Town Attorney Cully advised Mr. Karrat to secure the services of an attorney to straighten this matter out so he can move forward. Attorney Cully offered to work with him to help this process along.

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Mr. Karrat said he did talk to Chris at the County, and Mr. Karrat said he can't find the deed to this. He doesn't think one exists. He will also talk with the Assessor.

Town Attorney Cully again suggested getting an attorney.

Discussion ensued again about a public road. Codes Officer Booth said if Mr. Karrat had talked to him about a public road, he would have sent him to the Planning Board and process a major subdivision. Mr. Karrat said that is not what he wanted to do.

Discussion ensued regarding driveway vs. roadway. Board Member Kiehm said we can approve this if he shows he owns the property. Chairman Bogar feels we don't have enough information tonight – Mr. Karrat has to show who owns the property. Also, ownership of this street/driveway is in a family trust and is it being taxed. He has to show continuous ownership on that road.

Mr. Karrat said he plans on buying it from the County at auction. Town Attorney Cully said that Mr. Karrat has no assurances that he can buy this property. Mr. Karrat insisted he will get the property.

Attorney Cully referred to Section 297 of the Highway Law and what Mr. Karrat had stated. This is not the case here. The Town doesn't own the road – the family trust does. The Assessor said it is on the tax rolls.

Town Attorney Cully and Board Member Stanislaus again stated that Mr. Karrat needs to get an attorney to straighten this matter out. He should have a purchase contract with Karrat Family Trust as purchaser of the lot and where the land is going to be. This needs to be signed by the owner and something that says he has the right of access to put in a driveway.

Mr. Karrat asked if the Board would consider approving this with a stipulation that a letter be provided to Codes Officer Booth prior to a Building Permit – no discussion ensued.

It was stated that we can't work on speculation

Board Member Murad referred to the access/driveway. What happens with the other lots in the area nearby? Who would own the access?

Mr. Karrat said he would hire an attorney who will address ownership, right of ingress and egress to get to his property and that access doesn't cut off the other properties.

Mr. Karrat asked if the Board would entertain a vote by email (Town Attorney Cully said any further discussion would have to be a public meeting) or hold a special meeting – no further discussion.

Motion was made by Board Member Fred Kiehm to table this application again until the November 17, 2014 Zoning Board meeting; seconded by Board Member Karan Stanislaus. All in favor.

Draft minutes of the September 15, 2014 Zoning Board meeting were approved by motion of Board Member Byron Elias; seconded by Board Member Lenora Murad. All in favor.

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Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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