

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
SEPTEMBER 19, 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 Taras Tesak. Board Member absent: Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, 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. He also stated that we are down one Board Member and it is up to the applicant whether to proceed.

Correspondence: Request of **Ms. Giovanna Riccardo, 1122 Pleasant Street, Utica, New York (Town of New Hartford)**. She was granted a 14' rear yard setback Area Variance on November 17, 2014. She has asked for an extension of one more year. Tax Map #330.016-2-2; Lot Size: .42; Zoning: Low Density Residential. Ms. Riccardo was not present at the meeting.

Ms. Riccardo asked for an extension of a variance that was granted to her in November 2014. She cited in a letter the reasons why she needed the additional time.

Codes Officer Booth was asked if any laws had changed since the granting of this variance – Mr. Booth said no.

Board Member Tesak felt she should come back before this Board and waive the fee as he feels we are setting a precedent by approving it and it's been over two years.

Town Attorney Cully explained that the variance expired in 2015.

Motion was made by Board Member John Montrose to extend for one year the variance of Ms. Riccardo at 1122 Pleasant Street, as there is just cause to granting this extension to September 19, 2017. This is the final date for her to comply with the variance. Seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar – yes
Board Member Byron Elias – yes
Board Member Fred Kiehm – yes

Board Member John Montrose – yes
Board Member Taras Tesak – no
Board Member Lenora Murad – yes

Motion **approved** by a vote of 5 – 1.

The application of **Mr. David Dow regarding a 12.12 acre vacant parcel on Mallory Road**. (Property currently owned by Mr. Jason Flemma). Mr. Dow is seeking an approximate 394 square foot Area Variance to construct a 706 square foot one-story home. Zoning in this area requires that a minimum of

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1100 square feet be built for a one-story home. Tax Map #350.000-2-31.6; Lot Size: Approximately 12.12 Acres; Zoning: Agriculture. Mr. David Dow and Ms. Erica Capuana appeared before the Board.

Ms. Capuana stated this is a nice rural piece of property. They want to build an environmental-type home that she feels blends in well. The round home (yurt) was designed by a company and has been reviewed and stamped by a New York State Engineer – it has a laminated vinyl roof. They will install a septic system, well and utilities. They met with the adjacent landowners and the home will set back a little bit further than originally thought – about 400 ±. This home suits their needs, it is an open floor plan.

Board Member Montrose asked how much of a problem it would be for them to add the required square footage to conform. Ms. Capuana said it would require an addition to the original design. This structure is the maximum design.

Board Member Tesak asked if this is a financial hardship or they like the cosmetics of the house. Ms. Capuana said they like the cosmetics of the home want to build something where they wouldn't go into debt. Mr. Dow also stated aesthetically it is what they want. This fits their needs but they are open to an expansion sometime down the road.

Board Member Murad asked if approval of this variance is contingent on them purchasing the land – Ms. Capuana said yes.

Board Member Elias stated this is a nice area and they did their research on this type of home – these houses are becoming very popular.

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

Kristen Sen, 10124 Mallory Road. She wanted to know how the Town determines a minimum of 1100 square feet for a home in this zone. She mentioned that she has to look at this every day. Also, she is concerned about the value of her home as in this area there are larger homes.

Codes Officer Booth said this Ordinance has been effect for at least 30 years. Town Attorney Cully said it is a minimum size standard, which has been followed over the years. Board Member Tesak explained how boards are formed and also community involvement.

-Aaron Vaber submitted his concerns which have been made a part of the file.

Board Member Murad asked Codes Officer Booth if they were within the square footage, would there be an issue with this type of home – Mr. Booth said no.

There being no further business, the Public Hearing closed at 6:30 P.M.

The Board Members discussed this submittal regarding size of home, how it affects the neighborhood, etc. Board Member Elias feels the Town should be looking into items like this as lifestyles are changing. – but we have a law in place.

Town Attorney Cully stated the Town Board did take a close look at the Zoning Ordinance and the Master Plan and what transpired during this review. The Town Board did due diligence with what we have.

Chairman Bogar addressed whether this type of home fits 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: yes, 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: yes, all in agreement;
- The requested variance is substantial – response: possibly;
- 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 – yes, all in agreement.

Motion was made by Board Member Fred Kiehm to deny the application without prejudice as it did not meet the criteria; seconded by Board Member Taras Tesak. 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

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

The application of **Ms. Christine Martin for property she owns located at 132 Oxford Road, New Hartford, New York**. Interest has been shown for using this property for personal training/small retail. The property is zoned Medium Density Residential, which does not allow for this type of use. The applicant is seeking a Use Variance to use the first floor of the home for personal training/small retail. Tax Map #339.011-1-16; Lot Size: .59; Zoning: Medium Density Residential. Ms. Christine Martin and Mr. Lucas Boutin appeared before the Board.

Ms. Martin explained what has transpired on this property since she bought it approximately six years ago and the Use Variance she received in 2011. This property, however, has always been a store – it is set up that way. She thought she had someone interested in an art studio, however, that did not proceed. She had a lot of interest in the property but no one wanted to follow thru with going before the Zoning Board and paying fees. Now she has someone interested in operating as a personal trainer with small retail. This will be one on one health and fitness – light traffic as it is by appointment only. The downstairs space is about 850 square feet.

Chairman Bogar referred to the upstairs – Ms. Martin said it is still an apartment and she takes very good care of it.

Town Attorney Cully referred to the application and how it is completed. It shows the applicant as Christine Martin. He asked Ms. Martin, do you own the property? She replied yes under CEM Realty. For the record, the application should have stated CEM Realty as the applicant.

Attorney Cully asked how many times she has been before this Board and what was done – Ms. Martin explained. She would like to have some type of personal services for this property. Town Attorney Cully asked Codes Officer Booth if this application was approved, would it have to go to the Planning Board – Mr. Booth said no.

Board Member Tesak complimented Ms. Martin on what she has done to this property and others. He asked why she didn't convert the first floor into a residence. Ms. Martin explained that it would be too costly as she would have to put in a kitchen, bathroom, and a parking lot – it is too expensive.

Mr. Lucas Boutin appeared before the Board and explained that he works with about 8 – 10 people now. Having gone through his childhood being obese, he wanted to help others. He is very committed to this life style. Mr. Boutin has many certifications. He feels it is a great location and near the elementary school. He spoke with pediatricians who think this is a great opportunity for the youth. Mr. Boutin would train by appointment only one on one – maybe two. He is the only employee. He would be open seven days a week from about 9 AM to 7 or 8 PM. He would like to upgrade the sign also – it would be lighted and no neon. He said you wouldn't be able to see in through the windows – it will be a very high-end studio. Mr. Boutin will put in some equipment and make some cosmetic modifications – nothing structural.

Chairman Bogar mentioned that the existing sign is grandfathered in. Mr. Boutin will not be changing the size – it will remain the same.

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

-No name given. She wanted to know what kind of retail. Mr. Boutin said t-shirts, etc.

The Public Hearing closed at 7:00 P.M.

Discussion ensued regarding the types of personal services – does she really need to come back before the Board. It was stated that her Use Variance in 2011 was very specific. Town Attorney Cully stated that if she did an Interpretation, you would be limiting this to this specific use. She wants a Use Variance for personal services which, if this new business ever closes and a massage therapist comes in, she doesn't have to come back before this Board.

Board Member Kiehm referred to personal services and what would we be granting. Board Member Elias feels there is no difference with this and the 2011 Use Variance that was granted.

Board Member Tesak referred to the application presented. He would like to see the applicant come back for an Interpretation.

Codes Officer Booth has a list of personal services but it wasn't advertised as such. It was advertised for this specific use for personal training/small retail. The application states personal training/small retail and the focus should be on this. He didn't know about a list for professional services.

The Public Hearing was opened again at 7:10 P.M. Ms. Martin again stated this property has always been used as a store on the first floor. She was advised that any change would require a Use Variance application.

The Public Hearing closed again at 7:15 P.M.

At this time, the Board Members went through the criteria for granting a Use Variance that was addressed with the 2011 application:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: yes, all in agreement;
- 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: no, all in agreement.

Motion was made by Board Member Byron Elias to approve the application as submitted for personal training/small retail; seconded by Board Member Lenora Murad. Vote taken:

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

Board Member Byron Elias – yes
Board Member John Montrose – yes
Board Member Fred Kiehm – yes

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

Minutes of the August 22, 2016 Zoning Board of Appeals meeting were approved by motion of Board Member John Montrose; seconded by Board Member Byron Elias. All in favor.

There being no further business, the meeting adjourned at 7:25 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

dbS