

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
MAY 18, 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, John Montrose, Fred Kiehm, and Karen Stanislaus. Board Member absent: Lenora Murad. 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. Chairman Bogar also stated that we are absent one (1) Board Member this evening and it is up to the applicant whether to proceed or postpone.

The application of **Mr. Francis Marchio, 141 Valley View Road, New Hartford, New York**. Mr. Marchio would like to attach an approximate 14' x 36' carport onto his existing garage which will be 6" from the right side property line. Zoning requires a 15' side-yard setback from the property line. Therefore, the applicant is seeking a 14' 6" right side-yard setback Area Variance. Mr. Fran Marchio appeared before the Board.

Mr. Marchio explained that he would like to build an open carport on the right side of his garage with a concrete floor. He has a one-stall garage now and there isn't enough room for an additional vehicle. The fireplace chimney also goes into the garage which takes up space. The existing garage door is only 10' wide. The recent winters have been rough and he wants to be able to park his vehicles inside a sheltered area. This carport will match the existing house and he presented some pictures. He has lived at this residence (which he built) since 1984.

Some of the Board Members asked if he could go smaller as 6" is very close to the property line. Mr. Marchio said the 6" from the property line includes the overhang on the side. He does not have a survey but he knows where the pins are since he built the house. Mr. Marchio said he couldn't go too much smaller as it would be too tight and because of the chimney in the existing garage.

Chairman Bogar asked if he had talked with his neighbor affected by this carport. Mr. Marchio said he talked with him briefly.

Discussion ensued regarding a size suitable to accomplish this.

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

-Mr. James Cesare, 143 Valley View Road. He mentioned that Mr. Marchio is a great neighbor. He mentioned the trees existing on the site. He has concerns about water runoff; also, would like Mr.

Marchio to have what he'd like, but he also has concerns with the carport being too close. There is a lot of water through the back yards. The carport has open walls and he likes this better than a solid wall.

Mr. Marchio said he is going to put an oversized gutter on the carport and the water will come in front of the carport and down the driveway to Valley View. The water in the back is generated from the South Woods project.

There being no further input, the Public Hearing closed at 6:20 P.M.

Chairman Bogar said a telephone call was received from Mr. Sid Perry, Higby Road, who has no opposition or opinion. Also, Chairman Bogar said replies were received from Oneida County DPW and Oneida County Planning – no issues.

Board Member Kiehm would like to see a survey since this request is only 6" from the property line. It was the consensus of the Board Members that this request is too close. Also, Board Member Stanislaus said she didn't see any carports in the area where Mr. Marchio lives.

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 – 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: yes – however, difference of opinion;
- The requested variance is substantial – response: yes – 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: yes – 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: yes – all in agreement.

Motion was made by Chairman Randy Bogar to **deny** the application as presented without prejudice and that Mr. Marchio did not meet the criteria; 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 Tim Tallman - yes

Motion to **deny** was carried by a vote of 6 – 0.

Chairman Bogar addressed the public stating that **Mr. Paul Sierak of 5 Brantwood Road** left the meeting at approximately 6:25 P.M. and would like to be on the June 15th agenda. He advised the public that anyone here for this application would be renotified.

The application of **Mr. Harold Ostrom, Jr., 16 Beechwood Road, New Hartford, New York**. The applicant is requesting a reduction in the size of his lot. This will make the lot more non-conforming than it already is by reducing the frontage from 75' to 70'. This 5' strip will then be conveyed to 14 Beechwood Road. Tax Map #339.007-5-22; Lot Size: approximately 75' x 178'; Zoning: Medium Density Residential. Mr. Robert Bischoff appeared before the Board on behalf of Mr. Ostrom (letter of authorization is in the file).

Mr. Bischoff stated that their neighbor and friend placed a fence 5' over onto their land. They are going to sell the house and they want to make it right, hence, selling 5' to the neighbor.

Board Member Kiehm asked if the 5' would make them conforming. Codes Office Booth said it actually makes the frontage conforming on the one. The house they are taking it from still has a nice side yard setback.

The Board Members understood what this applicant is trying to do.

Chairman Bogar asked if there was anyone present to address this application – no response. 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 John Montrose to approve the application as presented; seconded by Board Member Karen Stanislaus. 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 Tim Tallman - yes

Motion was **approved** by a vote of 6 – 0.

The application of **Ms. Sarah Dudajek-Bush, 216 Higby Road (corner of Higby Road and Benton Circle), Utica, New York (Town of New Hartford)**. The applicant is proposing to install a 5' fence within the front yard of the Benton Circle front yard. The fence will extend to within 3 ½' of the front property line. The applicant is seeking a 30' front yard Area Variance. Tax Map #329.020-8-35; Lot

Size: 100' x 169'; Zoning: Low Density Residential. This was postponed at the April 20, 2015 meeting at the request of the applicant. Ms. Jodi Bush and Ms. Sarah Bush appeared before the Board.

Ms. Jodi Bush stated this fence is for safety reasons for their child and to also keep the stray dogs out of her yard. Also, Benton Circle has a lot of cars coming around the corner quickly. They have trees and landscaping so the fence would be placed behind the trees. They need the privacy. The topography of the land curves/slopes down.

Board Member Kiehm asked if they thought the fence would take away from the beauty of what they have now. Also, he didn't notice any fences in the area. It was stated that the way it is now is they won't have to move any of the plantings. All the trees are on their property.

Board Member Elias wanted the girls to show him where the bushes are located. The green pipes are where the property line is located.

Codes Officer Booth went to the board and did a drawing in detail of the proposed variance request and where the fence would be located and also, where a fence would be allowed without seeking a variance. Legally they couldn't go past the furthest most part of the house.

Board Member Tallman asked if they would consider a 5' fence instead. They stated this would not give them the privacy that want. Board Member Stanislaus stated she didn't see fences in the area and thought the character of the neighborhood would be affected because of the corner. She feels this is too substantial of a change.

Chairman Bogar and Board Member Elias referred back to what is allowed without seeking a variance. Ms. Sarah Bush said they have to keep the application this way for the fence installer to make it work.

Chairman Bogar asked if there was anyone present to address this application. There was no response. The Public Hearing closed at 6:45 P.M.

-A phone call was received from Mr. Cascioli, 11 Tilton Road, who is not in opposition.

-Mr. Mike DeSantis, 10 Benton Circle. The fence would cause a visibility problem, and the fence is too high. It will look out of place.

Responses were received from Oneida County DPW and Oneida County Planning – no adverse comments.

Board Members Tim Tallman and John Montrose asked Codes Officer Booth questions regarding the property line in the rear and distance of the right-of-way in conjunction with the placement of the fence. Board Member Elias felt the fence is far from the road and perhaps to ask to extend the bushes – he doesn't see a problem with it.

Chairman Bogar feels there is another way to do this. Discussion ensued regarding the placement of this fence and where the fence can be erected in conformance with the Zoning Law.

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 – 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: yes – 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: 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: difference of opinion.

Motion was made by Board Member Fred Kiehm to deny the application as presented without prejudice as it has not met the criterial and he feels it affects the neighborhood; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member John Montrose - no	Board Member Byron Elias – no
Board Member Karen Stanislaus – yes	Board Member Tim Tallman - yes

Motion to **deny** was passed by a vote of 4 – 2.

Board Member Tallman would like to see drawings of what the fence and affected areas would look like.

The application of **Mr. Lawrence Bastien, 9440 Elm Street, Chadwicks, New York 13319**. Mr. Bastien would like to add an approximate 12'.5' x 22.5' bedroom onto the main floor of his home. The existing home is 2.5' from the right side property line. This is a legal non-conforming structure that cannot be expanded. Therefore, the applicant is seeking a 7.5' right side yard setback Area Variance. Tax Map #350.017-1-14; Lot Size: 61' x 110'; Zoning: Medium Density Residential. Mr. Bastien appeared before the Board.

Mr. Bastien presented a sketch of his property. He wants to add a bedroom downstairs. He's getting older and it's getting hard for him to climb stairs any longer. He is not changing the footprint. The roofline will conform with the existing house and he will be using stained Texture 111 all the way around. There will be two (2) emergency exits. The cellar has a crawl space.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 7:05 P.M.

Board Member Kiehm said he isn't going any further than what he has now.

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; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm - yes
Board Member Byron Elias – yes
Board Member Tim Tallman - yes

Motion was **approved** by a vote of 6 – 0.

The application of **Mr. Jared Schultz, 54 Slusser Avenue, New Hartford, New York**. Mr. Schultz is proposing a 6' fence to be placed in both front yards, which is prohibited. The applicant is seeking a 20' front yard Area Variance on the Ontario side of his property and a 30' Area Variance on the Slusser Avenue side of his property. Tax Map #329.010-2-37; Lot Size: 74' x 98'; Zoning: Medium Density Residential. Mr. Schultz appeared before the Board.

Mr. Schultz said one side of his home faces the arterial. He is looking to reduce the sound because of this. The other side faces Ontario. He has his own business which he uses a landscape trailer. He would like to put this trailer behind the fence and out of the way. Also, they are thinking of starting a family and the fence would give them privacy and safety.

Mr. Schultz presented a survey. He believes the bushes are on the neighbor's land. There is a house between him and the arterial.

Board Member Kiehm asked why he needs a 6' fence. Mr. Schultz said the trailer is about 6 ½' tall. He would put in swing doors to get the trailer in and out. A lower fence wouldn't help.

Board Member Elias asked Codes Officer Booth where Mr. Schultz could place a 6' fence without seeking a variance. Mr. Booth displayed where on the survey map. Also, Mr. Booth would insist that the gates go in.

Discussion ensued regarding placement of the fence on the Ontario side without a variance.

Chairman Bogar asked if there was anyone in attendance to address this application – no response. The Public Hearing closed at 7:20 P.M.

-A letter was received from Sarahjean Borek, who states she is his neighbor. She is opposed to this application (this has been made a part of the file).

Also, Oneida County Planning and NYSDOT replies were received with no adverse comments.

Chairman Bogar referred to the fence on the Route 12 side. Board Member Kiehm referred back to what Board Member Elias stated regarding the fence without having to seek a variance.

The Public Hearing opened again at 7:24 P.M. Mr. Schultz said he is not opposed to the arterial side as he can eliminate that and go to the front of the house. However, the other side is crucial to him. The fence will be about 1' in from the property line. As far as maintaining the fence, he will do so. The Public Hearing closed again 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: yes – 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: yes – 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: 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: yes – all in agreement.

Motion was made by Board Member Karen Stanislaus to deny the application as presented as it did not meet the criteria. She thinks Board Member Elias came up with the right answer to put a fence in certain areas where allowed; 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 Tim Tallman - yes

Motion to **deny** was passed by a vote of 6 – 0.

The application of **Mrs. Cheryllyn C. Tallman, regarding 6 Crawford Lane, New Hartford, New York**. Mrs. Tallman is seeking to subdivide a 3.67 acre parcel out of a 6.75 acre parcel. The applicant is seeking a 100' Area Variance for frontage as this is the minimum frontage required in a Low Density Residential zone. Tax Map #329.018-7-37; Lot Size: Approximately 6.75 Acres; Zoning: Low Density Residential. Gerald Green, Esq., appeared before the Board for Mrs. Tallman.

Board Member Tim Tallman abstained from this part of the meeting at 7:30 P.M. having acknowledged to the Board that his wife is the applicant.

Attorney Green appeared before the Board and provided information for the Board's review. Included among the exhibits produced by Mr. Green and made part of this application are the following:

- Survey map showing 6.75 acre parcel
- Survey map (colored) showing the 6.75 acre parcel subdivided into two (2) parcels measuring 3.08 acres and 3.67 acres
- Letter to attorney Gordon dated May 14, 2015
- Petition signed by adjoining neighbors
- Colored map of the adjoining properties depicting who did and did not sign the petition and the location of their property
- Letter from Attorney Rossi dated May 18, 2015 (later made part of the Zoning Board file).

He explained that Mrs. Tallman bought this property from Mr. Cifarelli, which had been for sale for three (3) years and he referred to a map of the 6.7 acre parcel showing road frontage at 61.95'. The property is short of the required number of feet of road frontage, but is grandfathered in. With this purchase, the applicant learned the existing driveway to the 6.75 acre parcel is actually located in a substantial part of the neighbor's land owned by the Silberlicht's. The Silberlicht's have been using a portion of that 61.95 foot section to gain access to their property from Sanger Avenue. The proposed subdivision land locks the 3.67 parcel. The applicant would like to provide access to Sanger Avenue for the subdivided 3.67 acre parcel by constructing a driveway that connects to the existing driveway as shown on the colored map that has been made part of this application. To that end, the applicant has spoken to the Silberlicht's and they have agreed to exchange easements with the Tallman's for their continued use of the existing driveway as presently situated. Silberlicht's attorney is Mr. Dean Gordon. Attorney Green illustrated on the map where the new driveway is proposed to be constructed and how it will connect the 3.67 acre parcel with Sanger Avenue. The agreement with the Silberlicht's also includes that only one (1) home will be placed on this property and that home will be on the upper or lower portion of the existing home previously owned by Mr. Cifarelli. In addition to the survey maps and letter written to Mr. Gordon dated May 14, 2014, the Applicant also submitted a petition from most of the adjoining neighbors stating that they have no objection to the application. As part of the record, there is also a map that shows the location of the adjoining properties. Also, Attorney Green met with Dr. Max, through his attorney, Vincent Rossi, Jr., Esq., who owns the other side of the 61.95 foot piece of property touching Sanger Avenue and explained this application. Attorney Green informed the Board that Dr. Max has also been gaining access to Sanger Avenue from his property through the same 61.95 foot of road frontage, but has been doing so with the express written permission of the prior owner, Mr. Cifarelli. Mrs. Tallman is planning to have her son, Ian, live in the house with the area shown in red on the map and her son Jason will build his home at some future date in the rear portion of the 3.67 acre parcel shown in yellow. Without this variance, there is no other way to get in or out of the landlocked 3.67 acre parcel. With this variance, the 61.95 feet of road frontage will be the access to Sanger Avenue for both subdivided parcels. The new driveway will connect to the existing driveway on Ian's parcel approximately 87' from Silberlicht's property line. There is a waste area on the lower portion of the 3.67 acre parcel behind Silberlicht's property. The proposed driveway will be built at least 15' wide to allow for emergency vehicles, etc.

Town Attorney Herb Cully asked Attorney Green if he got information from Attorney Vincent Rossi regarding Dr. Max. Attorney Green stated he met with attorney Rossi who indicated his client had no

objection to the application but received nothing in writing. (Note: as of this meeting there was no paperwork from Attorney Rossi, however, a fax had been sent but after hours and this has been made a part of the file).

Attorney Green stated that Mr. Cifarelli was represented by Attorney Armond Festine who represented to him that Dr. Max was using the driveway with Mr. Cifarelli's permission without right or claim of ownership. Dr. Max's concern was whether he would be permitted ongoing use of the driveway through the 61.95 foot frontage. The applicant has agreed to permit that restricted use.

Attorney Green also met with Dr. Blake, explained the application and gave him the survey maps.

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

-Mr. Richard Zdyb had sent a written response with no objection.

-Mr. F.X. Matt also wrote in that he had no objection.

-Dr. Mark Blaker addressed the Board. It sounds like a plan for a home and where it is located – to make this a legal lot to place a home on it. The house hasn't been designed yet – no plan? Is there a timing for this.

Attorney Green said somewhere within 3-5 years and somewhere on the upper portion of the 3.67 acres behind the existing house previously owned and occupied by Mr. Cifarelli.

-Dr. Blaker asked if this application needed to come back before the Zoning Board when the house is being built.

It was stated that this does not come back before this Board. A Building Permit is obtained through the Codes Office with setbacks in place. This Zoning Board doesn't have authority to approve the plan to build the house.

Board Member Elias stated this will continue to be landlocked – just a driveway to the property. He explained the setbacks to Dr. Blaker.

Chairman Bogar asked Attorney Green if he has given any thought to front, rear and side yard setbacks.

Codes Officer Booth said the minimum rear setback is 40'. He would like the Board to tell him where the 40' has to be as the minimum. Chairman Bogar asked, does it make sense that the front yard is Sanger Avenue – it seems logical. Mr. Tim Tallman said the front yard should be Sanger Avenue. The yard has been determined to be the yard parallel with Sanger Avenue. All other yards must comply with the Low Density Residential requirements. The placement of the front yard is all Mr. Booth needs.

Attorney Green said Sanger Avenue makes the most sense to him and they have no objection to making that the front yard. Mr. Booth said that works with him. This affects sheds, pools and everything forward.

-Mr. Joe Sibling: the existing driveway goes directly in front of his house. He was concerned initially but now he is in agreement with one house – he has no objection.

-Dr. Blaker: have you decided where the house would be located.

Chairman Bogar said Sanger Avenue as the front yard. Attorney Cully said the applicant has agreed to use Sanger Avenue as the front.

There being no further input, the Public Hearing closed at 8:00 P.M. The Board Members agreed that there is a lot of land with this application. The property had been for sale for three years and no one purchased it until now.

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: 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: 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 designating the Sanger Avenue side as the frontage; 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 Tim Tallman - yes

Motion was **approved** by a vote of 6 – 0.

Board Member Tim Tallman came back to the meeting at 8:05 P.M.

Motion to approve the minutes of the April 20, 2015 Zoning Board meeting was made by motion of Board Member John Montrose; seconded by Board Member Tim Tallman. All in favor.

There being no further business, the meeting adjourned at 8:15 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals
dbs

