

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
AUGUST 21, 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, 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.

The application of **Ms. Michelle Landry, 6 Longfellow Drive, New Hartford, New York**. The applicant has installed a fence 17' ± in front of her home. Ms. Landry is located in a Low Density Residential zone, which does not allow a fence in the front yard. Therefore, she is seeking a 17' ± front yard Area Variance. Tax Map #329.017-2-4; Lot Size: 162' x 113'; Zoning: Low Density Residential. Ms. Landry appeared before the Board.

Ms. Landry explained that her primary yard is the side, about 20' back from the road. This fence enables her dogs to be in the yard. This is one lot (one tax map number) and she has lived there for twenty years. The fence was put up about 2-3 years ago, and it was noticed by a Codes Officer that she didn't have a permit. She thought the permit was applied for, but it wasn't.

Board Member Tesak asked her if she could change the contour of the fence to be in compliance – Ms. Landry said no as it would be a financial hardship and it wouldn't look as nice. Shrubs in the front of the fence were discussed.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at approximately 6:15 P.M. It was opened up again at 6:16 P.M. to Ms. Landry. Board Member Tesak would like to see some shrubs/plantings staggered and he would leave it up to the applicant to what kind of plantings. Ms. Landry agreed. She also referred to a gate in that area – it was decided not to address it. The Public Hearing closed again at 6:20 P.M.

Chairman Bogar stated that two calls were received in favor of this application: Ms. Susan Johnson, 21 Tennyson Road and Ms. Bertha Lawson, 3 Longfellow Drive.

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;
- The requested variance is substantial – response: possibly;

- 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 Taras Tesak to accept the fence application as it is now, but he would like to see immediate vegetation/plantings to be installed at least 4'-5' high (as long as these cover the frontage of the fence) about 4'-5' apart; (not to look like a wall or hedge); that she would have a year to accomplish this; and that a Building Permit for the fence to be obtained within one year of approval date; seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Taras Tesak – yes
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 7 – 0. Board Member Tesak advised the applicant if she wanted to continue further with the plantings, she could. Ms. Landry said she will probably start the plantings in the spring.

The application of **Mr. Jeffrey Wheelock, 3612 Oneida Street, New Hartford, New York**. The applicant is located in a Medium Density Residential zone, which requires a 10' side yard setback. He is seeking a 3'± left side yard Area Variance to construct/expand a porch. Tax Map #349.012-1-19; Lot Size: 65' x 183'; Zoning: Medium Density Residential. Mr. Wheelock appeared before the Board.

Mr. Wheelock presented a survey. He was using the driveway to park his pickup truck. By him expanding, the driveway won't be functional any longer. His wife would like to porch and a small hot tub on the backside. The porch won't be enclosed and it will not be a 3-season room. They will join the front and back porches. He has lived there since 1985.

Board Member Tesak asked if there was any other way to accomplish this. Mr. Wheelock said no, not the way the house sets now. Also, aesthetically it wouldn't look right.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at approximately 6:35 P.M.

Board Member Elias would like to see some grass planted where the driveway will be removed. Mr. Wheelock said he already thought about it and grass will be planted and some type of landscaping.

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: difference of opinion.

Motion was made by Board Member Fred Kiehm to approve the application as presented with grass being placed where the driveway is going to be removed; 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 Taras Tesak – yes	Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes	

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

The application of **Mr. Ray Trotta for Mr. Joseph Parisi, 4752 & 4754 Commercial Drive, New Hartford, New York**. This property is located in a C1 General Business zone, which requires a 10' side yard setback for parking spaces and limits the total number of parking spaces to 120% of the minimum requirement. The applicant is seeking a 7'± right side yard Area Variance for the parking lot and a 51 space Area Variance for exceeding the maximum required parking spaces by 39 spaces. Tax Map #317.017-4-21.3; Zoning: C1 General Business. Mr. Ray Trotta of the Holland Trotta Project, Rochester, New York, and Mr. John Jweid of Pavia Real Estate were in attendance.

Mr. Trotta gave a background of the people behind this project. He referred to the previous applicant for this property, which the NYSDOT had concerns and it did not go forward. The NYSDOT is on board with this developer. Some of the comments he received from the County and State will be addressed with the Planning Board. At this point, they are asking for a right side yard Area Variance of 7'± and for 39 parking spaces. He explained that there are a total of 98 spaces and out of that 98 there are 49 spaces for what is allowable under a plaza parking distinction. Also, you have 120% of that allowable without a variance. This comes up with 59 spaces. Then the 59 is what is allowed. Minus 59 from 98 leaves a total of 39 parking spaces, which is what they are seeking for the parking variance.

Mr. Trotta explained where the line of reference was to the existing pavement. The tree line and the property is pretty extensive – almost 2.7 acres. He also stated all of the easements will be maintained with this proposed project. Cross access easement will no longer exist – if they get rid of the two buildings, there is no need for it (only for the two properties Mr. Parisi owns).

Also, Mr. Trotta referred to the plan before that was originally submitted. He is showing this because it was before he started looking at storm water. He addressed the Code for parking for the proposed medical, dental and restaurants at this site. That is how they designed the site. Codes Officer Booth said

this would be looked at as a retail plaza, that is why the parking variance is required. If tenants ever change in the future, then they are covered by this variance. This is being reviewed as a retail plaza. There will be an urgent care, dental office and two restaurants. No retail use now. Every one of these have signed leases of intent – they have these tenants on board. This property in this area needs to be updated. Mr. Trotta stated they are allowed to pave to the edge on the side but can't park on it.

Board Member Tesak asked about possible subdivision if tenants move out. Mr. Trotta said they have a subdivision plan but the biggest criteria is you have to have direct access to the road. It meets road frontage but not driveway. Since one developer will own both properties, there is no reason. But they may want to have the opportunity at some time. Aspen Dental is the parent company. Two tenants are owned by one entity. Codes Enforcement Officer Booth said if they ever split a building in half, it looks like they have enough frontage but parking would be an issue.

Mr. Trotta stated one thing changed from the first plan – storm water catchment area.

Board Member Tesak asked Mr. Trotta to show him how far back this property goes. Mr. Trotta referred to the map and pavement line – we are looking at about 100' beyond where the trees are. There is a dead end street on the backside. Board Member Tesak said the prior interested person was thinking of some type of parking in the area where the dead end street is and making a walkway. They are not developing anything on the creek side. There will be some grading changes. They think they can balance the site – they will design it so it doesn't flood down. The whole area will be contained and they will look at overall drainage. They will have a storm water plan. He referred to why there is flooding around that area from the site. They will have the entire design plan before the Planning Board. However, this application is the first step. They are working with NYSDOT and will address their comments. They had concerns regarding stacking. They want an updated traffic analysis, but they have the light dedicated to this property.

Board Member Elias asked how they are going to keep the storm water from running into the Hage property. Mr. Trotta said it would be graded back – a swale – they know you can't legally push water onto an adjacent site. Board Member Montrose referred to the bollards there now. Mr. Trotta said they will be eliminated.

Mr. Trotta explained that this will not impact the Hage and the other building next door. The two buildings coming down are Mr. Parisi's.

Board Member Tesak asked, knowing that parking is a concern, have you approached anyone adjacent to the property to eliminate the problem and are we creating a problem further if approving this? – Mr. Trotta said not yet, possibly in the future. It is his understanding that they have called them to express an interest, but that is it at this time. The Board agreed that this area needs to be updated. Mr. Trotta stated that how this project is being viewed, and how the Code is written, it is a hardship. He can't see anyone coming in without going for a variance.

Town Attorney Cully stated there was a State appropriation and various owners were paid for their buildings. He doesn't know what limitations the State imposed, if any. Mr. Trotta said it was more of design limits not affecting the front setback. There weren't any limits that he knows of. The only

easements are National Grid and sanitary as far as restrictions of NYSDEC, and also the sidewalk in the front.

Codes Officer Booth asked, if you did the individual analysis of the uses, what were parking requirements then? Mr. Trotta said if they break it down, there is actually 115 spaces. By Code it would be 103 and then you are allowed 122 without a variance. If each use was identified individually, that is what it would be. Restaurant parking goes by how many seats, medical goes by how many examining rooms. The only encroachment is the side setback.

Board Member Tesak asked if they looked into making the buildings narrower – Mr. Trotta said this would not work.

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

Mr. Joseph Hage, he owns the property where the variance is on the side. He said there are some ongoing negotiations, but in case it falls through, his concern would be the side variance. 3' from the property line is about 18' from the building. Parking would be into the right-of-way in the deed. He has four buildings in the back also. There is an easement there for ingress and egress and right-of-way. His attorneys can check this.

Board Member Elias stated that if it's an easement or right-of-way, that would be a situation between Mr. Hage and the existing owner. His attorney should look at this. Mr. Hage said his concern is it is still 3' from the property line and 18' from a commercial building. His buildings are all similar in structure – he has a little less than two acres. Board Member Elias said 18' isn't unusual.

Town Attorney Cully said he hasn't seen an abstract where he could establish ownership except the survey shows a common easement between two buildings located within these two parcels. The surveyor has shown an easement or right-of-way for the Hage property. Mr. Hage said he has something from 1842. Town Attorney Cully said as it relates to any violation, that is a civil matter between the two property owners.

Mr. John Jweid of Pavia Real Estate stated that if we didn't move with this, the land could sit there for many years to come. This property has been looked at for over ten years. Board Member Tesak asked if anyone would be landlocked – it was stated no. Board Member Tesak asked Mr. Hage if he is using the building – Mr. Hage said no. Board Member Tesak feels these buildings are eyesores but he doesn't want to overcrowd the site. He asked the distance between the two buildings – about 30'.

Codes Officer Booth stated Mr. Hage has no access or frontage – walking only. The State paid him for the building. Mr. Parisi got some and the sidewalk and Mr. Quinn (who also owns a building) accepted their offer. What the State offered were two choices: take 90% with landlocked or take the whole property.

Mr. Hage again referred to the abstracts and deeds, which is a gray area. Can you take a right-of-way? Again, it was stated this is a civil matter.

Mr. Trotta explained the difference between easements and rights-of-way. He will check to see if those portions of the deeds are still valid or updated. He also stated that this development is not as dense as some of the developments around them. If this wasn't designated a retail plaza, they wouldn't even have to be here. If the variance is granted, this will be completely engineered before going to the Planning Board. If it is not approved, this is a dead project.

Board Member Tesak addressed traffic – Mr. Trotta said they have a double lane stacking and the traffic analysis will address this.

Mr. Hage referred to when the plats were subdivided; provisions were made for these rights-of-way. Mr. Trotta said he has no issue to address those items.

There being no further input, the Public Hearing closed at approximately 7:50 P.M.

Chairman Bogar addressed replies from NYSDEC, NYSDOT, OC Planning, and OC Solid Waste, which are a part of the file. NY Mills did not respond.

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: Board Member Elias stated because of the shape of the lot and constraints, no. They have done a great plan. He gave a brief history of what he knew about this area. There are wetlands behind them and there isn't much they can do – Board Member Tesak has no comment – all others agreed;
- 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 – it would be a positive plan to make this area look better;
- The requested variance is substantial – response: Board Member Tesak thinks it is – other Board Members think it is not. Board Member Murad said it is by definition because of the parking;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: Board Member Montrose is concerned about water; Board Member Murad said this can be addressed at the Planning Board – others agreed;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: most Board Members stated because of the shape and the unique parcel, also the State taking the land created a problem. Board Member Tesak feels there is another way to approach this property to make it work, i.e. take a building out or seek another professional use. Board Member Elias would like to see the land utilized and to make this look better. To take a building away it takes away the viable use. People have been trying to utilize this property for a long time.

Board Member Stanislaus asked if any steps have been taken regarding water problems. Mr. Hage said there are drainage easements in there. She also stated one of the agencies addressed drainage and water. Mr. Trotta said this will be designed by today's standards, which are much better than designed 40 years ago. This will be designed to drain and contain water and right now there is nothing in the design. They

have looked into this and will be issuing a full SWPPP to submit to the Planning Board. Also, from NYSDOT as far as traffic, they wanted the analysis for future developments also.

Board Member Murad to Codes Officer Booth: if this doesn't get approved, do they still have the option to go to the Planning Board without calling it a retail plaza. Mr. Booth said yes, but they would still need the setback variance if they leave the parking the way it is. He also stated this administration requested all developments reduce their impact on the site as far as storm water by a certain percentage. When the project is done, it will have less runoff on its present site. This is an improvement.

Motion was made by Board Member Byron Elias 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 Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Byron Elias – yes
Board Member Taras Tesak – no	Board Member Karen Stanislaus – no
Board Member Lenora Murad - yes	

Motion was **approved** by a vote of 4 – 3.

Draft minutes of the Zoning Board of Appeals meeting of July 17, 2017 were approved by motion of Board Member John Montrose; seconded by Board Member Taras Tesak. Board Member Byron Elias abstained as he was not in attendance at this meeting. All others in favor.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

dbb