



TOWN of NEW HARTFORD

COUNTY of ONEIDA

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Randy Bogar

VICE CHAIRMAN

SECRETARY
Dolores Shaw

ZONING BOARD OF APPEALS

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MINUTES OF THE REGULAR MEETING ZONING BOARD OF APPEALS BUTLER MEMORIAL HALL DECEMBER 19, 2016

Board Members

Byron Elias
Frederick C. Kiehm
John Montrose
Lenora Murad
Karen Stanislaus, Esq.
Taras Tesak

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were John Montrose, Lenora Murad, Karen Stanislaus (arrived at 6:25 P.M.), Byron Elias, Taras Tesak, and Fred Kiehm. 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. He stated that Board Member Karen Stanislaus was on her way but would be a little late and it is up to the applicant whether to proceed at this time or not.

The application of **Stewart's Shops Corporation, 4756 Middle Settlement Road, New Hartford, New York**. The applicant is seeking a modification to the Area Variance granted to them on October 17, 2016. The Zoning Board approved a side yard setback Area Variance and with the stipulation that the sign doesn't exceed its current 15' height. The applicant is seeking a 5' height exception to that variance. Tax Map #316.016-6-65; Lot Size: approximately 2.4 Acres; Zoning: C1 General Business. Mr. Marcus Andrews of Stewart's appeared before the Board.

Mr. Andrews said they want to raise the sign up to 20' maximum height because of the water housing unit installed by the nearby hotel which blocks the view of the price of gasoline. By doing this, their gasoline rates will be seen from NYS Route 840.

Board Member Kiehm referred to what transpired at the November 21st meeting – what changed since then? Mr. Andrews would like to have had the two Area Variances together last month but that didn't happen. Thus, they reapplied at this time for the height. Mr. Andrews said that the water housing unit causes a problem for them regarding visibility for their gas prices.

Chairman Bogar referred to the restriction to the 15' height and that resident Mr. Patrick Mineo was present who stated to keep that sign height as is and that he was the most affected by this sign.

Board Member Tesak suggested placing the gas prices on top with the Stewart's sign under that. Mr. Andrews said Stewart's has their sign standards and he didn't think it could be done.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:15 P.M. Responses were received from Oneida County Planning and NYSDOT 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: yes, it could be moved but some 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, but some 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 – yes, they can redesign the sign.

Motion was made by Board Member Fred Kiehm to approve the application as presented; there was no second.

Chairman Bogar asked Codes Officer Booth if he could put the sign back 10' and go up 25'? Mr. Booth said he could but it wouldn't be feasible.

Motion to deny the request was made by Board Member Byron Elias; seconded by Chairman Randy Bogar. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - no
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Lenora Murad – yes	Board Member Taras Tesak – yes
Board Member Karen Stanislaus – wasn't present at this time	

Motion to deny was passed by a vote of 5 - 1.

The application of Mr. John Vella/Utica Sign for T.S. New Hartford Partners, LLC, 4640-4666 Commercial Drive, New Hartford, New York. The applicant is located in a C1 zone, which limits free standing signs to 128 square feet. The applicant is seeking a 112 ± square foot Area Variance to construct a 240 square foot sign. Tax Map #328.008-1-6.1; Zoning: C1 General Business. Mr. John Vella appeared before the Board.

Mr. Vella explained that he was contacted by the owners of this plaza to bring this sign up to current standards. The present sign is old and the panels are worn and just held together with screws. For him to fix this sign would be costly and he can't guarantee how long it would last. The owners want a new modern sign but he was informed they can't do that without getting a variance. The new sign will be all aluminum and the panels will still be there but better – LEDs will be put in. The existing poles are fine.

Board Member Tesak referred to Codes Officer Booth regarding any type of grandfather clause. Mr. Booth explained once the panels are down, they need a variance.

Chairman Bogar asked if it was possible to comply with the Code – Mr. Vella said yes but the owner won't go smaller.

Board Member Elias referred to the new code for signs and why it was enacted. People have GPS's now and also know how to find their particular business. Mr. Vella understands but stated this sign has been there for many years and needs updating.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing ended at 6:40 P.M. Responses were received from Oneida County Planning and NYSDOT with no adverse comments.

Board Member Elias stated that we will never fix the sign situation if we don't address things now. Board Members Murad and Kiehm feel if they want it to look the same, they need to fix it – they just want to make it look better. Board Member Murad feels we are here to support the law but there are exceptions.

Chairman Bogar said the applicant didn't show a cost regarding any change on this.

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 repaired or made smaller;
- 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: it is existing, 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 – difference of opinion.

Board Member Montrose asked if a storm blew the sign down, would they have to comply with the new Code – Mr. Booth said yes.

Motion was made by Board Member Fred Kiehm to approve the request as presented; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - no
Board Member John Montrose - no
Board Member Lenora Murad – yes
Board Member Karen Stanislaus - no

Board Member Fred Kiehm - yes
Board Member Byron Elias – no
Board Member Taras Tesak – no

Motion was denied by a vote of 5 – 2.

The meeting was opened to the applicant at 6:45 P.M. Mr. Vella wanted to know why this Board approved the variance the last time they added more square footage. Board Member Elias stated they had a couple of more tenants only but now to keep putting up all the signs is too much. It is a bigger sign and it doesn't help us conform to the new Code. The meeting closed again at 6:47 P.M.

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. Dean Zumpano appeared before the Board.

Mr. Zumpano referred to the letters he submitted to the Board (one from him and the other from his attorney, Mr. Alan Knauf of Knauf Shaw, LLP, and which were available for anyone interested.

Town Attorney Cully referred to Mr. Knauf's letter of December 15, 2016. In particular where he referred to our Ordinance 118-127(B)(2). This is the balancing test. We have to look at the criteria to balance it out to make our determination. He disagreed with sections of his letter where it addressed certain cases – Page 3 – we deal with each case individually. Page 4 he strongly disagrees regarding reconstruction of non-conforming uses. This isn't a non-conforming use – it is a non-conforming structure. Town Attorney Cully referred to how Codes Officer Booth addressed this in the beginning. Mr. Zumpano wanted to repair this non-conforming structure – it had nothing to do with the use. He clearly needs a variance to go forward and it is up to this Board to review the criteria. He felt the cases referred to in his attorney's letter aren't relevant. (This letter has been made a part of the file).

Board Member Kiehm referred to when Mr. Zumpano first came before this Board. He doesn't feel it is Mr. Zumpano's fault. Mr. Zumpano had asked to be in line with the existing building. This Board granted it. We did not insist on a survey. Mr. Zumpano stated if we didn't grant this, he would have left it alone, remodeled and rented it. Board Member Tesak asked if there is an alternative way to do this. Mr. Zumpano said no, not at this stage. Board Member Stanislaus felt we should have asked for a survey. Mr. Zumpano said he did get a survey afterwards and brought it to everyone's attention regarding the change in numbers. Board Member Murad felt everyone understood what Mr. Zumpano was asking for – he was going within the same footprint. Maybe the inches were off, but she feels we knew what we were granting.

Chairman Bogar asked if anyone would like to address this application. Mr. Zumpano asked if we would keep the comments to the 9 ½"± and not address anything that doesn't apply to the variance.

-Mr. Dan Mahoney, 5 Compton Road. He still hasn't seen a Building Permit and wonders why work is continuing. He referred to what was mentioned at the last meeting about the developer proceeding at his own risk.

Board Member Elias elaborated on this again. He stopped on the portion where the variance is – he is not in violation. He further explained what the Judge had said.

-Mr. David Lemire, 6 Gilbert Road. He referred to the survey situation - (measure twice, cut once).

-Mr. Vincent Karl, 11 Gilbert Road. He had a question, if something was totally torn down he thought that nothing could be rebuilt there. He feels the variance in May shouldn't have been granted. Codes Officer Booth said the building was there. Mr. Zumpano elected to demolish after the variance was granted. Board Member Elias said Mr. Zumpano came to us before he did anything. We gave him the right to take the next step. This Board has routinely given approval to stay on an existing foundation.

Board Member Tesak asked Mr. Zumpano – do you think that the $9 \frac{1}{2} \pm$ inches has any adverse affect from what he did 2-3 months ago. Do you think this would cause any hardship. Mr. Zumpano said no.

-Mrs. Ellen Rayhill, 111 Paris Road. She mentioned that 6 Compton Road existed and had not been seen because of the overgrowth. A lot has been cleared away. She doesn't think people understood what could be done at that site. When addressing water, it was mentioned gutters could be put up – gutters get clogged quickly. She feels he is getting closer to the property line. The problem she feels is no one measured and what we have learned since March is that it is difficult to do work on that property without affecting Paul Rayhill's property. She said Mr. Zumpano removed a wire fence, which they understood was the property line. That is when Mr. Rayhill felt Mr. Zumpano was building on his property. She agrees with Attorney Cully regarding the letter submitted by Mr. Zumpano's attorney. She feels this variance is substantial and detrimental. He removed the fence, driven on the property – the closer you allow him to go the more it is going to affect Mr. Rayhill.

-Mr. Paul Rayhill, 4 Compton Road. He is the person most affected. Mr. Zumpano went on his property and took down a tree. Equipment has gone through his property. Where is the engineering report with the application? He moved dirt, which is affecting his property, which raised the elevation. He feels Mr. Zumpano can't put a ladder up without going on his property. There is a water issue at this site. He is speaking to protect his property from getting soaked. None of this existed before. Mr. Zumpano is a contractor and should have known measurements. Now the amount has changed to $9 \frac{1}{2} \pm$. Because it is wrong, he feels it isn't our problem or his problem.

Board Member Tesak referred to the November 21, 2016 minutes which he asked for a complete understanding and if any confusion, we should revisit the site. He knows of the history of water problems in this area. He referred to the dirt pushed back which created a problem. He feels we have to listen to everyone carefully.

Mr. Zumpano submitted a drawing of the property and where the water runs. He took it upon himself to get an engineered drawing. Chairman Bogar invited people in attendance to come forward to see what Mr. Zumpano submitted. This letter from Mr. Ehre is dated December 16, 2016. It addresses storm water analysis. (This letter has been made a part of the file).

Chairman Bogar was asked to read the minutes of the November 21, 2016 meeting regarding the Zumpano application.

Mr. Rayhill stated Mr. Zumpano is up hill. Board Member Murad stated we don't know if water was an existing problem or caused by this one. Mr. Zumpano referred to the soil and if you don't bring water to the road you will have problems. He has a 3' ditch on his property and he could put water there as long as he doesn't create a problem for anyone else.

Mr. Zumpano asked Codes Officer Booth if he knew how many calls have come to the Town about water on this property – Mr. Booth said he knows of none. Mr. Zumpano said he hasn't gotten any water from any other properties.

Mr. Tesak feels there is a definite water issue. Mr. Rayhill said it has never been as wet. We may not know how this ends. He never had any problems with the neighbors on that road. He had to spend a lot of money to defend himself.

Board Member Tesak asked Mr. Rayhill why he is against this application:

- Encroachment on his property
- Water situation
- He changed the property because of the trees and dirt
- How will this situation resolve itself.

Board Member Murad wants to stay with the variance. We tried to get a clear understanding of what was happening. The numbers are different but what he was planning to do and what we granted is the same.

Mr. Rayhill said the original application is 5'. 5' is 5'. This affects his property. The fact is how this affects us, what did you approve in March and what was presented based on that approval.

Mr. Zumpano feels Mr. Rayhill has not presented any facts at all. They aren't engineers who address drainage. Mr. Zumpano doesn't want a water issue either.

-Mr. Dan Mahoney, 5 Compton Road. He referred to property line setbacks and that they are there for a reason.

-Mr. Vincent Karl. Can he work on projects before they come to you. The issue came up after he got a survey. What is the normal side yard setback – it was stated 15', but he is staying with the original footprint.

Board Member Murad reiterated that Mr. Zumpano is not asking for extra – he asked to stay within the footprint.

Chairman Bogar asked if there were any additional comments. There being none, the Public Hearing closed at 8:15 P.M.

Board Member Tesak asked Chairman Bogar to read the March 2016 minutes for the record regarding this application.

Board Member Elias stated we listened to people in the audience about the drainage problem. This Board has routinely approved where people stayed on the existing foundation. We asked for drainage information. If there was a substantial change to the contour of the land, it should be addressed. For him the measurement did not make a lot of difference at this point. Chairman Bogar referred to a berm that Board Member Elias brought up. The drainage was an issue and he wanted it taken care of and he thinks it has been. He still wants it addressed further. He wants it away from the Rayhill property.

Board Member Tesak wondered what kind of consequences would there be if denied. Town Attorney Cully feels we will end up in Court either way. There is some case law. If we grant it, there could be an

appeal taken within thirty days. It could overturn and even go back to the March 2016 decision. If we deny the application, then Mr. Zumpano could bring an action in Court for a Judge to decide. If we deny it, Mr. Zumpano still has the 5' but he will have to research it further.

Board Member Montrose agrees with Board Member Murad. We were okay with him staying on the footprint. Board Member Stanislaus stated that Mr. Zumpano has a right to ask for an amendment but an amendment could have to show a change – reason to change for what we granted before. We didn't have a survey. He had a right to do a survey in the beginning. It is up to the applicant whether to get a survey. Maybe we should have requested a survey and maybe have an engineer address water. She doesn't feel we should grant an amendment.

Attorney Cully feels the water is an important issue. Board Member Tesak agrees also. Board Member Murad doesn't feel we created a problem for the neighbors. We didn't cause the water problem.

Chairman Bogar agrees water does come into the balancing act.

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: Chairman Bogar-yes; Board Member Montrose-no; Board Member Kiehm-no; Board Member Murad-no; Board Member Elias-no; Board Member Tesak-yes; Board Member Stanislaus-yes;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: Chairman Bogar-no; Board Member Montrose-no; Board Member Kiehm-no; Board Member Murad-no; Board Member Elias-no; Board Member Tesak-yes; Board Member Stanislaus-maybe;
- The requested variance is substantial – response: Chairman Bogar-no; Board Member Montrose-no; Board Member Kiehm-no; Board Member Murad-no; Board Member Elias-no; Board Member Tesak-yes; Board Member Stanislaus-no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: Chairman Bogar-yes; Board Member Montrose-no; Board Member Kiehm-no; Board Member Murad-no; Board Member Elias-no; Board Member Tesak-yes; Board Member Stanislaus-yes;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – Chairman Bogar-no; Board Member Montrose-no; Board Member Kiehm-no; Board Member Murad-no; Board Member Elias-no; Board Member Tesak-yes; Board Member Stanislaus-no.

Motion was made by Board Member Byron Elias to approve the amendment conditioned upon the approval of a civil engineer as to the design of the site plan addressing elevation so no additional water is being deflected on any adjoining properties; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Lenora Murad – yes
Board Member Karen Stanislaus - no

Board Member Fred Kiehm - yes
Board Member Byron Elias – yes
Board Member Taras Tesak – no

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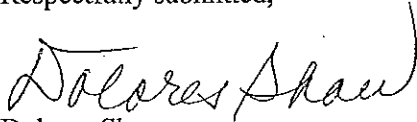
Motion was **approved** by a vote of 5 – 2.

Town Attorney Cully said there has been allegations of buildup of dirt. He feels that this has to be addressed.

Draft minutes of the November 21, 2016 Zoning Board meeting were approved by motion of Board Member John Montrose; seconded by Chairman Randy Bogar. All in favor.

There being no further business, the meeting adjourned at 8:30 P.M.

Respectfully submitted,



Dolores Shaw
Secretary/Zoning Board of Appeals

dbb



BOULDER CONSULTANTS

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December 16, 2016

Mr. Dean Zumpano
Zumpano Construction
40 Oxford Road
New Hartford, NY 13413

RE: Stormwater Runoff Calculations for 6 Compton Road Property
Town of New Hartford, Oneida County

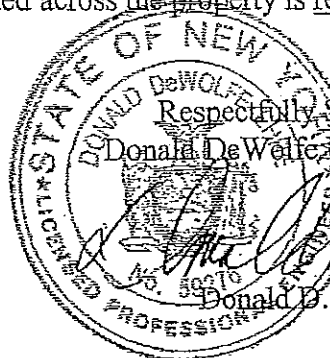
Dear Mr. Zumpano,

Pursuant to your request I have visited the 6 Compton Road property and calculated the anticipated peak rate of runoff from the property based on the existing and proposed conditions:

The existing condition is described as follows: The property contains approximately 1 acre, or 43,560 square feet, of land. The existing asphalt driveway is 120 feet long by 14+/- feet wide. The existing residence is 27 feet by 56 feet (1512 square feet). The ground surface of the property gradually slopes westerly toward the rear of the property.

The proposed condition is described as follows: The property contains approximately 1 acre, or 43,560 square feet, of land. The proposed asphalt driveway will follow the path and dimensions of the existing driveway (120 feet long by 14+/- feet wide). The proposed residence will have a total area of 2520 square feet. Through the use of gutters, downspouts and an underground drainage pipe system, rainfall runoff from 2380 square feet of the structure's roof will be carried easterly to the piped storm water system in Compton Road, leaving 140 square feet of roof runoff being carried on the ground surface. The ground surface of the property will continue to gradually slope westerly toward the rear of the property.

I have used the Rational Formula on the attached sheet to calculate the peak runoff rate for both the existing and proposed conditions. As shown thereon, for the 10-year storm event the peak runoff carried across and to the rear of the property is 1.04 CFS (cubic feet per second). In the proposed condition, due to the installation of the underground piping system for most of the proposed roof area, the peak rate of runoff headed across the property is reduced by 12% to 0.92 CFS.



Respectfully Submitted,
Donald DeWolfe Ehre, PE, PLLC
Donald B. Ehre
Donald B. Ehre, PE



December 15, 2016

Town of New Hartford Zoning Board of Appeals
48 Genesee Street
New Hartford, New York 13413

Re: 6 Compton Road Variance Request

Dear Board Members:

This letter is written on behalf of our client Dean Zumpano, in support of his pending application for an area variance from the side setback requirement applicable to his property at 6 Compton Road, New Hartford, New York (the "Property"). As you are aware, Mr. Zumpano previously requested and received a 10-foot side setback variance to construct an addition to an existing nonconforming structure in conjunction with his development of a house on the Property. This request, which was not based on a surveyed distance, was made to keep the addition in line with the remaining portion of the existing structure that was not being demolished.

Subsequently, after an instrument survey was conducted (showing the existing structure 4.3 feet off the property line, and the neighbor's survey showing it 4.2 ± feet), it was determined that Mr. Zumpano actually required a 10' 9½" ± side setback variance to make the addition flush with the pre-existing nonconforming structure. After disclosure of this discovery, Mr. Zumpano requested that the Zoning Board of Appeals ("ZBA") interpret the previous area variance to be "roughly" 10 feet in line with the setback of the remaining nonconforming structure. Upon denial of that interpretation request, Mr. Zumpano made the present application.

The Property is located in the Low Density Residential ("LDR") Zoning District. Pursuant to Schedule B of the Town of Hartford Zoning Code ("Zoning Code"), the side yard setback requirement for properties in the LDR District is 15 feet. Pursuant to Zoning Code § 118-127(B)(2), the ZBA, in determining whether to grant an area variance, must weigh the variance's benefit to the applicant against its potential detriment to the health, safety, and welfare of the neighborhood. In performing this analysis, the ZBA is instructed to consider the following factors:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

- [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- [3] Whether the requested area variance is substantial.
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- [5] Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

At the ZBA's March 21, 2016 meeting, where the ZBA considered application of these factors to Mr. Zumpano's request for a 10-foot side setback variance, it was found, after presentation, deliberation, and a vote:

- (1) The 10' variance would not create an undesirable change in the character of the neighborhood or a detriment to nearby properties
- (2) The benefit sought by the applicant could not be achieved by some method, feasible for the applicant to pursue, other than the variance.
- (3) The 10' variance was not substantial.
- (4) The 10' variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- (5) The difficulty was not self-created.

After denial of Mr. Zumpano's interpretation request, the ZBA informed the Town Code Officer that Mr. Zumpano was still able to construct the addition in compliance with the 10-foot variance. At issue now is only whether applications of the area variance factors would have been different had Mr. Zumpano requested an additional nine inches in his initial application. Based on the nature of the variance, the layout of the Property, including the existing nonconforming structure, and the ZBA's prior application of the area variance factors, it is clear that the balancing test warrants granting Mr. Zumpano the present variance.

A. The variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

As the Property already contains an existing nonconforming structure located at the side setback which Mr. Zumpano wishes to utilize through the requested variance, it cannot be said that granting the variance would create some change or detriment. Indeed, granting the variance here would actually improve the aesthetic quality of the area, as the ZBA has recognized that Mr. Zumpano is already allowed to build an addition to the nonconforming structure using the previously granted 10-foot variance, which would create an odd looking nonuniformity on the

structure's side wall. Granting the additional 9 ½ ± inch variance here would have a negligible effect on the proximity to the adjacent property, while creating a substantial improvement in the overall aesthetic quality of the completed structure. Furthermore, the new construction work will improve the Property.

Further, the proposed Variance will not change the character of the neighborhood, as the nonconforming structure already utilizes the requested side setback. Where the variance is in keeping with a pattern of development, the first factor favors granting the variance. *Raubrogel v. Zoning Bd. of Appeals of the Village of Brookville*, N.Y.L.J. Dec. 27, 1995, p. 33, Col. 2 (Sup. Ct. Nassau Co. 1995).

B. There are no feasible alternative methods of achieving the desired benefit.

As the ZBA recognized in its vote on the initial variance, there are no feasible alternative methods for achieving Mr. Zumpano's desired benefit without the variance. Mr. Zumpano's goal is to develop a residential structure on the Property utilizing the existing building. As construction which is consistent with the existing building would require a 10' 9½" ± variance, Mr. Zumpano's only option is the present application.

In applying the second area variance factor, the ZBA must assess whether there are alternatives that will attain the specific benefit Mr. Zumpano is seeking. An alternative that does not enable the applicant to achieve the specific desired benefit is not truly a feasible alternative to obtaining an area variance. *See Baker v. Brownlie*, 248 A.D. 2d 527, 670 N.Y.S.2d 216 (2d Dep't 1998) (granting an area variance where the board's determination that the applicant had alternative means of achieving the benefit was "clearly erroneous," because the applicant's objective was to face a proposed patio toward the water, not merely to build a patio). Here, because the distance necessary for the setback is predetermined by the nonconforming structure, the second factor supports granting the Variance.

C. The variance is not substantial.

The requested variance is not substantial. What constitutes a substantial variance is fact specific to each application. *See e.g. Korean Evangelical Church of Long Island v. Bd. of Appeals of the Village of Westbury*, N.Y.L.J. Feb 28, 1996, p. 31, col. 2 (Sup. Ct. Nassau Co. 1996); *Raubrogel v. Zoning Bd. of Appeals of the Village of Brookville*, N.Y.L.J. Dec. 27, 1995, p. 33, Col. 2 (Sup. Ct. Nassau Co., 1995). Here, because the ZBA already found that 10 feet was not substantial, the only relevant question is whether the addition nine inches would somehow render the variance substantial. Because of the negligible difference between the requested variance and the previously granted variance, which the ZBA already concluded was not

substantial, and because the variance will only bring the planned structure into conformity with the existing structure, the requested variance is not substantial.

Further, Zoning Code § 118-111 allows for the reconstruction of nonconforming uses up to 50% of the value of the building, so it is questionable whether a variance was required in the first place. In light of these provisions, the variance is even less substantial.

D. The variance will not have an adverse impact on the physical or environmental condition in the neighborhood.

The fourth factor looks at the effect the variance would have on things like drainage, flooding, runoff, topography, vegetation, and traffic. *See Hampshire Management Co. v. Nadel*, 241 A.D.2d 496, 660 N.Y.S.2d 64 (2d Dep't 1997). The adjacent property owner has previously said that the current configuration of the Property creates drainage issues for his property. Though Mr. Zumpano has investigated this issue and found absolutely no support for this contention, his planned project will *improve* the Property's drainage by tying into the Town's storm sewer, so the fourth factor supports granting the Application.

E. The difficulty was not self-created, but even if it was, this factor does not warrant denial of the Application.

The difficulty from which Mr. Zumpano now seeks a variance is not self-created, because the nonconforming structure existed before he purchased the Property. The ZBA recognized that the hardship was not self-created when deliberating on the 10-foot variance. Regardless, the five factors taken as a whole support granting the Application. While self-created hardship is fatal in an application for a *use* variance, it is merely one factor to be considered in the balancing test for an *area* variance. *Mobil Oil Corp. v. Village of Mamaroneck Bd. of Appeals*, 293 A.D.2d 679, 680, 740 N.Y.S.2d 456, 458 (2d Dep't 2002). Therefore, even if the ZBA were to find that the difficulty here was self-created, that would not warrant denial of the application.



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Based on the above, we respectfully request that the ZBA grant Mr. Zumpano a variance allowing the new addition to be in the same line as the existing nonconforming building, being a 10' 9½"± side setback.

Please do not hesitate to contact us with any questions. Thank you.

Yours truly,

KNAUF SHAW LLP

A handwritten signature in black ink, appearing to be "Alan J. Knauf", written in a cursive style with a long, sweeping tail.

ALAN J. KNAUF

pc: Mr. Dean Zumpano