

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
AUGUST 22, 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, Lenora Murad, Fred Kiehm, and Karen Stanislaus. Board Member absent: Taras Tesak. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, and Secretary Dory Shaw, Town Supervisor Patrick Tyksinski, and Councilmen David Reynolds and Paul Miscione. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting. He also stated that we are down one Board Member and it is up to the applicant whether to proceed.

The application of **Mr. Dean Zumpano regarding 6 Compton Road, New Hartford, New York**. Mr. Zumpano is seeking an Interpretation of the March 21, 2016 Zoning Board decision regarding 6 Compton Road in light of new information. Tax Map #329.017-2-40; Lot Size: 150' x 290'; Zoning: Low Density Residential.

Chairman Bogar has comments on this particular application and opened it up to the Board Members. This case is before us for an Interpretation to the Interpretation of our decision from a previous meeting, that being a 10' right side-yard Area Variance. It comes to light that the applicant needs more than 10' based on a survey that was done. Chairman Bogar felt that in his opinion the only way to interpret our decision is that it was a 10' decision, not 10 ½' or 11' but 10'. Based on that, it is his feeling that if more is needed, Mr. Zumpano would have to come back and reapply. Chairman Bogar opened discussion up to the Board only. It is the consensus that it was granted for 10'.

Board Member Elias stated we referenced the existing foundation during our discussion. If the 10' addressed is the law, then we have to abide by it. Discussion ensued with the Town Attorney regarding an opinion Codes Officer Booth sought and received from the Association of Towns – Town Attorney Cully's opinion is different. Town Attorney Cully recited the references made by the Association of Towns, which he feels are totally different from this case. He wouldn't have brought this on as an Interpretation – Codes Officer Booth stated it was the opinion of the attorney for the Association of Towns who cited two case laws. Town Attorney Cully said in his opinion, Mr. Zumpano is seeking an interpretation of a 10' variance and he had new information. Town Attorney Cully said the applicant came to the Board and said the existing foundation is 5'.

Town Attorney Cully referred to the new application submitted by Mr. Zumpano and he explained about non-conforming uses and why variances are needed. This Board looked at an application that said 5' and which necessitated a 10' right side-yard Area Variance. This would be, in his opinion, based on the fact he is alleging new information.

Board Member Elias to Town Attorney Cully, because it was advertised wrong, it needs to be reapplied? We are being asked to interpret what we granted. Board Member Murad stated if he didn't come for this

variance and he had that existing structure, how far would he have been from the property line. The Board Members felt they spent a lot of time reviewing this application when he first appeared. Board Member Stanislaus feels we are setting a precedent to put in a new request on the basis of an interpretation with new evidence that we didn't have. However, she said he can file for another variance. It would be improper to grant his interpretation of what he wants now.

Motion was made by Board Member John Montrose that the interpretation was 10' and we aren't going any further to address this application; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Lenora Murad – yes

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

Motion **passed** by a vote of 6 – 0.

Codes Officer Booth asked the Board, can Mr. Zumpano move the building so that it is in compliance with the 5' setback – answer was yes.

The application of **Mr. William Tanner, 167 Paris Road, New Hartford, New York**. Mr. Tanner is requesting an approximate 17' front yard Area Variance to place a fence into his front yard on the Oakwood side of his property. The Town of New Hartford prohibits fences from being placed in a front yard, therefore, the request for a front yard Area Variance of approximately 17'. Mr. & Mrs. Tanner and his contractor, Michael Clark, appeared before the Board.

Mr. Clark presented pictures of the property. Mrs. Tanner explained what transpired on this property when Oakwood Subdivision was established. Her husband planted twenty fir trees and eventually the trees died. A few years ago they had to take them out and they are left with stumps. There is no privacy for them now. Traffic has grown in this area. The fence will be 25' off the back property line. They just want privacy. Mr. Clark ordered the fence not knowing they needed a variance.

Chairman Bogar and Board Member Montrose mentioned putting in bushes or trees. They don't want to plant more trees as they'll never see them grow fast enough (they are in their 90's) and Mr. Tanner doesn't want to have to maintain them.

Board Member Stanislaus asked if they ever contacted the Town when the road was put in or did they ever ask for compensation – it was the developer who did this, not the Town.

Mr. Clark said they could still put a fence up but just not as long. They aren't blocking the road and traffic won't be affected.

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

-Mr. Louis D'Ambro, 51 Oakwood Drive. He respects the Tanner's but the laws are there to protect everyone. There are high-end houses there and he feels the fence would detract from the beauty

of this development. He feels the fence would be intrusive. He wondered if they ever looked into putting in trees. Also, if the house ever sells, how do we know the people would take care of a fence.

Chairman Bogar also received comments from the following:

-Mr. William Virkler, 2 Eagle Ridge Drive. He is against the variance as he feels the fence wouldn't be aesthetically pleasing to the neighborhood.

-Mr. & Mrs. Corindo Cipriani, 1 Oakwood Drive. They object to the fence as their property is immediately adjacent to the Tanner property. They feel the fence would detract from the appearance of the neighborhood.

There being no further business, the Public Hearing adjourned at 6:45 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: 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, physical - 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 – yes, all in agreement.

Motion was made by Board Member Byron Elias to deny the application as it did not meet the criteria; 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 to **deny** was made by a vote of 6 – 0.

The application of **Mr. Paul Ferrone, 46 Golf Avenue, New Hartford, New York**. Mr. Ferrone is seeking an approximate 34' Area Variance to construct a 6' fence in the front yard that fronts on Esmeralda Avenue. Zoning prohibits fences in front yards and this being a corner lot it has two front yards. Thus, the request for an Area Variance. Tax Map #329.010-3-71; Zoning: Medium Density Residential. Mr. Ferrone appeared before the Board.

Mr. Ferrone presented pictures of the property. Esmeralda Avenue has a lot of traffic from Utica National. He would like some privacy because of the number of cars going in and out and he is concerned about safety. He wants to put a dog-eared fence, but he didn't have pictures to present at this

time. He will likely put in a 6' stockade fence. He was asked why 6'. Mr. Ferrone said it saves on cutting. A chain link fence will be put in by the neighbors. The trees will be left on site.

Mr. Ferrone was asked if there was any other way to accomplish this without a variance. Board Member Montrose said the trees will hide the fence but we don't know what the fence will look like.

Chairman Bogar asked if there was anyone in attendance to address this application – no response. The Public Hearing closed at 7:00 P.M. Oneida County Planning 239 was received with no recommendations.

The Board Members reviewed the application as presented.

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: difference of opinion;
- 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 – no, all in agreement.

Motion was made by Board Member John Montrose to deny the application as it did not meet the criteria; 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 to **deny** was passed by a vote of 6 – 0.

The application of **Mr. Paul Zalewski, 10 Glencrest Boulevard, New Hartford, New York**. Mr. Zalewski would like to increase the size of a bedroom and add a bathroom in that bedroom over the existing garage. Mr. Zalewski is seeking to expand a legal, non-conforming structure, which is prohibited. Therefore, the applicant is seeking an approximate 2' left side yard Area Variance to accomplish this expansion. Tax Map #339.016-1-17; Lot Size: 119' x 134'; Zoning: Low Density Residential. Mr. & Mrs. Zalewski appeared before the Board.

Mr. Zalewski presented some plans. They aren't going any further to the property line. The roof and siding will match. They need the extra living space.

Chairman Bogar asked if there was anyone present to address this application – no one was present but a

list was given for the file with several residents in favor of the application (this has been made a part of the file). The Public Hearing closed at 7:10 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; and a Building Permit be obtained within one year of approval date; seconded by Board Member Lenora Murad. 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.

The application of **Mrs. Connie DeLong, 30 Tennyson Road, New Hartford, New York**. Ms. DeLong would like to add a 12' x 12' extension to her front bedroom. A small bathroom can be added to create a master bedroom. The home is legal, non-conforming and cannot be expanded. The applicant is seeking an approximate 4' left side yard Area Variance. Tax Map #329.013-3-39; Lot Size: 100' x 376'; Zoning: Low Density Residential. Mr. & Mrs. DeLong appeared before the Board.

Codes Officer Booth explained why they needed the 4' left side yard Area Variance. Mrs. DeLong corrected what was stated – she is 13.5' and only requires a 1 ½' Area Variance. While advertised, this is a much smaller request.

Mrs. DeLong referred to pictures of her neighbors who have come out the front and she'd like to do the same. They have two teenage daughters in a small house and they need the additional living space. They will not be any further than their neighbors. This is closer to the plumbing lines and more convenient and less costly. If approved, they will start construction in two weeks.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public hearing closed at 7:20 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 Karen Stanislaus to approve the application; 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.

Minutes of the July 18, 2016 Zoning Board of Appeals were received by each Board Member. Motion was made by Board Member John Montrose to accept these minutes as written; seconded by Board Member Karen Stanislaus. All in favor.

There being no further business, the meeting adjourned at 7:30 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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