

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
NOVEMBER 21, 2016**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were John Montrose, Byron Elias, Taras Tesak, and Fred Kiehm. Board Members absent: Lenora Murad and 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 – the applicants would need to receive four (4) votes for approval. Chairman Bogar stated that we are absent two Board Members and it is up to the applicant whether to proceed. He further stated that tonight's meeting is being recorded (videotaped) by the Town.

The application of **Mr. Dean Zumpano for 6 Compton Road, New Hartford, New York**. The applicant is applying for an amendment to the original variance granted on March 21, 2016. Applicant's variance allowed for the demolition of the front portion of an existing building and the reconstruction of a new garage in its exact location and 5' from the property line. A recent survey shows the existing building to be only 4.3' ± from the property line. Therefore, the applicant is seeking an amendment to the original variance. Tax Map #329.017-2-40; Lot Size: 150' x 290'; Zoning: Low Density Residential.

Mr. Zumpano asked that his application be postponed until the December 19, 2016 Zoning Board meeting where there would be a full Board. The Board Members agreed. Mr. Zumpano left the meeting.

-Dr. Brigitte Garrison, 10 Thornwood Road, addressed the Board and asked them to explain what has occurred with this application and where we are now.

Chairman Bogar would rather wait until the meeting in December to address any questions on this application.

-Mr. Paul Rayhill, 4 Compton Road. He wanted to know the clarification. Board Member Elias explained this is an amendment from the 5' granted by the Zoning Board previously. Mr. Rayhill also stated he would check with Codes Officer Booth regarding a question he had with work being done at the site.

-Mr. Dan Mahoney, 5 Compton Road. What Mr. Zumpano is working on right now is against the Zoning Law. Board Member Elias explained he stopped on the portion where the variance is - he is not in violation. He explained what the Judge stated on this and what Mr. Zumpano was made aware of regarding this property.

Board Member Tesak addressed the Board stating he would like a complete understanding of what we are granting and measurements. If there is any confusion, the Board should revisit the site.

Again, Chairman Bogar stated the applicant asked for a postponement until December's meeting and he won't be addressing this any further.

The application of **Mrs. Loretta Massoud-Romano, 133 Paris Road, New Hartford, New York**. The applicant is proposing an 8' gate and 6' fencing around the property. The applicant is seeking a 2' height Area Variance for the gate and approximately a 184' front yard setback Area Variance to place the gate and fence in the front yard. Tax Map #329.017-2-50; Lot Size: approximately 2 Acres; Zoning: Low Density Residential. Mrs. Romano appeared before the Board.

Board Member Tesak explained that he does business with the Romano's firm. However, he feels he can make an unbiased decision on this application. The Board Members agreed that he could proceed.

Mrs. Romano stated she needs the gate for security and safety reasons. People are in and out of her property and she doesn't know who they are – it is frightening. Since the application was submitted, she didn't know whether she would go ahead with the fence, but the gate is essential. She would put in trees, etc. She would make the area look pretty and it would improve the neighborhood. She is not withdrawing the fence but she will do whatever the Board wants. Mrs. Romano stated that she has plenty of land to work with. Board Member Elias asked, you don't want the fence from the house up – only the gate? Answer: yes.

Chairman Bogar referred to Codes Officer Booth regarding the height of a fence in a residential zone, which was stated 6'. Gates fall into this same category. It was stated that the gate sets about 50' back from the road. It was also stated that the pillar height is about 6'. Board member Tesak asked if there was any other way to accomplish the gate. Answer: there is no other way to achieve this.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:25 P.M.

Board Member Kiehm explained that from the back of the house she can get a permit for a fence, but not in the front of the house – this requires a variance. Board Member Tesak stated that even with a fence she would continue with landscaping.

At this time, the Board Members reviewed the criteria for an Area Variance for the **gate**:

- 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 Fred Kiehm to **approve the gate at 8' in height**; 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 Taras Tesak - yes	

Motion was **approved** by a vote of 5 – 0.

At this time, the Board Members reviewed the criteria for an Area Variance for the **fence**:

- 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, she could plant trees, etc. – 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: perhaps, 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: 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, all in agreement.

Board Member Tesak asked Mrs. Romano if the side fence was part of the gate – what is illustrated is part of the gate.

Motion was made by Chairman Randy Bogar to **deny the fence** because it did not meet the criteria set forth in the balancing test; seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Taras Tesak - yes	

Motion to **deny** was passed by a vote of 5 – 0.

The application of **Mr. Michael Hunsiker, 8925 Tibbitts Road, New Hartford, New York** who is proposing to construct a 3-stall garage on his property. The applicant is located in a Low Density Residential zone, which excludes accessory structures from a front yard and limits the height to 15'. The applicant is seeking a 9'± Area Variance for height and a 50'± front yard Area Variance to place an accessory structure within a front yard. Tax Map #339.000-1-25.2; Lot Size: approximately 3.82 Acres; Zoning: Low Density Residential. Mr. Hunsiker appeared before the Board.

Mr. Hunsiker stated this has taken him and his wife almost three years to decide where to place this garage. He can't go to the left of the property because he is too close to the property line and it would obstruct the neighbor's view.

He can't place it behind the house because there is a septic system there. The height of the garage is to get the trailer inside. He feels this is more aesthetically pleasing with the existing house. His existing 24' deep garage is filled with items, it cannot fit two cars – not wide enough. The construction will start even with the garage and come out towards Tibbitts Road. The entire building will be separated from the house. The size of the open area is 12' x 30' – he plans to use it as a patio. There is about a 150' distance to the road. He would like to be able to move it back an extra 12' but he is not sure – he would check with the builder. Materials will match the existing house and roof. There will be windows at the end of the garage, with a flower bed also. The final garage facing Tibbitts Road will not have a loft – just rafters – windows will be facing the street.

Board Member Tesak asked, you will end up with four garages? Answer; yes. Also, do you need five openings? Answer: four garages and a 30' patio. The whole structure is 1860 sf. Mr. Hunsiker spoke with the neighbor most affected and they had no issues. Mr. Hunsiker doesn't think this is excessive.

Board Member Elias has a problem with this structure being placed in the front of the house and he explained why. He feels the dilemma was created by himself by placing his house so far back. The septic tank can't be moved and the well is on the other side of the house.

Discussion ensued regarding setback with other homes from the street. Also, total frontage on Tibbitts Road of Mr. Hunsiker's property.

Mr. Hunsiker's biggest concern is to get the trailer in properly. He may have to get a different pitch – he can talk to the contractor.

A lengthy discussion ensued regarding connecting this structure to the house and he wouldn't need a variance. The Board Members tried to give him options.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing ended at 7:05 P.M. Chairman Bogar stated that Mr. Jack Brunner, 8937 Tibbitts Road submitted a response as not having a problem with this request. Oneida County Planning and Oneida County DPW had no concerns.

Public Hearing opened up again at 7:10 P.M. Board Member Elias addressed some alternatives to Mr. Hunsiker that may or may not work. Board Member Elias is trying to find out how much is going to be in the front of the house. The Public Hearing closed again at 7:15 P.M.

Discussion ensued regarding the different placement of this structure. The Board Members will be looking at the application as presented this evening.

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, anything in the front creates an aesthetic implication ;

- 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: 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 – difference of opinion.

Motion was made by Board Member John Montrose to grant the application as presented; there was no second.

Motion to **deny** was made by Chairman Randy Bogar without prejudice as it did not meet the criteria; seconded by Board Member Byron Elias:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member John Montrose - no	Board Member Byron Elias – yes
Board Member Taras Tesak - yes	

Motion to **deny** was passed by a vote of 4 – 1.

The application of **Mr. Henri Abiyaghi, 26 Woodberry Road, New Hartford, New York**. The applicant is proposing a covered front porch. Mr. Abiyaghi is located in a Low Density Residential zone, which requires that the average setback take precedent. Mr. Abiyaghi is seeking a 3'± average front yard setback Area Variance to construct a covered front porch. Tax Map #339.001-3-16; Lot Size: 115' x 145'; Zoning: Low Density Residential. Mr. Abiyaghi appeared before the Board.

Mr. Abiyaghi explained that he has an existing patio slab in the front of his home and he wants to place a roof over it with pillars. It will not be enclosed – it will have a pitched roof. He needs to protect the front of his home and he is worried about water and deterioration. What he presents will make his house more aesthetically pleasing to the neighborhood.

Board Member Tesak asked why he couldn't bring it back 3' – Mr. Abiyaghi explained because the pad is already there. He is not going beyond. He can't build a 3' overhang because it wouldn't look right.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing ended at 7:30 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: 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, 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, it is a safety feature - 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; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Taras Tesak - no

Board Member Fred Kiehm - yes
Board Member Byron Elias – yes

Motion was **approved** by a vote of 4 - 1.

Board Member Tesak felt he could make it narrower.

Draft minutes of the October 17, 2016 Zoning Board of Appeals were approved by motion of Board Member Taras Tesak; seconded by Board Member Byron Elias. All in favor.

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

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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