

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
OCTOBER 19, 2015**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Taras Tesak (arrived at approximately 6:35 P.M.), 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. Chairman Bogar explained that one Board Member would be late and it is up to the applicant whether to proceed.

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The application of **Mr. & Mrs. Jordan Keshler, 5 Concord Boulevard, Clinton, New York (Town of New Hartford)**. The applicants are located in a Low Density Residential zone, which permits an accessory apartment. However, the accessory apartment shall not significantly change the exterior appearance of the structure and the floor area shall not exceed 25% of the principal structure's square footage. Therefore, the applicants are seeking a determination as to whether or not the addition is a significant change to the structure and a 312 square foot Area Variance on the overall size of the apartment. Tax Map #328.005-2-37.2; Lot Size: 150' x 110'; Zoning: Low Density Residential.

Chairman Bogar stated that Codes Officer Joseph Booth received an email that the applicant was withdrawing his application. However, Mr. Ronald Mare, 11 Concord Boulevard, was present as an interested neighbor. Board Member Fred Kiehm presented the application that was submitted for Mr. Mare to review.

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The application of **Mr. Emilio Hallam 13 Hara Crescent, New Hartford, New York**. Mr. Hallam would like to build a new 12' x 8' roof over an existing deck on the front of his home. He is seeking an 8' average front yard setback Area Variance, as he is located in a Low Density Residential zone, which requires the home to be set back in average with adjacent properties. Tax Map #328.016-3-88; Lot Size: 151' x 131'; Zoning: Medium Density Residential. Mr. & Mrs. Hallam appeared before the Board.

Mr. Hallam stated he wanted to put a roof over his porch. There will be no walls – all open. He would like this to protect them and the house from the elements. There was never a porch, just a stoop. Mr. Hallam displayed a picture from his cell phone of what the proposed roof would look like. Mr. Hallam will forward an email to Secretary Dory Shaw of the rendering of this roof (as of this writing, an email has been sent). Mr. Micah Crewell, contractor, appeared before the Board and described the roof, materials, etc. It will match the existing house.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:15 P.M.

Chairman Bogar stated Oneida County Planning 239 and NYSDOT responses were received with no comment. Board Members Kiehm and Elias stated that many of the homes in this area have roofs over their porches.

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 – possibly.

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 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 Lenora Murad – yes	Board Member Karen Stanislaus – yes

Motion was **approved** by a vote of 6 – 0. (Board Member Tesak was not present for this application).

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The application of **Mr. Chris Battaglia, 35 Woodberry Road, New Hartford, New York**. Mr. Battaglia would like to build a bedroom addition and a front porch addition to his home. He is located in a Low Density Residential zone, which requires the principal structure to be set back a minimum of 15’ from the sidelines. The home is legal non-conforming it is only 10’ from the side lot line. Mr. Battaglia is seeking a 5’ right side yard setback Area Variance to erect a front and rear addition. Tax Map #339.001-3-35; Lot Size: 100’ x 155’; Zoning: Low Density Residential. Mr. Chris Battaglia appeared before the Board.

Mr. Battaglia presented some pictures and drawings. He will build the porch this year and the bedroom in 2016. It will be even with the outside wall. He is putting in a dormer to give character to the front of the house. He is not encroaching any further into the yard – the house is non-conforming. He will also be taking the old brick off the front of the house and updating it. Mr. Battaglia needs the additional living space.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:25 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: 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 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 Lenora Murad – yes	Board Member Karen Stanislaus – yes

Motion was **approved** by a vote of 6 – 0. (Board Member Tesak was not present for this application).

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The application of **Mr. David Razzante (Metropolitan Signs, Inc.) for Wachs NH Development, 4535 Commercial Drive, New Hartford, New York (Price Chopper Plaza)**. The applicant is requesting the placement of two new pole signs. This applicant's signs are located in a C1 General Commercial zone which restricts freestanding signs for height – 25.0'; quantity one per 1,000 lineal feet of frontage, and size to 128 square feet. The applicant is seeking a height Area Variance of 6'9"; 300 plus/minus lineal feet separation Area Variance, and a 116 square foot Area Variance for the total size of each sign. Tax Map #328.008-1-20.61; Zoning: C1 General Business. Mr. David Razzante and Mr. Michael Wachs appeared before the Board.

Mr. Razzante stated he took this Board's recommendations and brought the sign 6' above grade. The square footage is down another 30 sf from the original plans. They are seeking approval for the two pole signs.

Chairman Bogar stated that this current application has three (3) variances: Firstly, the pole height is 38' 9" and reduced to 31' 9" (maximum height allowed is 25'); secondly, square footage has changed from 274 sf to 244 sf; and thirdly, a 300 lineal foot Area Variance (1000 lineal feet limitation between signs).

Mr. Razzante would like approval based on what has been indicated to them from previous meetings as far as height and square footage. The top sign will be LED and the three (3) tenant signs will be 6' 1". There will be 4' at the bottom of the sign to the ground.

Board Member Elias stated that he went to the site and that he traveled Commercial Drive from west to east and the sign cannot be seen because of the trees. He feels the signs should be left the way they are since height doesn't seem to matter. Mr. Razzante mentioned removing the trees. Board Member Elias said the trees actually make the shopping center look better. If the trees are cut down, in his opinion, it would make this property look like a parking lot.

Town Attorney Cully reminded the Board that the trees were part of the original approval for this development and can't be changed.

Board Member Elias would like to see something like Sangertown Mall has put up for their sign, which is considerably lower. He did mention how the Rockin Jump sign looks nice on the building. He stated that his concern is the whole sign corridor and something different needs to be done because the area doesn't look good.

Mr. Razzante explained that malls and strip plazas are different. In a strip mall, which is going to be renovated, people want to see what is in there.

Board Member Murad stated to Mr. Razzante that he has done a good job trying to stay within our Codes and he had great presentations. This Board gave him some recommendations, but she agrees with Board Member Elias. Our job is to stay within the Codes as much as possible. Mr. Razzante said every aspect of this strip mall will be beautiful.

Chairman Bogar has been at the site a couple of times also and he doesn't feel the change is necessary. People have iPhone and Garmins to seek directions to a specific site. He also feels Sangertown Mall has done a nice job and probably all the stores are not listed but people can find a store if they want to.

Mr. Razzante said instead of being wider they are narrower and taller. What is there now vs. the end product will be something nice. There was mention of a new tenant coming into the plaza who will want a sign. Mr. Razzante mentioned refurbishing the refacing the existing sign, but what is better, old vs. new.

Board Member Murad asked the applicant, if you don't get the variances, would you refurbish it – Mr. Razzante said probably, but not sure. However, he feels the existing signs are old and outdated. He again referred to sign sizes. Tenants want recognition.

Chairman Bogar referred to the height of the Price Chopper sign. Toys R Us sign is 26', sign by the vision center is 32'. The suggested 31' 9" can be reduced to 31' minus the 9".

Board Member Montrose feels people will know where the stores are located eventually.

Discussion again ensued regarding the distance required between the two (2) signs. Town Attorney Cully referred to the Ordinance regarding this.

Mr. Wachs addressed the Board and thanked everyone for their input regarding the applications he has submitted. He mentioned how some of the space in this plaza has been vacant for years and he is trying

to update this place, i.e., stores and bringing in permanent jobs. Not granting him a little more signage doesn't make sense to him. He further explained the need for signage at this location. He thanks the Board for recognizing Mr. Razzante's workmanship.

Board Member Tesak arrived at the meeting at approximately 6:35 P.M.

Board Member Elias noted that to him is that you can't see the signs east to west now so why change it. Mr. Razzante feels the trees would block a monument sign also but Board Member Elias disagrees.

Mr. Wachs explained the width is less but the same height minus the 9".

Board Member Tesak asked if there is an alternative plan. Is there a reason why they want to go 5' higher than the existing sign. He gave an option, i.e., splitting signage half and half. Attorney Cully mentioned they would be creating an additional variance.

Board Member Tesak again asked if there is another way he can make the signs comply with the law. Mr. Wachs stated the signs are grandfathered in and they can refurbish what exists. He is not sure what their response would be or action. Board Member Tesak referred to the first time they came before this Board and they had drawings. He is wondering if they had any other plans.

Mr. Razzante again referred to the recommendations by this Board and they came back with what they thought the Board wanted.

Board Member Tesak asked if they subdivided this allowing for more space. Mr. Wachs said they leave space to allow if someone moves out. They have room at the bottom for another sign. Discussion ensued regarding subdividing the signage.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 7:10 P.M. Chairman Bogar stated that Oneida County Planning 239 and NYSDOT responses were received with no comments.

Board Member Elias feels the change in signs isn't warranted with the trees blocking this. He again stated he would like to see monument signs at each entrance. Board Member Murad is concerned if the signs stay the way they are - we don't know if the applicant wants a monument sign.

Board Member Tesak agrees with Board Member Elias. He feels we can see the stores from the road.

Board Member Kiehm doesn't like the height request. Board Member Montrose and Board Member Stanislaus like the low profile sign.

Board Member Murad asked if the applicant needs a variance to decrease the width – yes.

Board Member Stanislaus feels we need some suggestions on how this could be remedied and each time they come back they changed it based on what this Board recommended. However, it is not within the Zoning Laws.

Board Member Tesak asked to refer to previous minutes regarding this Board's recommendations to the applicant.

Board Member Murad asked to open the Public Hearing again at 7:15 PM. She asked, based on what this Board said at the first meeting, did you come back with what the Board asked and would they be interested in keeping the sign and decreasing the width.

Mr. Razzante said in order to accommodate the tenants, they need to be a mirror image of one another so one doesn't have more than the other. They would have to shrink everything accordingly. They have to keep the tenants happy. Also, what if they take the trees out and put in new ones in the same location.

Town Attorney Cully reminded the Board that you cannot amend the original site plan.

Discussion again ensued regarding modifying the sign. Board Member Tesak stated that if the applicant is denied, let them come back before this Board – he is not in favor of a variety of signage. Board Member Murad also stated the suggested monument sign isn't before us either.

Town Attorney Cully stated what Board Member Tesak is saying is correct. The applicant has to have some sort of hardship. This Board reviews each application independently.

Chairman Bogar reminded the Board that if they modify their application, it needs to be republished.

The Public Hearing ended again at 7:30 P.M.

Reference was made as to whether Board Member Tesak feels comfortable with voting on this application as he arrived late. Town Attorney Cully asked him if he felt comfortable addressing this. Board Member Tesak would like to ask the applicant if he had their approval – Mr. Wachs welcomed his vote.

Town Attorney Cully asked that each of the criteria be voted on separately for this application and the response noted by each Board Member.

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: Stanislaus; Yes: Bogar, Kiehm, Montrose, Elias, Tesak. Undecided: Murad;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: No: Bogar, Kiehm, Tesak, Montrose, Elias, Murad, Stanislaus;

- The requested variance is substantial – response: Yes: Bogar, Kiehm, Tesak, Montrose, Elias, Stanislaus; Murad;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: No: Bogar, Kiehm, Tesak, Montrose, Elias, Murad, Stanislaus;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: No: Montrose, \*Murad; Yes: Bogar, Kiehm, Tesak, Montrose, Elias, Stanislaus.

\*Board Member Murad believes the changes they anticipate are better than what is existing at the site now.

Discussion ensued regarding the variances requested and motion(s) involved.

Motion was made by Board Member Byron Elias to deny the whole application as requested; 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 Lenora Murad – yes	Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes	

Motion to **deny** was carried by a vote of 7 – 0.

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The application of **Mr. Jordan Keller, 9422 Roberts Road, Sauquoit, New York**. Mr. Keller is proposing to rebuild a 14' x 24' room on the rear of his home. The applicant is located in a Residential/Agricultural (RA) zone, which requires a 30' front yard setback. Mr. Keller is seeking a 3' front yard setback Area Variance to add a new addition to a legal non-conforming structure. Tax Map #349.000-3-24; Lot Size: 64' x 199'; Zoning: Residential/Agricultural. Mr. Keller appeared before the Board.

Mr. Keller presented a photo of his home from his cell phone, and submitted a plan for this addition. There had been a room on the back of the house, but there were problems with water and there wasn't a foundation. He is not encroaching any further on the property, but his home is non-conforming.

Board Member Tesak asked what he would be using this room for and if there was any other way he could accomplish this. Mr. Keller said it will be living space and he couldn't achieve this any other way. This addition is in the rear of his home.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 7:45 P.M. Chairman Bogar stated that responses were received from Oneida County Planning 239 and Oneida County DPW with no adverse 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 – this will improve the property;
- 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 Taras Tesak 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 Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Lenora Murad – yes	Board Member Taras Tesak – yes
Board Member Karen Stanislaus – yes	

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

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Minutes of the September 21, 2015 meeting were approved by motion of Board Member Byron Elias; seconded by Board Member Karen Stanislaus. All in favor.

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Board Member Tesak asked about the procedure for addressing minutes of the meetings.

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There being no further business, the meeting adjourned at 7:55 P.M.

Respectfully submitted,

Dolores Shaw, Secretary  
Zoning Board of Appeals

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