

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
MAY 15, 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, and Fred Kiehm. Board Member absent: Taras Tesak. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, Councilman David Reynolds, Councilman Richard Woodland, 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 mentioned that one Board Member was absent tonight and it is up to the applicant whether to proceed.

The application of **A.J. Signs for York Pinnacle LLC, 44-54 Kellogg Road, New Hartford, New York (Hannaford Plaza)**. This area is zoned C2 (Commercial Retail Business) which allows a maximum of 128 square feet for a freestanding sign. The applicant received an Area Variance on April 24, 2017 to reconstruct the sign at 148 ± square feet. The applicant is now seeking an additional 13.5± square feet to be added to the bottom of this sign. Tax Map #339.015-2-2; Lot Size: approximately 12 acres; Zoning: C2 Commercial Retail Business. Ms. Bridgette Shoemaker of A.J. Signs appeared before the Board.

Ms. Shoemaker stated that the owner wanted to be able to give every tenant exposure and equal representation. They need the two bottom tenant panels. The distance between the ground and bottom of the sign is about 6'±. Each panel is about 53" x 12".

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

-Mrs. Gail Uebelhoer, 47 Imperial Drive asked that this Board keep the same lighting restrictions as previously addressed.

There being no further comments, the Public Hearing closed at approximately 6:10 P.M. Chairman Bogar stated there were comments from OCDPW regarding setbacks and rights-of-way, and no comments from OC Planning and NYSDOT.

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.

Motion was made by Board Member Byron Elias to approve the application as presented; 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:

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

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

The application of **Mr. Jason Stefanski, 34 Wilbur Road, New Hartford, New York (corner lot of Wilbur and Andover Roads)**. Mr. Stefanski is seeking a 21'± front yard Area Variance to place a fence in the front yard of his home. The home is located on a corner lot so the home has two front yards. The front yard affected is on the Andover side. Tax Map #329.010-3-52; Lot Size: 100' x 97'; Zoning: Medium Density Residential. Mr. Stefanski appeared before the Board.

Mr. Stefanski bought the house in 2010 and cleared about 80% of the hedges and bushes that were in need of removal. This gave them an idea of what their actual yard looked like. There is a pre-existing fence. They want to remove 21' of hedges and still leave Andover hedges intact. The backyard fence was put up last year. He would like to put the fence on the inside of those hedges for a completely secure area as he has small children. People don't stop like they are supposed to – traffic is a problem. He submitted pictures showing the street view of Andover and you can't see the fence. The property behind him is a rental with families coming and going. He wants his property more secure.

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

-Mr. Paul Duane Howe, 31 Slusser Avenue. He said Mr. Stefanski has done a lot to his property and is in favor of the application.

There being no further comments, the Public Hearing closed at approximately 6:25 P.M. OC Planning and NYSDOT has no 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: 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.

The Board Members understood that this is a difficult location, and the fence will be hidden behind bushes.

Motion was made by Board Member Karen Stanislaus 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 - yes	Board Member Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Karen Stanislaus – yes	Board Member Lenora Murad - yes

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

The application of **Ms. Gathelee Terrell, 12 Brantwood Road, Utica, New York (Town of New Hartford)**. The applicant is located in a Low Density Residential zone, which prohibits the placement of a fence in the front yard. Therefore, Ms. Terrell is seeking a 42'± front yard Area Variance to place a fence in the front yard. Ms. Katherine Terrell, daughter, appeared before the Board and will speak on her mother's behalf.

Ms. Terrell presented pictures of what the 3' white picket fence would look like. Her mother is 74 and has some health restrictions. She takes care of very young children (her family) and they can't play outside except for a tiny area. The back yard drops down with a raving in the back. Fencing in the front yard is the only way they can go. They watch other children play and they can't because they are confined. They want to enclose the entire front yard 3' back from the property line. The fence will be attached to the garage and a gate to where the sidewalk is located.

Board Member Montrose felt 3' is too close in the front and is concerned about plows, right-of-way, etc. Codes Officer Booth said a fence cannot be located in a right-of-way. It will have to be delineated if she gets a permit. Town Attorney Cully said if you don't know where the property line is, we don't know the extent of the variance. Codes Officer Booth said they show the fence projecting 42' out from the corner of the house. The survey only shows 29' – this would put her in the right-of-way. The survey doesn't show the road. Ms. Terrell said another survey is very expensive.

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

Mr. Mark Levitt is here on behalf of his family and he lived on this street previously. There are no shoulders on this street. He referred to zoning, restrictions, etc. There are no front yard fences in this area – one that may be in violation of the Zoning Ordinance or grandfathered in. There should be a place for children to play but the front yard is not a safe area unless supervised by someone who can supervise. Many children have been raised in this area without a fence. Fill can always be brought in for the back. A fence across a middle of the front yard will be unsightly. This isn't fair to the other neighbors. He believes this is a self-created hardship.

Ms. Terrell said their lawyer told them there were no restrictions.

-Ms. Monica Kowalsky, 3 Brantwood Lane. She spoke with others in the neighborhood. Her concern is visibility as her driveway is at an incline. In the winter there will be snow build up and block visibility more. Ravines are everywhere, you just have to watch your children. There are children who play there no without fences.

Ms. Terrell said the proposed fence is not an eyesore. There being no further input, the Public Hearing closed at approximately 6:45 P.M.

Considerable discussion ensued regarding the survey, setback requirements from the middle of the road, the property line, etc. The Zoning Board tries to be fair but we still have to go by the criteria. Chairman Bogar is concerned what it would look like when it gets done. Chairman Bogar asked the applicant if she wanted to poll the Board Members or wait until a full Board is present and table this application.

The Board discussed that they would like to visually see where the fence will be located – discussion ensued regarding how far back from the middle of the road. Codes Officer Booth said 21'± from the edge of the road back. Then it would be in the middle of the yard.

Ms. Terrell will ask to table this application and she will mark the property to see where it is going to go without doing another survey. She asked if she could use this survey – yes. She will contact Secretary Dory Shaw and let he know when it is ready for the Board Members to come to the property.

Mr. Levitt feels the neighbors would like to see where it is going also, but feels a survey is needed.

Motion was made by Board Member Karen Stanislaus to table this application until the June 19, 2017 Zoning Board meeting; 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 Karen Stanislaus – yes	Board Member Lenora Murad - yes

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

Draft minutes of the April 24, 2017 Zoning Board meeting were approved by motion of Board Member Karen Stanislaus; seconded by Board Member Fred Kiehm. All in favor.

There being no further business, the meeting adjourned at approximately 7:00 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

dbS

