

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
OCTOBER 16, 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; Highway Superintendent Richard Sherman; Councilman James Messa; Assessor Darlene Abbatecola; and Secretary Dory Shaw. Absent: Codes Officer Joseph Booth. 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. Paul Mancuso for **Mr. & Mrs. Anthony Giovinazzo, 2 Viburnum Place, New Hartford, New York**. The existing home is legal non-conforming with a left side yard setback of 13'. The applicant is seeking a 2'+ left side yard Area Variance to place an addition on the back of the home. Tax Map #340.001-1-6; Lot Size: 107' x 185'; Zoning: Low Density Residential. Mr. Paul Mancuso of Octagon Engineering and Nick Palmieri appeared before the Board.

Mr. Mancuso explained that the existing addition has been in place for twenty (20) years and it was built too close to the property line. He presented photos for the Board's review. The structure is non-conforming because the pre-existing structure is too close to the property line. They want to add on a bedroom and bathroom and the addition is nowhere near this side. Gutters will be put up and materials will match the existing house.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing was closed at approximately 6:10 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.

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

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The application of **Mr. Shane Berge II, 237 Fairway Drive, New Hartford, New York**. Mr. Berge is seeking a 10'± right side yard Area Variance for a second story 20' x 20' addition. Mr. Berge's house is non-conforming. and this home cannot be expanded. Thus, the request for an Area Variance. Tax Map #317.011-3-14; Lot Size: 97' x 222'; Zoning: Low Density Residential. Tax Map #317.011-3-14; Lot Size: 97' x 222'; Zoning: Low Density Residential. Mr. Shane Berge (father) appeared before the Board.

Mr. Berge presented a sketch of the proposed addition. This is non-conforming as the right side of the house is too close to the property line. They are building on the left side of the house, which has an 18' clearance. They are coming off the back of the house. It will be a bedroom, and one story. The roofline will match – it will look like it was always there.

Board Member Tesak asked if there was any other way to accomplish this – Mr. Berge said no. Also, Mr. Berge said there is no second story – they changed it but it never got changed on the application.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at approximately 6:20 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.

Motion was made by Board Member Fred Kiehm to approve this application as presented (it is not a second story addition); seconded by Board Member Byron Elias; and that a Building Permit to be obtained within one year of approval date. 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.

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The application of **Mr. Trevor Kalwara, 79 Merritt Place, New Hartford, New York**. Mr. Kalwara has installed a 6' high fence 9.3'± past his front property line into the Town right-of-way. He is seeking a 9.3'± front yard Area Variance to allow the fence to stay in its present location. This is a corner lot and the front yard runs parallel with Hilltop Terrace. Tax Map #328.016-4-40; Lot Size: 57' x 110' (corner lot); Zoning: Medium Density Residential. Mr. Kalwara appeared before the Board.

He stated he repaired the dilapidated fence with like and similar fencing in the same place where it stood.

Board Member Montrose referred to a driveway on Hilltop and the visibility problem that exists. He also explained that you can't put something in a right-of-way. Board Member Tesak asked if he thought he needed a permit to do this, and what is the purpose of the fence. Mr. Kalwara said when it was like material to repair something he thought he didn't need a permit. After the fact, he talked with Codes Officer Booth who said he needed a survey and then seek a variance. He stated he needs the fence for privacy and safety of children playing in the area.

Board Member Tesak wanted to know what option Mr. Kalwara has, i.e., leave the fence, repair it, take it down? Mr. Kalwara wanted to improve the area and he probably wouldn't have done anything with it if he knew what would happen. Board Member Murad asked who owned the house before and why is the fence there. It was stated that years ago a permit was not necessary for a fence. At present, you need a permit and a survey – also, fences are no longer allowed in a front yard.

Chairman Bogar mentioned putting in shrubs. Mr. Kalwara said there is an issue with the power authority so he decided to keep the fence. Board Member Tesak asked Town Attorney Cully if there was anything we can look at going back to the prior owner having that fence being there? Attorney Cully said no, the fence is in the right-of-way.

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

-Mr. Justin Latus, 85 Merritt Place: he is in favor of allowing the fence to stay.

-Mr. Randy Shephard, 4 Hilltop Terrace: he is in support of this application, and Mr. Kalwara did a good job fixing this fence.

-Mr. Michael Behan, 70 Merritt Place: he is in favor of this as Mr. Kalwara did a good job.

-Mr. James DeValle, 5 Hilltop Terrace: he is in favor and he feels the fence doesn't take away from the neighborhood.

-Mr. & Mrs. Michael Kosowski, 83 Merritt Place sent a letter in favor of the application.

Discussion ensued regarding whether the fence is replaced by taking one board at a time at different intervals rather than all at once. Repair vs replace.

There being no further comments, the Public Hearing closed at approximately 6:35 P.M. Board Member Tesak asked if there was any liability issue with the Town with the fence in the right-of-way if this Board approves it. Attorney Cully said yes.

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, 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 Chairman Randy Bogar to **deny** the application of Mr. Kalwara without prejudice; 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 Taras Tesak – yes	Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes	

Motion was **denied** by a vote of 7 – 0

Mr. Kalwara was advised to contact Codes Officer Joseph Booth to address this situation further in the event there is another option, i.e., seek an Area Variance for a fence in the front yard.

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The application of **McDonald's USA, LLC for 3912 Oneida Street, Washington Mills, New York** (Town of New Hartford). Replacement of existing restaurant with a new restaurant of the same size. The applicant is seeking an Area Variance on front yard parking lot setback of 14'±, rear yard parking lot setback of 7.4'±, maximum coverage variance of 14.5%±, maximum wall signs on building (1 sign); minimum parking stall size 1.75'± x 1.5'±, and maximum parking spaces allowed 15. Applicant is located in a C2 Commercial Retail zone. Tax Map #339.016-1-45; Zoning: C2 Commercial Retail Business. Ms. Lauren Monaghan, ASCE, Civil Engineer for Bohler Engineering appeared before the Board.

Ms. Monaghan presented a sketch of the location of this project. They will tear down the building and put a new one up in its place. They are investing quite a bit of money into this site, i.e., new equipment, modern technology, etc. The building size will go from 4300 sf to about 4390 sf. It will shift to the side slightly. But overall, it will remain the same. They will be adding a side-by-side drive thru for better traffic flow. Most of the variances are for improving the site. The parking setback is in the rear because of drive-thru improvements. – it is a corner lot and 15' is required.

Board Member Tesak asked if there is a reduction in parking spaces. Yes, there are currently 50 spaces and it will now be 40 spaces – losing 10 spaces.

Drive-thru stacking was addressed. Traffic flow will remain almost identical except for the new lanes. Traffic flow will improve. Ms. Monaghan also addressed the signage request and displayed a photo for review.

Board Member Elias addressed the trash enclosure, and a pad is provided. Snow removal will be the same and they expect no problems.

Chairman Bogar asked if there was anyone present to address this application – no response. There being no further input, the Public Hearing closed at approximately 6:50 P.M. Chairman Bogar stated that Oneida County 239 was received with no recommendation; Oneida County DPW had comments; and NYSDOT had no comment. The applicant received copies of 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.

Motion was made by Board Member Taras Tesak to approve this application as presented; seconded by Board Member Karen Stanislaus; and that a Building Permit be obtained within one year of approval date. 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.

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The application of **Ms. Kirsten Casale, 22 Wills Drive, New Hartford, New York**. Applicant is seeking clarification of Interpretation of Zoning Board of September 15, 2008. Business use of property has expanded beyond what Zoning Board of Appeals allowed. Tax Map #339.011-1-28; Lot Size: 80' x 123'; Zoning: Low Density Residential. Ms. Casale appeared before the Board.

Ms. Casale said they have a pumpkin display where people can come by their vehicle or walking. There is an honor system to make a donation. Traffic wise they have never seen more than three (3) cars at a time. They never had a complaint or problems driving or blocking a driveway. She displayed pictures of the last six (6) years of the property. They do donations to various organizations, House of the Good Shepherd, some churches, and a cancer foundation. A letter of support and receipts of various donations will be made a part of the file. Some money does cover the cost that they spend. No neighbors addressed her personally about this operation.

Board Member Kiehm asked if she wanted a definition of the original Interpretation of 2008. Chairman Bogar read the last paragraph from the September 15, 2008 Zoning Board minutes. Ms. Casale said they could put a tent on the side and a temporary structure and it wasn't a problem because it is not in the front yard. She takes them down on October 31<sup>st</sup>. Attorney Cully said it is part of a farm stand open June through October. They have a 10' x 10' tent to keep rain off the produce. It is part of this entity selling or distributing.

Board Member Murad asked if there is a Town law saying you can't have another canopy. Attorney Cully said this was done in 2008 and our Ordinance has changed substantially. Just being asked for what they gave them in 2008 – clear or not clear. It is up to the applicant as this wasn't clear at the time. Board Member Murad asked if there is a time limit for a tent – yes.

Board Member Tesak asked if this could be done elsewhere and still raise the same amount of money. Why here? Ms. Casale said because they live there. The produce is grown in the Town of Litchfield. Board Member Tesak asked, if you own some property, do you feel this particular area is better than another area to rent or use. Ms. Casale said they don't live at the other property and there is very little traffic there. Board Member Tesak sees a retail use here. He is more concerned about how many people travel through this lot. Ms. Casale said they both have full time jobs. She has noticed 1 – 3 cars at a time. There is no employee standing there or a volunteer. Sometimes her son helps.

Board Member Montrose asked how long does this go on – Ms. Casale said the middle of September and thru October 30<sup>th</sup>. He referred to a garage sale only being held two times a year and for one day at a time. This is still a residential area. Are donations a part of a garage sale?

Attorney Cully said Ms. Casale needs to address whether the prior Interpretation said they would be allowed to stay with a 10' x 10' tent on the side of the home, to have suggested donations only for this produce, strawberries, blueberries, pumpkins and vegetables, and no signage except for one sheet of 8 ½" x 11" piece of paper. If it is an Interpretation, you are being asked to interpret some part of it. If you do anything else, then it is a variance. As to traffic, if you look in the minutes it is open from June to October and no traffic. Some people walk to the site.

Ms. Casale wanted to know what is allowed for zoning laws for a tent – they thought they were allowed signage. No advertising by the road, just an 8 ½" x 11" sheet of paper. Mr. Casale stated back in 2008 they explained the pumpkins and each variety they would need a sign. They asked if it could be on the side and Mr. Booth said it was fine. We have operated the same exact way since 2008. What they have out front is the hay bales and donation box. One sheet of paper per size is what they requested. They have never seen more than 1-3 cars there. Some people walk or have wagons, or drive and what they wish to donate.

Board Member Elias said even so, anyone can park on their street or in front of their house. Mr. Casale said they would like to have this operated to the 26<sup>th</sup> of December with the sale of Christmas trees as they have nurtured to the point to bring them in. Board Member Elias said we are talking about 2008 only. For Christmas trees they would need to seek a variance.

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

-Ms. Camille Benzo-Fukes. She is the part-owner of 24 Wills Drive with her brother, Rocco Benzo, which is adjacent to 22 Wills Drive. She had left copies of a pamphlet for each Board Member with pictures of this pumpkin operation. Her mother still lives in the home at 24 Wills Drive.

-Mr. Rocco Benzo. He has been a resident of New Hartford all his life. He lived at 24 Wills Drive for at least 30 years. This operation is a commercial use and this community is not zoned for it. It would be setting a precedent for other businesses in a residential area. This operation has become substantially more than what it was back in 2008. They received an Interpretation and conditions were as follows: learning experience; no advertising except for an 8 ½" x 11" piece of paper, one 10' x 10' tent; and no traffic. Their children are adults now and the learning process is done. Numerous signs with prices have been displayed, no mention of donations and they have been advertising on Facebook. There are four (4) tents exceeding 10' x 10' and he referred to the section of the Code for New Hartford. Substantial growth has drawn many vehicles and people who would normally not frequent this neighborhood, i.e., strangers. There have been numerous rodents that continue to increase with the garbage generated by the individuals that run this farm stand. Rotted pumpkins, gourds, corn cobs chewed, all being disposed on our property – not theirs. This has been a problem for years. He presented some pictures to the Board Members from his telephone. He reiterated that prices are shown/posted – it doesn't say donations. The original purpose was for donations. Back in 2008, the residents close to the operation were not notified of this kind of use. The money earned was to be given back to the community. He would like to see what was donated and what was taken in. Were any of these donations given back to the community, i.e., New Hartford Library, New Hartford Senior Citizens, New Hartford School.

Board Member Elias asked the Casale's if they donated to any of these – they said no.

Mr. Benzo addressed parking. Sometimes the parking is in their driveway and sometimes on the lawn. There is an increase of pedestrian traffic, which is unsafe - both driving and walking and close proximity to a school bus stop. The size of this has caused stress to his mother. She is being faced with constant commotion, unwanted animals, patrons constantly using her driveway even for a turnaround. This affects the fair market value of all the houses in this area. If people were to sell their house it would have to be disclosed there is a retail establishment and could be a violation. Sometimes there is unloading done at night with floodlights as they are unloading pumpkins. There is a constant unloading every day. This business is not done in any other area except on his mother's side of the property.

He is respectfully asking to close this operation down immediately. We would like them to operate this in a commercial area, not residential. They can sell their pumpkins in an Agricultural or commercial area or lease property. There is a reason why we call Commercial Drive commercial. He thanked the Board on behalf of him and his sister to bring this to the table.

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

-Mr. Jim Kreutzer, 6 Center Terrace. He is up at all times day and night and he doesn't see any cars in the way. These are people who are trying to help their neighbors.

Board Member Elias explained that this is before the Board tonight to determine the Interpretation back in 2008. How many tents were there, etc.

Mr. Kreutzer said he had a tent in his back yard for picnics. He doesn't remember if they had more than one tent in 2008.

-Mr. Joseph Kennedy, 13 Center Terrace. Traffic hasn't been a problem. He knows Mr. Benzo and the Casale's. He asked Mr. Benzo if he lived at 24 Wills Drive.

Mr. Benzo said no, but he is concerned about the integrity of the area and also concerned about his mother. No one else lives next to it like his mother.

Mr. Kennedy referred to animals and said they are always there. He doesn't see a big influx but he doesn't live next door either. Donations are what they are – it is what it is. He kept referring to temperance and tolerance. He has seen pallets, signs, produce, etc. As far as fair market value, he has a neighbor with issues also.

Board Member Tesak asked if Mr. Kennedy has been there since the Casale's started this and have you seen an increase of the amount of pumpkins, corn, Christmas trees and increase of tents, signage? Mr. Kennedy said he hasn't seen any increase. They do replace pumpkins when they are sold. He believes change is inevitable.

-Mr. Joseph Varieur, 2 Center Terrace. He knows the Benzo's. He feels there is nothing done out of the ordinary. It's been done for some years. He referred to canopies, and feels garage sales are not donations. He understands how Mr. Benzo and his sister feel, but he feels these two neighbors need to get together and be friends again. There may be tents, increased pumpkins, signs but this is not a car dealership. He kept referring to the neighbors to work it out.

Mr. Benzo said this is not a personal issue. It is an adherence to the Zoning Laws. Animals are getting edged out of their habitat – the Casale's are providing a food source to attract deer, raccoons, etc. They are creating some of the vermin.

Chairman Bogar stated if this is what is happening, there is a way to address this. He also stated that the dumping of pumpkins is an issue.

It was mentioned by someone in the audience that Ms. Judy Cusworth introduced black squirrels into this area.

Board Member Murad we have to stick to the issue. She doesn't see many pictures and pedestrians. Some of the issues brought up we need to see if it is pertinent to what is being requested tonight.

-Ms. Susan Slavonik – Yorkville. She goes to this neighborhood frequently because she likes the produce on display. She doesn't see many cars there and she's never used anyone's driveway. This is her observation.

-Ms. Jodi Smith, 20 Wills Drive. They live next door. They haven't seen any concerns. She referred to a large family who once lived in their area and they had a lot more traffic. No one has blocker her driveway. She hasn't seen any mice, etc. She feels this is good for the community.

Board Member Elias asked if she has seen a change since eight years ago. He referred to the original Interpretation.

Board Member Tesak asked what brought this to the Board's attention. Ms. Fukes said she brought this to Codes Officer Booth's attention. Her and her brother have taken notice and it is their job as property owners to represent their mother and it is not in their best interest to allow this operation. People here tonight don't live in that close proximity to this operation. Their mother is home all day most of the time and sees what happens. In 2008 they had one tent, a little notification and donation box. Now they have more tents, more pumpkins, and they sell hay and corn stalks. The amount of pumpkins that they bring in from Litchfield are ungodly. This is a residential area. Until you live in that house, they can't know what goes on.

-Mr. Scott Brown, 21 Wills Drive. As far as things changing, he doesn't see a lot of changes. There are pumpkins on the pallets. He feels things are the same, a canopy, bucket and suggested donations. He hasn't noticed any increase in animals.

-Mr. Tom Mikalajunas, 19 Wills Drive. Everything looks the same since 2008. No traffic issues.

-Mrs. Maureen Benzo, 24 Wills Drive. She loves her neighbors and has lived there for over 50 years. Everyone here is looking at the house from the front. She suggested they come into her yard and see what she sees. She is concerned that this operation has grown and she has seen the change. There are numerous tents, etc. and all sorts of pumpkins. Furthermore, there is debris thrown in the back of her property and she doesn't appreciate it. She isn't here to make enemies but maybe they should see whether or not this has changed since 2008.

Mr. Benzo said people are saying no growth, where is their documentation. Can they provide this since 2008?

-Mrs. Casale, 22 Wills Drive. When they first started, she asked about compost. This is the first time they heard about it. It was on her property and she thought she had permission to do so. No one has complained or talked to her. Since Mr. Booth's notice, they haven't put anything more there. Mrs. Casale thought she had Mrs. Benzo's permission to put compost there.

Board Member Murad stated that everyone had valid comments but some of them don't pertain to what we decide tonight. Pallets and canopies/tents – she doesn't know if there are any violations. She understands Mrs. Benzo's concern about the debris.

Mrs. Benzo stated she never gave permission to the Casale's to allow debris into compost.

Mrs. Casale said they used to mow Mrs. Benzo's lawn and rake her leaves, and that no one ever lived in the trailer. They have a flood light that is on until 9 PM. At no times did the signs ever say anything but suggested donations.

Mr. Rocco Benzo was asked why all of a sudden did this come up. Mr. Benzo said it is a zoning issue. Also, this was suppose to be a learning experience for their children – the children are grown now. There has been a marked increase in their operation and it belongs in a commercial area – this is nothing personal.

There being no further business, the Public Hearing ended at approximately 8:00 P.M.

Board Member Tesak referred to other areas of the Town where he feels there are issues, which he brings to the Codes Department to address. There has been produce brought in since 2008 and have this produce increased in volume and variety, and donations gone from perhaps \$50 to \$250 to organizations. Has it changed from 2008 to 2017? He wants to know what brought this up and Ms. Fukes told him. Has it become a nuisance and hindrance?

Board Member Kiehm listened carefully. He sees two separate sets of opinions. Board Member Murad may not like what is being done but is it a violation? If it is a six week period this could be much worse. She doesn't feel there is any violation. She doesn't see the problem with rodents, etc.

Board Member Elias feels we should go back to what was started in 2008. Donations, whether or not they were collecting money for profit/suggested donations, the 10' x 10' tent to cover produce and one 8 ½" x 11" sign. Donation evidence was shown.

Board Member Stanislaus feels we need to look at what exactly was done in 2008. She thinks that is the only issue here. Codes Officer Booth had sent them a notice that it was suppose to be a learning experience for children, etc. He also went to the site and noticed four (4) tents, many 8" x 11" sheets of paper and the dumping of vegetation. Therefore, it seems that the initial purpose was that there was some kind of variation at the time it was given in 2008. Our interpretation is to be consistent with what they were authorized to do in 2008. If there are additional things going on and more than one tent, etc., she doesn't think it can be expanded, and now Christmas trees expanded also. This is a residential area. If it is not being done according to 2008, then it is a violation. She feels it can still be operated but that is all that can be done, i.e., the Interpretation of 2008.

Board Member Montrose feels what happened is a little bit more added here and there but no one said anything. Now they are talking about Christmas trees but looking for permission to do it. As far as he is concerned, we have to stick to what was interpreted in 2008.

Chairman Bogar feels we have to be guided with what Codes Officer Booth wrote to the Casale's on September 25, 2017. We have to go back to 2008, suggested donations, no change in signage, etc. He referred to Codes Officer Booth's letter of October 2, 2017 regarding Codes violations, Section 118 etc. He has to be guided by Mr. Booth's letter of October 2<sup>nd</sup> (which is a part of the file).

Board Member Tesak asked how do we get back to the 2008 – has it expired? What is their limitation? Do we go back to the 2008 Interpretation – it was stated yes. He said Christmas trees were not in the

original Interpretation of 2008 and he doesn't want to expand it. It came up tonight.

There is a difference of opinion of canopies vs. tents. Chairman Bogar will refer to Attorney Cully or Codes Officer Booth to allow them as to what they are doing. He is not recommending to expand on that approval given in 2008.

Attorney Cully stated the minutes say they can have one 10' x 10' tent – it is not called a canopy. It is basically the same whether it is a canopy or tent, but only one and one only. It is consistent with this display of pumpkins.

Board Member Murad commented on canopies whether the side or front of a yard but this isn't what we are talking about tonight.

Attorney Cully reiterated that Board Member Stanislaus couldn't have said it better when referring to the Interpretation of 2008 – including the one tent.

Motion was made by Board Member Byron Elias that the Interpretation determined in 2008 stand to allow one 10' x 10' tent to the side of the home to cover his produce, to have suggested donations only for this produce and vegetables, and no signage or advertising except for the 8" x 11" sheet of paper stating donations; seconded by Board Member Karen Stanislaus.

Discussion ensued regarding Codes Officer Booth's job to check a property if there is a concern. He must've seen some evidence to have it come back to this Board.

Attorney Cully said the business use of the property has expired as to what the Zoning Board allowed and that is what Codes Officer Booth said. In his letter, he talked about four (4) tents instead of one and more than one 8" x 11" sign. The Casale's wanted more signs for different pumpkins.

Any change from what was granted would require a Variance, i.e., Christmas trees, more signs, etc. and to be enforced by Codes Officer Booth.

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.

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Draft minutes of the September 18, 2017 Zoning Board of Appeals meeting were reviewed by the Board Members. Motion was made by Board Member Byron Elias to approve these minutes as written; seconded by Board Member Fred Kiehm. All in favor.

Town of New Hartford  
Zoning Board of Appeals Minutes  
October 16, 2017  
Page 12

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

Respectfully submitted,

Dolores Shaw  
Secretary/Zoning Board of Appeals

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