

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
APRIL 20, 2015**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Tim Tallman, Byron Elias, Lenora Murad, Fred Kiehm, and Karen Stanislaus. Absent: Board Member John Montrose. 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. He also mentioned that one Board Member is absent tonight and it is up to the applicant whether to proceed or to wait for a full board.

The application of **Mr. Ernest Cavalier, 4390 New Paris Road (State Route 12, New Hartford, New York)**, who is requesting to add a one-stall garage (14' x 31') onto his existing garage. The home is legal non-conforming and legal non-conforming structures are not allowed to be expanded per Section 118-111A. Therefore, the applicant is seeking a 9' left side-yard Area Variance for this addition. Tax Map #329.013-1-85 & 329.013-1-86; Lot Size: Approximately 175' x 200'; Zoning: Low Density Residential. Randy Soggs, Esq., appeared before the Board for the applicant.

Attorney Soggs stated that this house was built in 1954 or 1956. There wasn't zoning regulations when the house was built. The expansion is on the right side where there are no issues – only on the left side of the property. There is about 6' to the property line on the left side. The Cavalier's acquired some land next to them. This home had a fire about six (6) weeks ago and they had to build the garage over so they decided to make it bigger. They could use some additional space for storage.

Attorney Cully stated for the 6' non-conforming on the one side, they wouldn't need the variance – correct. Codes Officer Booth said that the Cavalier's combined two (2) parcels for the benefit of this addition. There are no other issues on this site.

Chairman Bogar asked if materials would match. Attorney Soggs stated there will be a minor change on the roofline of the garage but it isn't significant. It will be slightly higher. He also said there originally was a right-of-way but Mr. Cavalier acquired it.

Responses were received from Oneida County Planning and NYSDOT – no issues. 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.

The Board Members didn't see a problem with this request, especially since the Cavalier's had to rebuild because of the fire.

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 Tim Tallman. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - 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 6 – 0.

The application of **Mr. Matthew Lee, 63 Imperial Drive, New Hartford, New York (corner of Imperial Drive and Regal Place)**. Mr. Lee is proposing to install a 6' fence to be placed on the front property line of Regal Place. Zoning requires a 34' front yard setback. Therefore, the applicant is seeking a 34' front yard setback Area Variance. Tax Map #339.015-1-32; Lot Size: 90' x 142'; Zoning: Medium Density Residential. Mr. Lee appeared before the Board.

Mr. Lee stated that he would like his children to enjoy their yard but is concerned with traffic, etc. He lives on a corner lot. He is proposing white vinyl fencing at this time and he wants to eventually put in a deck and aboveground pool. The fence will be about 15' from the edge of the road – it will be on his property line.

Board Member Kiehm asked why he had to fence in the entire yard. Mr. Kiehm said he did not notice any fences in his area. Mr. Lee said he is a corner lot and it is a disadvantage because of the fencing rules.

The Board Members reviewed the layout of the proposed fencing as to where it is legal and not. Mr. Lee wants to keep the look the same around the entire property. Some of the Board Members do not like the 6' fence as it looks like a wall. Board Member Murad doesn't feel that way as the terrain of the property dips at a certain location.

Chairman Bogar asked Mr. Lee how long he has owned the property – Mr. Lee said two (2) years. Chairman Bogar asked if there was anyone present to address this application.

-Mr. Ray Lux, 11 Lloyds Lane. He stated that there are no fences in the neighborhood. He feels there has to be a different way to fence in the yard.

-Mr. Neil Prichard, no address. Mr. Prichard said he spoke with Codes Officer Booth about the width of the road. Mr. Prichard feels this fence would be in the right-of-way. Mr. Booth said it is not in the right-of-way. Mr. Prichard said he has no objection but has anyone done any studies about safety with coming around corners, i.e., Regal Place and Imperial Drive?

It was stated that there shouldn't be a problem with clearance.

-Cathy and Jim Lawrence sent an email stating they live at the corner of Imperial Drive and Tibbitts Road and they have no opposition to this request.

There being no further input, the Public Hearing closed at 6:25 P.M.

Most of Board Members had concerns regarding the height of this fence and location. A suggestion was to plant trees or bushes in front of the fence.

The Public Hearing opened again at 6:30 P.M. Board Member Stanislaus asked Mr. Lee if he could put in a 4' fence instead. Mr. Lee said because of the slope on his property, that it wouldn't be high enough. The Public Hearing closed again at 6:32 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 as no other fences were seen in this neighborhood;
- 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: 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 with the fence being 6' in height;
- 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.

Motion was made by Board Member Tim Tallman to deny the application as presented without prejudice as the application did not meet the criteria; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes
Board Member Byron Elias – no
Board Member Lenora Murad – no

Board Member Fred Kiehm - yes
Board Member Karen Stanislaus – no
Board Member Tim Tallman - yes

Motion was 3 – 3. Tied vote. This did not pass.

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The Board Members advised Mr. Lee that they are open to modifications if he wants to come back to the Board with a different application. Mr. Lee feels there is an inconsistency here. He looked at other variances for fences that were granted. (Each case is reviewed individually). He is not sure whether he could come back due to added expenses. Mr. Lee mentioned possibly leveling the property. Codes Officer Booth said there is a drainage issue that needs to be addressed if he does this.

Discussion ensued about Board Members coming to his house again with him there to discuss any possible changes for a new application.

Town Attorney Cully advised the Board Members about the Open Meeting Law.

Minutes of the March 16, 2015 Zoning Board meeting were approved by motion of Board Member Lenora Murad and seconded by Board Member Karen Stanislaus. All agreed.

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

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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