

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
JUNE 27, 2016**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Byron Elias, John Montrose, Taras Tesak, Lenora Murad, and Karen Stanislaus. Board Member absent: Fred Kiehm. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, Assessor Darlene Abbatecola, Councilman David Reynolds, 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 there is one Board Member absent tonight and it is up to the applicant whether to proceed.

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The application of **Ms. Barbara Manning, 2 Mapledale Road, New Hartford, New York** who would like to extend a roof beyond the average front yard setback by 7'. Zoning in this area is Medium density Residential, which requires a home to meet the average front yard setback, which is 30'. The applicant is seeking an average front yard setback Area Variance of 7'. Tax Map #328.011-2-4; Lot Size: 84' x 70' (corner lot); Zoning: Medium Density Residential. Ms. Manning appeared before the Board with her contractor, Mr. Mark Larson.

Ms. Manning said she would like a front porch to sit and enjoy the area and also to keep out the elements – it is nothing big. Mr. Larson displayed a plot plan and materials. The porch will be 19' long and will come out 7' and come up about 8-10 inches off the ground. The house is about 49' long. She is going from the door to the corner of the house. There will be two steps down.

Board Member Tesak asked if there was any other way to accomplish this. Mr. Larson said no as it would be too costly and there is existing concrete that would have to be broken. There is no back porch and Ms. Manning just wants to enjoy her property.

Chairman Bogar explained why the Board needs to ask these questions.

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

-Messrs. Christopher and Russell Voce, 4 Mapledale Road. They support this application. Ms. Manning has been an excellent neighbor who takes good care of her property. Also, other people have built in this neighborhood.

Mr. Larson was asked about changing the roofline – he stated it wouldn't look right and wants to do this project right.

There being no further input, 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 – no, all in agreement.

Motion was made by Board Member John Montrose to approve the application as presented; 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 Taras Tesak - 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.

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The application of **Mr. Maurizio Salamone, 244 Sylvan Way, New Hartford, New York** who would like to extend a 6' fence 12 feet into his front yard. Zoning in this area is Low Density Residential, which prohibits the installation of a fence in a front yard. Therefore, Mr. Salamone is requesting a front yard Area Variance of 12'. Tax Map #340.005-1-62; Lot Size: 281' x 136' (corner lot); Zoning: Low Density Residential. Mr. Salamone appeared before the Board.

Mr. Salamone stated that the main reason for this fence extension is to provide a safe area for his future children. This area can be easily seen from the house and it is the only area that is level.

Board Member Tesak asked if this could be accomplished any other way and can the request be reduced. Mr. Salamone said no, this is the only place and it cannot be reduced – it would be too small. Higby Road is a busy road – safety is his first priority.

Chairman Bogar asked if he could take down the fence on the Higby Road side – no. The fence will come from the right corner out and around – like an enclosed area. This will be a white vinyl fence. Mr. Salamone owns the land to the side also.

Board Member Elias referred to the existing pool. Also, he is always concerned with fences on corners because of site situations. He asked Mr. Salamone if he could work with a different setup. Mr. Salamone said no as it would be too small. He plans on putting in shrubs all around the fence.

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

-Mr. Frank Cook, 242 Sylvan Way. He asked about the location of the fence. It is on the Higby Road side. Mr. Cook addressed site distance coming off sylvan Way to Higby Road – will there be interference. It was stated the trees on the corner are worse. Mr. Salamone doesn't feel visibility is a problem at all.

There being no further input, the Public Hearing closed at 6:35 P.M. The Board referred to the location of the fence. The Public Hearing was opened again at 6:40 P.M. There seemed to be some confusion about the location of the fence. Board Member Tesak asked Mr. Salamone when he would like to start this project. Mr. Salamone said time is important to him. Board Member Tesak feels he needs more information.

Board Member Elias mentioned going to the site and looking at this again. Reference was made to whether that would become a meeting, publishing it, etc. A vote was taken as to whether the Board Members would be able to vote on this tonight:

Chairman Randy Bogar - yes	Board Member Taras Tesak - no
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus – yes

The Public Hearing closed again at 6:45 P.M. It was decided that the Board Members would vote on this tonight.

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: it could be less;
- 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: difference of opinion.

Motion was made by Board Member Byron Elias to grant Mr. Salamone 8' instead of the 12' to be better in line and that he put shrubs every 5' in front of it.

Mr. Salamone said 8' is too small. There was no second to this motion.

At this time, motion was made by Chairman Bogar to deny the application, as it didn't meet the criteria; seconded by Board Member Taras Tesak.

Chairman Randy Bogar - yes	Board Member Taras Tesak - yes
Board Member John Montrose - no	Board Member Byron Elias – yes
Board Member Lenora Murad – no	Board Member Karen Stanislaus – no

Motion tied: 3 – 3.

Motion was made by Board Member Karen Stanislaus to accept the application of Mr. Salamone as presented and that he place shrubs all around the fence; and that 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 Taras Tesak - no
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 4 – 2.

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The application of **Mr. Anthony Pellegrino, 30 Forest Road, Utica, New York (Town of New Hartford)** who would like to screen in a portion of an existing deck. This property is located in a Low Density Residential zone, which requires a 15’ side yard setback. The applicant is seeking a 4’ left side yard Area Variance to construct a screened in deck. Tax Map #339.008-3-40; Lot Size: 97’ x 195’; Zoning: Low Density Residential. Mr. Pellegrino appeared before the Board.

Mr. Pellegrino said he has an existing deck in the rear of his home. He explained that his house is non-conforming with the changes in the Code. His house was built 50 years ago. He would like to screen in half of his deck. It will be a summer-type room.

Board Member Tesak asked if there is another area where he can do this – Mr. Pellegrino said no – it would be too costly.

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

-Mr. Frank Catanzarita, 28 Forest Road. He has no objection to this request and he is the only one affected by it.

There being no further input, the Public Hearing closed at approximately 7:00 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; 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 Taras Tesak - 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.

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The application of **Woods Hill Homestead, LLC, 9755 Sessions Road, New Hartford, New York**. The applicant is seeking an Interpretation of Section 118-46A2, specifically the reuse of an existing barn for theatrical performances and whether or not this use fits the intent of the Code. Tax Map #350.000-2-67.1; Total Lot Size: 67 Acres; Zoning: Agricultural. Attorney Merritt Locke and Ms. Mary Wilcox appeared before the Board.

Board Member Elias asked if this was a working farm – yes. They just restored the barn and have another barn to keep the animals. The upper level is the area they want to use. They need an interpretation as to whether or not this fits – they have a theater group and want to hold workshops to do Shakespeare. They would invite students, high school and/or college, to learn from actors. People doing this donate their time. This would be held in the summer, about four weeks. Students would live in their farmhouse.

Board Member Tesak asked about any type of dance studio at another time, or weddings. Answer: no. However, there is a lot of interest in community events, maybe a lecture – all without cost. They want to use their facility for the community.

Attorney Locke said capacity is 200 people. This is not a wedding venue. Her husband eventually wants to go back into farming.

Board Member Montrose asked Codes Officer Booth if approved by the Zoning Board, does this have to go through the Planning Board to address parking, fire inspections, etc. Mr. Booth said yes. The building has to comply with the Building Code – it is not an easy task and they know what they have to do.

The Board Members discussed what they are asking for specifically, i.e., artists, Shakespearian type setting, lectures – all artist related – no weddings. If they changed to something else, Attorney Locke knows they would need to come back before this Board.

There is about 80 acres at this site. Traffic/parking would be addressed by the Planning Board.

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

-Mr. & Mrs. Ted Zinski: 9841 Mallory Road. They are in favor of this application. They appreciate what is being planned. However, he doesn't want to see any type of loud music/bands.

-Mr. Ed Richards, 9732 Sessions Road. Parking: will they have a paved area at the farm. Attorney Locke said this is part of the Special Use Permit that would go before the Planning Board. They are only addressing the interpretation tonight. The Special Use Permit will define everything.

There being no further questions, the Public Hearing closed at 7:15 P.M.

At this time, the Board Members addressed this Interpretation as to whether or not this application fits into the intent of the Code, specifically Section 118-46A2:

Motion was made by Board Member Byron Elias that this falls into what the applicant would like to do at this site, i.e., the theater group, Shakespeare, etc. under Section 118-46A2; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes	Board Member Taras Tesak - no
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 5 - 1.

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The application of **Mr. Mark French of Apex Solar for Mr. Michael Baldwin, 8944 Tibbitts Road, New Hartford, New York**. Solar systems up to 10 kw are permitted. The applicant is seeking a Use Variance to install a 15.6 kw system, which is a non-permitted use. Therefore, the applicant is seeking a Use Variance to install a 15.6 kw system. Tax Map #339.000-2-35; Lot Size: Total acreage: 44 acres; Zoning: Agricultural. Mr. Michael Baldwin (who left the meeting at approximately 8:00 PM), Mr. Mark French, Mr. Nick Clingerman, and Mr. Lance Durham (representing Apex Solar) appeared before the Board.

Mr. Clingerman stated this is a roof flush mount solar system. The usage justified the system. He stated that it is a financial hardship to have large utility bills. One of Mr. Baldwin's utility bills was \$600 for the month of February. This is a good investment for homeowners. The key thing is it covers 55% of its usage. The 10 kw system is too small.

Board Member Tesak asked if Mr. Baldwin was here. It was stated he had to leave the meeting. Discussion ensued regarding the difference of square footage and modules. Board Member Tesak asked if they are thinking of replacing units or any type of energy systems in an existing home. Mr. French said to offset the entire usage is about 27 kw.

Board Member Tesak said the Town Board put this standard of 10 kw for a reason.

Board Member Elias is not convinced it is a Use Variance.

Below is an excerpt from Mr. Nick Clingerman of Apex Solar Power describing what his company does for homeowners who want to save money, etc. (This addresses many questions asked by the Zoning Board members).

**Excerpt:** I wanted to put a few things in writing to help explain solar photo-voltaic systems, particularly in the residential sector of NYS.

The average size residential system that we install is around 9kW. That could be 35 panels(about 5.5ft x 3.33ft each) or 20 panels of the same dimension. There are different outputs for different models. The modules that produce more, cost more, and are typically used in situations where additional production is needed in a limited roof space. The industry average output of these modules is about 260 watts each(.26kW). The largest that we use are 320 watts each(.32kW). They produce about 30% more and cost about 25% more.

4 years ago, the average panel was closer to 200 watts(.2kW), and the premium modules were closer to 250 watts(.25kW). The square footage needed to fit the same amount of kW today is less than it was 4 years ago. The average system we install is about 9.1kW. The average size of a system that size is 660 square feet. The production of the system is dictated by the tilt, azimuth, and amount of shading. Someone who needs to offset 11000kWh of annual usage may need a 9.1kW system with a nice, south roof, where there neighbor with the same usage, may need a 11.44kW system to reach the same production due to having east and west roofs. The size of the 11.44kW system would be about 830 square feet. A 15.6kW system would be about 1130 square feet.

Many homes use more than the average amount of electricity for a wide variety of reasons. Some people use electricity to heat their homes. Some have electric vehicles. Some have hot tubs or jacuzzis. Some have large or extended families living under the same roof. These are all things that are acceptable ways for people to consume electricity. They are not all avoidable uses of electricity. They could produce all of the electricity with power generated from the sun.

NYSERDA funds residential projects up to 25kW. There is a very small portion of single family residences that use more than the usage that can be offset by a 25 kW system. NYSERDA also limits the production of a system to 110% of the consumer's previous 12 months of usage. Each year, a consumer's usage can vary by several percent for many reasons such as an extremely cold winter or hot summer, having a child returning home from college for a year, etc. It is for this reason NYSERDA allows a slight margin of over production.

In New York, per the public service commission's(PSC) regulations, utility companies "net meter" the production of the solar. While the sun is high, the systems typically produces more than is being used at the moment, and spin the meter "backwards". At night, it spins "forward" again. In the summer, the over production typically outweighs the usage, and any excess kWhs that were produced in the current billing cycle are added as a kWh credit to the consumer's bill. In the late fall through early spring months, the systems usually produce the same or less than the usage, in which case the credits are applied to the bill prior to and supply or delivery charges.

Once a year, on what is known as the anniversary month, remaining credits, if any remain, are to be paid out to the consumer. The utility company pays less than 1/3 of the average cost per kWh, as regulated by the PSC. There is not a financial advantage to this, as the real value in solar is offsetting full price kWh. Due to NYSERDA's regulation, and the poor return on investment of over production, solar companies like Apex Solar Power do not over size systems. It would hurt the return on investment.

Town of New Hartford  
Zoning Board of Appeals  
June 27, 2016  
Page 8

Nick Clingerman  
Apex Solar Power

Discussion ensued regarding whether this application is a Use Variance. Town Attorney Cully referred to our Ordinance and Schedule A. To go to something larger than what is allowed is deviating. Codes Officer Booth agrees – the only ones permitted are in Schedule A. This was decided in 2014 where small scale solars are up to 10 kw. We have to go by Local Law. Board Member Elias gave his reasons why he thought this is an Area Variance, i.e. size. Codes Officer Booth reiterated that he can't support anything else than what is shown in our Ordinance.

Board Member Tesak asked if a 15 kw unit could be sold off – it was stated no. Mr. Baldwin couldn't sell his power at all. Board Member Tesak asked this as he referenced a solar farm location and feels the Town Board is trying to prevent something. Mr. Clingerman said there are many agencies involved.

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

-Ms. Cathy Lawrence, Tibbitts Road. She did some research and noticed the Comprehensive Plan encourages people to use energy. She feels the Comprehensive Plan is the town's backbone. Why are we restricting the size. She references the cost of applying for a Use Variance and how hard it is to get an approval. She does not like people to be spending \$300 and to be told no.

-Ms. Laurie Barnes – no address given. Why does Mr. Baldwin need a larger system than what is allowed. Mr. Clingerman stated that he has a higher usage then an average home.

-Mr. Carol Slawson – no address given. She heard a rumor that Mr. Baldwin wants to light up his runway. She is concerned about this. Mr. Clingerman does not know what he is using the power for at this site.

-Ms. Joanne French 9496 Weston Road. She is also asking for a Use Variance for a 10.4 kw system. She has a small house with large energy bills.

-Mr. Nathaniel Gould, 3766 Snowden Hill Road. He supports this application and feels the Town should eliminate the stipulation of 10 kw.

There being no further input, the Public Hearing closed at 7:45 P.M.

Oneida County Planning had no comment and Oneida County DPW didn't have any adverse comments.

Chairman Bogar and Board Member Tesak asked about glare – Mr. Clingerman said glare studies are not required – typically, there shouldn't be any glare issues. If there is a problem, the owner of the house and the company should be able to resolve it.

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: application doesn't meet this;
- 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: no, 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: no, all in agreement.

Motion was made by Board Member Byron Elias to deny the application without prejudice in the event in the event it should be found that the law is not written in accordance with the Zoning Ordinance for a Use Variance; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar – aye  
Board Member Lenora Murad – aye  
Bards Member Taras Tesak – aye

Board Member Byron Elias – aye  
Board Member John Montrose – aye  
Board Member Karen Stanislaus – aye

Motion carried by a vote of 6 – 0. Note: Board Member Tesak voted aye because it is what the law states now.

Mr. Clingerman asked Codes Officer Booth, what if they apply for a 10 kw install and was approved – then can they seek another 10 kw. Mr. Booth will look into this.

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The application of **Mr. Mark French of Apex Solar for Ms. Joanne French, 9496 Weston Road, New Hartford, New York**. Solar systems up to 10 kw are permitted. The applicant is seeking a Use Variance to install a 10.4 kw system, which is a non-permitted use. Therefore, the applicant is seeking a Use Variance to install a 10.4 kw system. Tax Map #340.000-1-28; Lot Size: 150' x 110'; Zoning: Residential/Agricultural. Mr. Mark French, Ms. Joanne French (applicant), Mr. Nick Clingerman, and Mr. Lance Durham (representing Apex Solar) appeared before the Board.

Board Member Byron Elias said Ms. French is his neighbor but can act fairly on this application. He offered to recuse himself but the Board Members agreed he could act responsibly.

Ms. French wanted to know the difference between a 10 kw and 10.4 kw system. She doesn't feel there is much difference. She bought the house 26 years ago with electric heat – it is very expensive. She lives alone. Half of the house is turned off because he bills are high – he house is only 1400 square feet. She knows it is a big investment – approximately \$30,000 but she related it to owning a new car cost wise.

Board Member Elias explained the criteria for a Use Variance. He recommended Ms. French pulling her application and then come back if there is a change in our Code.

Board Member Tesak asked if anyone can add to an existing system – answer is yes.

It was stated that when the Master Plan was drawn up it clearly states the goal for the Town for solar.

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

Town of New Hartford  
Zoning Board of Appeals  
June 27, 2016  
Page 10

-Cathy Lawrence, Tibbitts Road. She finds it ironic that the State puts out a packet for solar and the Town of New Hartford is listed twice in that packet. Our Code is used by New York State.

-Councilman David Reynolds – this is an example where technology has surpassed our Code. He is certainly willing to address this further with the Town Board and staff. People are trying to reduce their utility bills.

There being no further input, the Public Hearing closed at 8:00 P.M.

Mr. Clinger asked, if we were to use this system to 10 kw right now, would they be able to get a permit – yes. If we the Board denied it today as shown, just go to Codes Officer Booth to submit a revised plan.

Ms. French decided to withdraw her application.

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Minutes of the May 16, 2016 Zoning Board of Appeals meeting were approved by motion of Board Member John Montrose; seconded by Board Member Karen Stanislaus. All in favor.

There being no further business, the meeting adjourned at 8:20 P.M.

Respectfully submitted,

Dolores Shaw  
Secretary/Zoning Board of Appeals

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