

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
DECEMBER 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, John Montrose, Lenora Murad, Fred Kiehm, and Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, 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. Brian Sagrestano, 100 Chestnut Place, New Hartford, New York**. Mr. Sagrestano would like to install an 8' fence (approximately 74 lineal feet) along an existing wall in his back yard at 100 Chestnut Place. Zoning in this area is Medium Density Residential, which limits the height of a fence to 6'. Therefore, the applicant is seeking a 2' height Area Variance for a fence. Tax Map #339.012-1-38; Lot Size: 150' x 150'; Zoning: Medium Density Residential. Tax Map #339.012-1-38; Lot Size: 150' x 160'. Zoning: Medium Density Residential. Mr. Sagrestano appeared before the Board.

Mr. Sagrestano explained the hillside behind his house and what he has been doing to prevent it from sliding by installing blocks. Now he would like to place a fence in this area to make it more aesthetically pleasing and to prevent children from being in this area. The original wall failed. They hired an engineer who made up a new design. The hill is over 7' tall. Their goal is to put in an 8' fence to prevent the kids from going up the hill. The rest of the fence would be 6', which is allowed. The fence they like is an 8' hemlock.

Board Member Kiehm asked why a hemlock rather than chain link. He said at least with a chain link if anyone or anything happened to fall in the gap, they could be seen. Mr. Sagrestano said he could go with chain link but was looking for beautification. However, he is willing to change it. It was stated that the good side of the fence facing the neighbor really didn't apply as it would be installed into a hill. However, where the 6' will be installed, that part requires the good side to face the neighbor.

The Board mentioned parging the wall but Mr. Sagrestano said the wall moved once and he is concerned about it moving again.

Discussion ensued regarding a gap that could occur between the proposed fence and hill. Attorney Cully mentioned adhering the proposed fence right to the hill to prevent a gap – some kind of engineering drawing to show this. This is for his safety as well as for others. Also, water was discussed regarding pushing it away. There are concerns. Mr. Sagrestano said there is swale underneath.

Board Member Montrose questioned a variance for a retaining wall. Codes Officer Booth explained this is treated just like a fence, the height requires a variance.

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Chairman Bogar asked if the fence would be flush with the ground – Mr. Sagrestano said no. Board Member Murad has concerns about the placement of the fence to the hill – any gaps that could cause someone or something to slip between the hill and fence. She wondered if some shrubs could be placed there also. This was the concern of the Board Members also. She is concerned about granting this variance and leaving it to Mr. Sagrestano to build it.

There was extensive discussion regarding how to prevent a gap between the fence and hill. Suggestions were made.

Attorney Cully was asked if the Town could be held liable if this Board passed it and something happened where someone got hurt. Attorney Cully said if this Board grants the variance, the Town could be held liable.

Mr. Sagrestano stated the engineer said it would work with how he prepared the drawing. Mr. Sagrestano said the fence would come in a few feet from the property line.

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

-Mr. Davis, 98 Chestnut Place. What is to stop this fence from bowing? He is concerned about ice buildup and drainage onto his property. Also, aesthetically, he is concerned about what the fence would look like. He explained where his house is in conjunction with the fence. Chairman Bogar showed Mr. Davis where the 6' fence would be located.

There being no further input, the Public Hearing closed at 6:40 P.M.

Discussion ensued regarding chain link vs. wood, gaps between the fence and hill, etc.

The Public Hearing opened again at 6:42 P.M. Board Member Montrose asked how long this has been a problem – Mr. Sagrestano said about two (2) years. He has hired an engineer to assist with this project. The concept is a safety issue for him. The Public Hearing closed at 6:45 P.M.

Board Member Stanislaus feels we should have more evidence that this is not going to be a hazard. She doesn't feel we should speculate, She can't get a visual how this would solve the problem. Perhaps the engineer should come to the Board and/or an engineer's plan submitted.

The Public Hearing was opened again at 6:47 P.M. Chairman Bogar asked Mr. Sagrestano when he would like to start this project – he said spring. This would give Mr. Sagrestano the time to get the recommended information to this Board. The Public Hearing closed again at 6:48 P.M.

The Public Hearing opened again at 6:48 P.M. Mr. Sagrestano was asked how high was the original wall – 9' or more. Public Hearing closed again at 6:49 P.M.

Chairman Bogar asked if the Board wanted to proceed or wait for further information.

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Motion was made by Board Member Byron Elias to table this application and ask that the applicant provide an engineering report on the installation of the fence and safety so as to prevent the wall from pulling away from the concrete and creating a dangerous situation and that also protects the Town; seconded by Board Member Karen Stanislaus. All in favor.

Mr. Sagrestano will contact Secretary Dory Shaw when he is prepared to come back to the Board.

Minutes of the November 17, 2014 meeting were approved by motion of Board Member Byron Elias; seconded by Board Member Tim Tallman. All in favor.

There being no further business, the meeting adjourned at approximately 6:50 P.M.

Respectfully submitted,

Dolores Shaw
Secretary

dbb