

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
JULY 17, 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, Taras Tesak and Fred Kiehm. Board Member absent: Byron Elias. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, Councilman David Reynolds, Assessor Darlene Abbatecola, 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. Chairman Bogar explained that one Board Member is absent and one Board Member will arrive later. It is up to the applicant whether to proceed.

The application of **Mr. Nick Smajic for Mr. Dong Weng, 21 Leard Road, New Hartford, New York.** The applicant is seeking a 7' ± right side yard Area Variance to add a dormer on the rear of the home. The current building is non-conforming and cannot be expanded. Tax Map #328.012-3-76; Lot Size: 50' x 120'; Zoning: Medium Density Residential. Mr. Nick Smajic appeared before the Board.

Mr. Smajic explained that the dormer is at the rear of the home for a second bathroom. The footprint of the house is the same. There are several houses in this neighborhood that have similar or larger dormers.

Board Member Tesak asked if there was another way to accomplish this. Mr. Smajic said no, they tried. The houses in this area are small. Board Member Tesak asked Codes Officer Booth to explain a non-conforming use. Mr. Booth also stated that this addition is totally within the framework of the existing house.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:10 P.M. One phone call was received from Ms. Kristin Fedor who was not in opposition but she didn't want anyone to affect her fence.

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.

Town of New Hartford
Zoning Board of Appeals
July 17, 2017
Page 2

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 Fred Kiehm. Vote taken:

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

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

The application of **Ms. Anne Wadsworth, 34 Clinton Road, New Hartford, New York** (corner lot). The applicant is seeking two Area Variances to locate a fence on a corner lot. She is seeking a 30' ± front yard Area Variance on Clinton Road side and a 26' ± front yard Area Variance on Hara Crescent side. This area is zoned Medium Density Residential which does not allow fences in a front yard. Tax Map #328.016-3-83; Lot Size: 75' x 140'; Zoning: Medium Density Residential. Ms. Wadsworth appeared before the Board. Mr. Michael Giordani also appeared.

Ms. Wadsworth mentioned that this will be a 6' fence, not 7.5' as shown on the application. Ms. Wadsworth placed markers where the fence would be located. The fence will be placed behind the bushes. This is for the safety of her children, and also for privacy. She spoke to her neighbors and no one had any concerns. This fence will be a solid, natural 6' fence.

Board Member Tesak asked if this fence would create a visibility problem – Ms. Wadsworth said no as it will be behind the trees/bushes. Board Member Kiehm asked why the 6'. Ms. Wadsworth stated this helps with noise as Clinton Road is very busy. He also asked how far back from the edge of the road the fence would be – she said about 10' off the edge of the road. Board Member Montrose referred to some branches that are hanging down and create a visibility problem. Ms. Wadsworth will trim those. He also asked if snow got into her yard – she said no.

Chairman Bogar explained that this is a corner lot on a busy street. He also brought up what would happen if the trees/bushes died.

Chairman Bogar asked if there was anyone present to address this application – no response. However, calls were received as follows:

- Sharon Goodenow, 21 Hara Crescent – no objection
- Jennifer Lattimer, 15 Hara Crescent – no objection
- Mr. Damiano, 9 Edna Terrace – no objection
- Carolyn & Tim Solan, 18 Hara Crescent – no objection
- Mrs. Fancett, 8 Hara Crescent – no objection
- Pam Sohigian, 40 Clinton Road – no objection

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

Board Member Tesak questioned whether the amount we grant is greater than the request because the fence is down to 6'. Board Member Murad also questioned the square footage because of the height reduction. Codes Officer Booth said we are talking about linear footage. Just the height is changing from 7.5' to 6'. Board Member Tesak asked Codes Officer Booth about a corner lot. Mr. Booth explained that you cannot choose their front yard on a corner.

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: difference of opinion – fencing will be added;
- The requested variance is substantial – response: difference of opinion – corner lot;
- 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: yes, all in agreement.

Motion was made by Board Member John Montrose to approve the application and that the fence be 6' tall where markings are shown; that the fence be left natural in color; to remove two or three branches that are very low and keep them trimmed; that shrubs be maintained in front of the fence; 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 John Montrose - yes

Board Member Taras Tesak – nay

Board Member Fred Kiehm - yes

Board Member Karen Stanislaus - yes

Board Member Lenora Murad - yes

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

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 3' fence in the front yard. Tax Map #339.008-3-47; Lot Size: 213' x 199'; Zoning: Low Density Residential. TABLED AT THE MAY 15, 2017 MEETING & POSTPONED UNTIL THE JULY 17, 2017 MEETING. Ms. Katherine Terrell, daughter, appeared before the Board.

Ms. Terrell brought the Board Members up-to-date on what has transpired. She secured a survey, and staked out where the proposed fence would be located (they got it out of the public right-of-way). It will be 3' high, white and a picket. They cannot locate a fence to the rear of the property as it is too steep. Her mother has custody of this child and they want to provide an area for her to play. The child won't be unsupervised. (She gave her personal comments about something that was brought up at the last meeting from a neighbor). Also, the fence is 17' back from the driveway where a gentleman said it would block his driveway. (See fence proposal in file).

Board Member Murad asked Ms. Terrell if he objected to putting in a few plants in front of the fence – Ms. Terrell said she has no problem doing so. The fence is parallel with the driveway and will go to the walk with a gate. The playpen as shown in the picture will be removed when the fence is installed.

Board Member Tesak referred to bushes rather than a fence – Ms. Terrell said it would take too many years to grow.

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

-Mr. Steven Kowalsky. There is a security fence in the back now which was placed after the last meeting and which he feels is adequate. He feels there is a lot of grassy area between the house and a patio and a good 20' of grass area before it drops off. He feels they have done a good job securing the area in the back. Also, the zoning calls for no fences in the front yard – the neighbor who has one was grandfathered in 40 years ago. What if the variance is granted and they move away, or the child doesn't need the fence any longer. It is not fair to the rest of the neighborhood.

Board Member Tesak questioned whether this is a fence or something decorative. He suggests a cedar hedge with mesh behind it. Board Member Murad understands the concerns, but this is why there is a Zoning Board of Appeals. She takes things very seriously and looks at each case individually.

Ms. Dorothy Harris. Can you have a playground area in front of the house, i.e., swing set? Codes Officer Booth said yes. Ms. Harris also said children can poke through fences.

-A phone call was received from Mr. Stewart Brooks who had no problem with this request but did not want a chain link fence.

Ms. Terrell wanted the Board to know that their neighbor offered to remove their objection if they sold them some land. She feels this is a health and safety issue and there is no other reasonable way to give this child a safe place to play while she is little.

There being no further input, the Public Hearing closed at approximately 7:10 P.M.

Board Member Tesak is trying to decide whether this is a fence or not. Chairman Bogar said the fence cuts through the middle of the property. Board Member Montrose feels it would look like a decoration – and perhaps shrubs in front would make it look nicer.

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 – shrubs are costly;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: difference of opinion;
- The requested variance is substantial – response: difference of opinion – depends on what it would look like;

- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: difference of opinion – maybe no environmental but physical;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: yes, all in agreement.

Motion was made by Board Member Lenora Murad to approve the application with the stipulation that shrubs be placed in front of the fence, spaced appropriately to make it more appealing; seconded by Board Member John Montrose; 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 - no
Board Member John Montrose - yes
Board Member Taras Tesak – no

Board Member Fred Kiehm - no
Board Member Karen Stanislaus - no
Board Member Lenora Murad - yes

Motion was **not passed** by a vote of 4 - 2.

The application of **Mr. Mark Scatko, 9503 Mallory Road, New Hartford, New York**. Mr. Scatko would like to place an addition onto the back of his home. He is seeking a right side yard Area Variance of 5' ± as his home is legal non-conforming, and cannot be expanded without seeking the Area Variance. Tax Map #340.000-4-33; Lot Size: 100' x 244'; Zoning: Residential/Agricultural. Mr. Scatko appeared before the Board.

Mr. Scatko stated he wanted to build a 10' x 17.6' addition onto the back of his home. He would like to make the kitchen larger, and add a bedroom and bathroom. He is going no closer to the property line. There is no other alternative way to do this. He needs the additional living space. He stated he would reside the whole house.

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

Town of New Hartford
Zoning Board of Appeals
July 17, 2017
Page 6

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 John Montrose. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Taras Tesak – yes

Board Member Fred Kiehm - yes
Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes

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

Draft minutes of the June 19, 2017 Zoning Board meeting were approved by motion of Chairman Randy Bogar; seconded by Board Member Karen Stanislaus. Approved. Note: Board Member Taras Tesak did not vote as he was not in attendance at this meeting.

There being no further business, the meeting adjourned at approximately 8:00 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

dbS