

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

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Taras Tesak, Byron Elias, John Montrose, Lenora Murad, Fred Kiehm, and Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, Councilman David Reynolds, Councilman James Messa, Assessor Darlene Abbatecola, 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 thanked former Zoning Board Member Tim Tallman for his many years of service to this Board and to the Town of New Hartford. He did a good job for the community. Also, he welcomed new Board Member Taras Tesak who has had experience with this Zoning Board and service to the Town/community.

Further, Chairman Bogar mentioned that the application of Ms. Constance DeLong of 30 Tennyson Road, New Hartford, has been postponed for the time being per Ms. DeLong's request. Ms. DeLong will notify the Zoning Board when she plans to appear. Residents will again be notified.

The application of **Mr. Michael Fiore, 111 Winchester Drive, New Hartford, New York**. Mr. Fiore is located in a Low Density Residential zone, which prohibits fencing in a front yard. The applicant is proposing to place a 4 foot high fence 30' in front of his home. Therefore, Mr. Fiore is seeking a 30' front yard setback Area Variance. Tax Map #317.015-2-54; Lot Size: 112' x 160'; Zoning: Low Density Residential. Mr. Fiore appeared before the Board.

Mr. Fiore presented pictures for the Board's review. He had placed a 6' vinyl fence towards the rear of his property and now he would like to replace the existing 4' wooden fence to match the vinyl fence. The wooden fence is falling apart and he would like to keep the new fence consistent with the one that is there. The wooden fence is about 20 years old. He showed the Board Members where the fence is in accordance with his house. He wants a fence instead of shrubs as he wants less maintenance and to match the 6' fence. He took a tree down to be able to put in the fence.

Board Member Elias asked Codes Officer Booth if Mr. Fiore is grandfathered in – Mr. Booth said no. Codes Officer Booth stated what is separately addressed in the Zoning Law.

Chairman Bogar asked if there was anyone present to address this application – no response.

-Mr. William Schmelcher, 109 Winchester Drive. He called the Codes Office to say he is not against this variance if Mr. Fiore is just going to replace the wooden fence. He is opposed if Mr. Fiore wants to go any further out with a fence.

There being no further input, the Public Hearing closed at 6:15 P.M.

The Board Members stated Mr. Fiore has a nice home, and he is just replacing an old, dilapidated fence. They feel this will improve the character of the neighborhood.

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;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no – the old fence needs to be replaced – this is not a new fence – the old one has been there for 20 years – additional comments made;
- 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 and that the fence is not to exceed 30' in the front of the house; and a Building Permit be obtained within one year of approval date; seconded by Board Member Fred Kiehm.

Board Member Tesak had a question as to front yard vs. side yard – Codes Officer Booth explained.

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 Taras Tesak - yes	

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

The application of **Mr. Charles W. Tibbitts, 3513 Oneida Street, Chadwicks, New York**. Mr. Tibbitts would like to convert the existing garage into a two-bedroom single-family residence. Mr. Tibbitts' property is located in a Medium Density Residential zone, which requires a 10' side yard setback, and a minimum living area for a two-story structure of 1600 square feet. Mr. Tibbitts is seeking a 2' left side yard Area Variance and a minimum living Area Variance of 614 square feet. Tax Map #349.016-1-71; Lot Size: 1.44 Acres; Zoning: Medium Density Residential. Mr. Chuck Tibbitts and Mr. Mike Steiger, Architect, appeared before the Board.

Mr. Steiger presented pictures of the existing property. They don't have a survey but it is the left side of the building that is somewhat close to the property line. Based on the site conditions there, that is where they feel the property line is – they aren't extending the building.

Board Member Tesak asked Mr. Tibbitts if he was a resident of this house – no. He lives up the street. He has rented his properties for years. No one is living there now. It is used now as a workshop and storage. It is a nice building and he would like to turn it into a higher end apartment. This house has a full cellar. There is a second floor with a bedroom. The downstairs they want to keep as a garage and the front as a kitchen area. He will make it look very nice. To each side of this property is a three-family home.

Mr. Steiger presented a site plan. This property has never been subdivided. The downstairs is only 724 sf with 259 sf to be added. They do not want to expand this property and that is why they need the variance. They don't have any pictures of what it will look like, but they will put vinyl siding on the house. They feel there is a need for a nice two-bedroom apartment with a garage space in this area. The yard is very nice and appealing. This is a Medium Density Residential zone, which allows for a two-family.

Board Member Tesak asked if this was income property solely – Mr. Tibbitts said yes. He also asked if this is a common driveway – yes, only one driveway. Board Member Tesak wondered if there could be a third building there with another income property – answer: no. The back property is not usable property. Mr. Tibbitts said he could use the extra income and it is a nice project for him to work on.

Board Member Tesak asked Town Attorney Cully if he had concerns about one driveway for two parcels. Attorney Cully said no; but if it was subdivided it would be an issue but none now. Board Member Tesak has concerns with more people coming in and out. Mr. Tibbitts said it is a wide driveway.

Board Member Elias questioned as to whether this is a Use Variance. Codes Officer Booth explained that he feels it is not a Use Variance and explained why. Discussion continued.

Board Member Kiehm has no issue with the side yard request, but he does with the living space variance, as did some other Board Members. Board Member Elias asked, if you didn't do the second floor, would you still need it – answer: yes.

Board Member Elias again asked if this should be treated as a Use Variance. Town Attorney Cully said we can act on this because it is an Area Variance, not a Use Variance. Codes Officer Booth stated it is his interpretation that it is an Area Variance when the application came before him. Reference was made to Section 118-25F of the Ordinance regarding zoning. Town Attorney Cully agrees with Codes Officer Booth that this is not a Use Variance.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 6:50 P.M.

The Board Members discussed the width of the driveway whether it is adequate or not, and concerns regarding the living space request.

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, especially regarding living space;
- 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 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 - no	Board Member Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – no
Board Member Karen Stanislaus – no	Board Member Lenora Murad – yes
Board Member Taras Tesak - no	

Motion **denied** by a vote of 4 – 3.

The application of **The Meadows at Middle Settlement, Inc., 4310 Middle Settlement Road, New Hartford, New York**. The applicant's property is zoned Institutional which requires 100 feet of frontage per lot and a rear yard setback of 25'. The applicant is proposing a 3-lot subdivision, that creates two landlocked parcels and a building setback from rear lot line 17'. Therefore, the applicant is seeking two 100' frontage Area Variances and two rear yard setback Area Variances of 8'. The applicant will address the Planning Board regarding shortage on parking spaces. Tax Map #328.000-2-65; Zoning: Institutional. Mr. Jim Connors of The Chazen Companies, appeared before the Board.

Mr. Connors explained that the existing buildings were constructed in the 1970's. A number of units have been flooded out recently as it is within the flood plain area. There are 22 two-story buildings currently. They will be replaced with three-story buildings. He presented elevation views. The primary reason is they have received grants from New York State for storm water recovery and reconstruction of the property. They will be approaching the Planning Board for Site Plan Review for Phase I. They are keeping Lot 3 as open space. The reason why they are subdividing is for financial reasons. They will be creating two lots with no road frontage. They are looking into in putting a road but with the existing buildings they won't be able to do so. Lot #1 does not require a variance but Lots #2 and #3 are without road frontage. These will be owned by one entity. This will not generate any more traffic as they will have the same number of people.

Mr. Connors addressed the flood plain issue. The Meadows lost 18 units when it flooded. Those units have been repaired.

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Discussion ensued regarding how the financing is precipitating this request. The process for securing funding was explained. If they didn't have to create the subdivision, they wouldn't need any variance at all. With this concept, the potential mitigation is to reduce any potential flooding. It will reduce the amount of impervious area with going to three stories.

They are still providing the same number of parking spaces. The Planning Board has the ability to waive that parking requirement – the parking is under-utilized as it is.

Board Member Tesak asked about apartments – answer: definitely the same. They will also continue to maintain the existing entrance – no plans to do anything different with the driveways – they will pave the entire road. No improvements to the entrance on Middle Settlement Road.

Town Attorney Cully explained The Meadows needs the variance before they proceed to the Planning Board. There will be cross easements for ingress and egress because they don't have road frontage.

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

-Ms. Mary Ellen Lazarek, resident of the Meadows and a Resident Committee member. She represents the people who live in this development. They are not happy about this. They are losing balconies and other amenities. She is concerned about the one entrance there and when they are building. She feels it will be a very dangerous situation with mud, dust, and dirt. She would like to see another entrance during construction. There are elderly people still driving. Also, she heard that they are going to demolish the laundry room.

It was mentioned that these are something the Planning Board could address. She was advised to talk/meet with representatives of The Meadows.

Town Assessor Darlene Abbatecola asked about a start date and ending date for each phase. It was stated this would take about fifteen months. They can only do one building at a time. Also, each building will have laundry.

A question was asked, where will the people be moved to – it was stated they will be moved on site. No one will be moved off site.

There being no further questions, the Public Hearing closed at 7:20 P.M.

Chairman Bogar stated that County Planning 239 had no recommendations, NYSDOT also had no recommendations. NYSDEC did not respond.

Board Member Tesak recommended that the residents speak with the people running this facility to help answer their questions. He feels a lot of issues addressed tonight are a part of the Planning Board review.

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; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Karen Stanislaus – yes
Board Member Taras Tesak - 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 **Reaves Dental, 4301 Middle Settlement Road, New Hartford, New York**. Mr. Reaves is proposing a solar system of up to 44 kw to be located on a freestanding structure in the rear of his property. Proposed solar panels of 10 kw or larger are not a permitted use. Therefore, the applicant is seeking a Use Variance to install this 44 kw system. Tax Map #328.000-2-31; Lot size: 1.42 Acres; Zoning: Institutional. Mr. Justin Reaves, D.D.S. and Mr. Justin Williams, CNY Solar, Inc., appeared before the Board.

Mr. Reaves stated that he has been looking into a solar system for his office – Mr. Williams will be installing it. When he looked into solar, there are federal and state tax credits to allow him to run electricity 110%. They have to produce at least 95% in order to get it approved. Credits roll month to month. The panels cannot be placed on the roof - there isn't any space to do so and the panels are 44 kw.

Board Member Montrose asked what safety features are built into this system – all have to be in conduit and all systems will shut down if there is a problem.

Board Member Tesak asked if there is an agency that governs this. NYSERTA – they have to send a package to them for approval. Also, National Grid have to approve the design and the local Codes Department. Board Member Tesak also asked if the Town has any position on this and how far back does it go. Town Attorney Cully and Codes Officer Booth stated larger panels were an allowed use but that was changed last year and lowered. 10 kw was granted for residential. There were no comments raised during the Public Hearing session for commercial uses.

Board Member Elias asked why this isn't a Special Use Permit. Town Attorney Cully stated detailed financial information needs to be submitted and with a Special Use Permit you wouldn't need to do this. There is no district in the Town that allows over 10 kw.

Board Member Elias feels this is an incomplete application – they need more detailed financial information. It needs to be prepared by a competent financial individual. It is information for each of the uses allowed in this district. If we were to vote on this tonight and deny it, they couldn't go forward. Perhaps this should be tabled and have their attorney contact our attorney and Codes Officer to decide how to proceed. .

Mr. Reaves was given several comparisons on how to proceed further, i.e., financial information to justify his use.

Board Member Stanislaus tried to explain further on how to proceed, i.e., a financial loss or burden. There is certain criteria this Board needs to go by – it is the law. I.e., show that the solar is the only way he can run his business.

Board Member Tesak said the Town changed this last year for residential but he congratulates them for coming to this Board to pursue their application for commercial.

Board Member Murad questions the Use Variance as they are not using the land differently. Codes Officer Booth explained he can't issue a permit that is not a permitted use.

Town Attorney Cully mentioned to have the applicant seek a Zone Text Amendment to the Town Board to liberalize the statute for a commercial use. Everyone thinks it is a good idea. Mr. Reaves stated no matter how much of a good idea it is, he doesn't know if there is another recourse.

At this time, the Board Members went through the criteria for granting a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: difference of opinion
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – response: yes, all in agreement;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: no, all in agreement;
- The alleged hardship has not been self-created – response: difference of opinion.

Discussion: Town Attorney Cully suggested appointing a committee to meet with the Town Supervisor and Councilman Messa to talk about the possibility of amending the Ordinance for commercial. Codes Officer Booth stated this was done – 10 kw.

Further, Town Attorney Cully stated he will check whether this is a Use Variance or not.

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Motion was made by Board Member Taras Tesak to table this to meet with Town Officials, as he wants to make the right decision and solve this; seconded by Chairman Randy Bogar.

Vote taken:

Chairman Randy Bogar - yes	Board Member Taras Tesak - yes
Board Member John Montrose - yes	Board Member Lenora Murad - yes
Board Member Fred Kiehm - yes	Board Member Karen Stanislaus - yes
Board Member Byron Elias - yes	

Motion **approved** by a vote of 7 – 0. Meeting to be setup by Dory Shaw and the participants notified.

Minutes of the June 15, 2015 Zoning Board of Appeals meeting were approved by motion of Board Member Byron Elias; seconded by Board Member John Montrose. 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