

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
APRIL 24, 2017**

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, Byron Elias, Taras Tesak, and Fred Kiehm. 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.

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The application of **Mr. Frank Cristiano for property located at 3899 Oneida Street, Washington Mills, New York (Tony's Pizza)**. Mr. Cristiano is seeking a quantity Area Variance for 39 parking spaces. He is expanding his building by 870 ± square feet. The site is already 39 parking spaces deficient. Tax Map #339.016-1-65.1; Lot Size: approximately 3 ± Acres; Zoning: C2 Commercial Retail Business. Mr. Frank Cristiano appeared before the Board.

Mr. Cristiano explained that he will not be seeking a variance for the captioned as he changed his mind about what he would like to do at this site, and which would not require additional parking spaces. He will enclose a patio area attached to the building and put in a chocolate candy shop. He was advised to appear before the Planning Board for the possibility of changing the zoning designation to a shopping center, thus, allowing him more parking. Right now his zoning classification restricts the number of parking allowed for each use.

Codes Officer Booth explained parking requirements for a shopping center, which are more lenient. Mr. Cristiano never got approved as a shopping center. If he could be granted the shopping center designation, his parking would be more in line with the current standards. It is assessed individually now – there are multiple uses on the same parcel. Technically, he meets the criteria for a shopping center. He stated that Mr. Cristiano can seek an amendment to the site plan before the Planning Board.

Board Member Tesak asked Town Attorney Cully if the public notice had to be changed. Attorney Cully advised that Mr. Cristiano is not asking for anything this evening, therefore, we are not reviewing it.

Mr. Cristiano thanked the Board for their time.

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The application of **Mrs. Barbara Raspante, 8121 Seneca Turnpike, Clinton, New York (Town of New Hartford) – corner of Seneca Turnpike & Homestead Road**. The applicant wishes to install a garage 30'± past the front of the home or garage side 21'± from the front property line. The front yard setback is 57'± from Homestead Road W. The applicant is seeking a 30'± front yard Area Variance. Tax Map #328.005-1-25; Zoning: Low Density Residential. Mrs. Raspante appeared before the Board.

Mrs. Raspante distributed a copy of what the proposed garage would look like, an aerial view of her home, and a list of proposed materials from a contractor. They have vintage cars that they keep in a rented area during off seasons and they would like to keep them at their residence inside a garage and not outside on the lawn. They would also like to use another area of the garage for outside equipment, i.e., lawn mowers, etc. They do not run a business out of their home, nor do they work on cars or anything else. This garage is for storage only. This garage would enable them to keep their property free from clutter. Three stalls will be used for the cars (total of three cars) and the other stall for equipment. All the cars are their own. They have a large wooded lot, which allows them to be non-conspicuous. Mrs. Raspante said the existing shed will be removed. Materials used for this garage will match the existing home.

Board Member Elias asked to locate exactly where the garage will be located on the application. Board Member Tesak asked if this could be accomplished by any other means to meet the zoning requirements – Mrs. Raspante said no – she tried to keep this off the side road as much as possible.

At this time, Board Member Bogar asked if there was anyone in attendance to address this application – there was no response. The Public Hearing ended at approximately 6:20 P.M.

Board Member Bogar stated that Oneida County Planning had no issue with this application, as well as NYSDOT.

Discussion ensued - Chairman Bogar and some of the Board Members felt this was a large structure. Chairman Bogar asked if it could be made smaller – Mrs. Raspante said she could try to go to three stalls but would rather have the four stalls. Others felt it wasn't noticeable because of the trees and location on the lot, and glad to know these vehicles, etc. will be kept under cover and not visible on the property.

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: no, all in agreement;
- The requested variance is substantial – response: yes, it is a large garage - 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 – yes, all in agreement.

Motion was made by Board Member John Montrose to approve the application as presented; and that a Building Permit to be obtained within one year of approval date; seconded by Board Member Lenora Murad. Vote taken:

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

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

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

Board Member Elias wondered what would happen if the trees came down. Mrs. Raspante said some were taken down but then replaced. She takes good care of her property.

Chairman Bogar questioned, percentage wise, how much is on the property now.

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The application of **VP Supply Corp., 4676 Commercial Drive, New Hartford, New York**. The applicant is applying for a Use Variance to install a large scale more than 10 kw solar system. Schedule B Permitted Uses does not allow for a large-scale solar system. Tax Map #328.008-1-4; Lot Size: 2.3 Acres; Zoning: C1 General Commercial. Mr. Mark Vulaj, Mr. Jay Didas and another representative of VP Supply appeared before the Board.

They applied for a Building Permit on December 19, 2014 and was issued the permit – it was stated to the Board exactly where the panels would be placed on the buildings in the back of the storefront. These buildings are virtually not visible from Commercial Drive. When they decided to proceed with this project, they contacted the Codes Office to extend the Building Permit, which was just before the one-year time frame. They were advised that this project did not meet the Code regarding solar panels, they were limited to 10kw and were issued a Stop Order. They were not aware of this – they were trying to get things in order to proceed with this project, weather conditions, etc. Now they are before this Board to proceed the best way possible as they spent a significant amount of money buying materials, planning this project, etc. They are trying to lower their cost at this location and be environmentally conscious.

Board Member Tesak asked if they are going to supply power to all three buildings – Mr. Didas said yes. Board Member Kiehm asked if they can generate enough from the panels to do this – Mr. Didas said yes. They are trying to be net zero. In the summer, they will overproduce and in the winter lower produce. They explained the watts generated. They had the roof replaced, which would meet standards for solar panels.

Board Member Tesak addressed their calculations – by following our Code of 10kw, what savings benefit would it be. Mr. Didas said at 10kw savings would be about \$1,000; 55kw would be a savings of about \$5,500.

Chairman Bogar asked why it took so long after obtaining the Building Permit to proceed. Mr. Didas said they had to get the materials, winter played a role, then they were stopped by Codes. They were asked if they were able to show financially why they couldn't get a reasonable return on this property.

Town Attorney Cully referred to a requirement for a Use Variance: 1) Reasonable Return and what is required, i.e., financial data in terms of tax reports, etc.

Mr. Vulaj didn't know how to respond to this because this is for solar panels on an existing garage. They made a substantial commitment financially on this. They still have the materials in storage. They also borrowed money to finish the financing of this with the understanding they would get a return on this investment and savings on electric, etc. Also, they had a Building Permit in their possession. Mr. Didas said they were issued a Stop Work Order before the end of their permit time. They have had discussions

with Codes Officer Booth on how to move forward. Estimated cost in 2014 was about \$175,000 based on the 55kw.

The applicant was asked if they were reimbursed any money – answer is no.

Codes Officer Booth explained the Use Variance procedure. Our law only applies to a smaller scale project, i.e., 10kw. He mentioned that the Building Permit was issued in error. Anything larger requires a Use Variance. The Town Board is looking further into solar panels at this time.

Board Member Montrose asked how old the buildings are – Mr. Didas didn't know but he said a structural analysis was done. Board Member Tesak asked if they reported it to the Fire Department – Mr. Didas didn't know but they have to have a fire protection interconnect and he explained what this is. They have one main switch.

Chairman Bogar referred to the progress of solar panels, possibly getting smaller and more efficient in the future. We have to, as a Board, follow what is on the books at this time. He has heard that you can now buy shingles as solar.

The Board Members discussed what the Town Board is looking into at this time concerning solar panels and asked the Town Attorney if he knew the status of this – he explained what he knows at this time. Councilman David Reynolds is in the audience this evening. Mr. Reynolds explained what he brought to the Town Board, which is seeking an amendment of our Ordinance as it relates to solar energy. He doesn't know why 10kw was designated. They have parameters to work out. They are working on it but he doesn't think it will happen with the next few months. Town Attorney Cully feels Councilman Reynolds is on the right track with this.

Board Member Elias addressed financial information, which is a requirement for a Use Variance and how to address this. Board Member Tesak asked Town Attorney Cully if there is any legal basis on this. Attorney Cully explained they had a year to fulfill this permit. Once the year ran out, that Building Permit is not valid. The other issue is the Codes Officer issued a permit. The fact that the Codes Officer made a mistake doesn't come into consideration.

Considerable discussion took place regarding the time frame of this permit, seeking a contractor to complete this project, weather setbacks, etc. Also, Board Member Murad questioned a Use Variance vs. an Area Variance regarding solar systems. Town Attorney Cully researched this with the Association of Towns and also Oneida County Planning and this falls under a Use Variance.

Chairman Bogar feels that the applicant should talk with the Councilman in this district, which is Mr. Richard Woodland, Councilman Reynolds and the Town Board for some type of direction.

Board Member Tesak asked is we can ask the Town Board for a different definition of solar panels from a Use Variance to Area Variance – Town Attorney Cully said this is by law. He said this is definitely a Use Variance.

Discussion ensued about changing or modifying the Code. Town Attorney Cully explained what would be needed.

Motion was made by Board Member Stanislaus to table this application – no further discussion.

Board Member Elias felt we should go through the criteria first and then talk about tabling it after. Board Member Murad asked if anything we say as a Board gets passed on to the Town Board – answer is yes.

The applicant stated there was a grant issued by NYSERDA and it is expiring soon. They have applied for extensions. The time frame left is a matter of weeks based on the outcome of this meeting. Board Member Murad asked if they can use this money for the 10kw – answer is no.

Board Member Stanislaus addressed the financial information and what they can do to present it to this Board – right now she doesn't have enough financial information.

Chairman Bogar asked if there was anyone present to address this application – no comment. The Public Hearing closed at approximately 7:25 PM. Oneida County Planning and NYSDOT had no comments.

Motion was again made by Board Member Karen Stanislaus to table this application; seconded by Board Member John Montrose. Vote taken:

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|---------------------------------|-------------------------------------|
| Chairman Randy Bogar – yes      | Board Member Byron Elias – yes      |
| Board Member Lenora Murad – yes | Board Member John Montrose – yes    |
| Board Member Taras Tesak – yes  | Board Member Karen Stanislaus – yes |
| Board Member Fred Kiehm – yes.  |                                     |

Motion passed by a vote of 7 – 0.

The applicant will speak with the Councilman in their district and try to find out if this is actually a Use or Area Variance. Board Member Tesak questioned whether their figures are up to date. The applicant said they want to use what they already bought.

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The application of **A.J. Signs for York Pinnacle LLC, 44-54 Kellogg Road, New Hartford, New York (Hannaford Plaza)**. The applicant is removing a large section of an existing pylon sign, updating it and replacing it in-kind. The sign exceeds the maximum allowed size of 128 square feet by 21± square feet. Therefore, the applicant is seeking a 21± square foot Area Variance. Ms. Bridgette Shoemaker of A.J. Signs appeared before the Board.

Ms. Shoemaker stated she is the Project Manager for A.J. Signs. They are replacing the aluminum skins and adding an additional business. They are not making it any higher. The footprint is staying the same. It will be all LED – softer to the human eye. Whatever the time is set to turn off will remain the same as it is now.

Codes Officer Booth said they aren't taking the posts out of the ground – just removing what is deteriorating there now and adding the additional sign, which is 21 ± square feet. This way they will be able to get all of the tenants in there – all tenants aren't there now.

Board Member Elias asked about square footage – it is 148.5 sf now then adding the 21 ± brings it to 169.5 sf.

Codes Officer Booth addressed the Board stating that the application wasn't clear. They need 41± sf as this sign is already 20 sf over, which makes it non-conforming, and now they are adding another 21± sf. The application has changed. It was published as 21± sf. This would have to be republished.

Ms. Shoemaker said the footprint doesn't change – they are rehabilitating an existing structure. She said she would leave it at 148.5 sf and take off the 21± sf as she needs to get working on this.

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

-Mrs. Gail Uebelhoer, 47 Imperial Drive. She and the other neighbors have had a lot of issues with Hannaford. She referred to garbage trucks and delivery trucks at night. Also, the top of this pylon sign isn't lit so she doesn't know if she'd have a problem with the new sign. Ms. Shoemaker stated the top should have been lit, but the sign isn't as tall as the building and it is not going to be any larger. The gentleman who purchased this property is doing a lot of work on this site. The lighting will be on a timeframe. Mrs. Uebelhoer would like this Board to put a timeframe on lighting.

Chairman Bogar asked Mrs. Uebelhoer if the spotlights in the back of the building bother her – yes. Board Member Tesak suggested motion detecting lights in the rear of this property.

Ms. Shoemaker informed the Board on how LED lights work. Ms. Shoemaker spoke with Codes Officer Booth regarding making this application conform. She will make the panels fit within the variance based on the pre-existing, non-conforming use. Also, any additional lights in the future will be brought before the Zoning Board.

There being no further comments, the Public Hearing closed at approximately 8:00 P.M. Oneida County Planning and NYSDOT have no comments.

The Board Members discussed lighting timers.

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.

It was noted that the additional sign will not be any lower than the existing sign.

Ms. Shoemaker will check with the landlord about lights in the back of the building by the neighbors.

Motion was made by Board Member Byron Elias to approve the application; and the sign is to be lit during normal business hours only or in any event not after midnight; and that a Building Permit to be obtained within one year of approval date; seconded by Board Member John Montrose. Vote taken:

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|----------------------------------|-------------------------------------|
| Chairman Randy Bogar - yes       | Board Member Fred Kiehm - yes       |
| Board Member John Montrose - yes | Board Member Byron Elias – yes      |
| Board Member Taras Tesak – yes   | Board Member Karen Stanislaus – yes |
| Board Member Lenora Murad - yes  |                                     |

Motion was **approved** by a vote of 7 – 0.

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Draft minutes of the March 20, 2017 Zoning Board meeting were approved by motion of Board Member Byron Elias; seconded by Board Member Taras Tesak. All in favor.

Respectfully submitted,

Dolores Shaw, Secretary  
Zoning Board of Appeals

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