

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
NOVEMBER 20, 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 (6:10 PM); Byron Elias; Taras Tesak and Fred Kiehm. Also in attendance were Town Attorney Herbert Cully (6:20 PM); 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. He noted that one Board Member is on her way and it is up to the applicant whether to proceed.

The application of **Mr. Hal Hofheins/Callaway Architecture**. Mr. Hofheins represents **At Home to be located at 4645 Commercial Drive, New Hartford, New York (former K-Mart Plaza)**. The applicant is seeking a quantity Area Variance for one additional sign on the front elevation; a 128± square foot Area Variance on the amount of signage on one side of a building; and an overall square footage Area Variance (242±) for the total sign square footage. Tax Map #328.008-1-3; Zoning: C1 General Commercial. Mr. Hal Hofheins appeared before the Board.

Mr. Hofheins explained the concept of the At Home franchise. He presented a picture of how the building will look – At Home has a character logo they use for all their stores. There is also a tag line. The company needs this for identification. They are going into a space that has been neglected for some time. They are leasing the property. This is the only variance and it is on the Commercial Drive sign – the freestanding sign isn't affected at all. If something is to be done with the freestanding sign, it is up to the owners to do so – At Home leases the property. The sign is internally illuminated.

Mr. Hofheins explained that this is the only occupant coming in for the variance. Board Member Tesak asked if this could be done any other way – Mr. Hofheins said no – it is the same size and type throughout the country.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing ended at 6:15 P.M. Chairman Bogar stated that NYSDOT and Oneida County Planning had no recommendations or 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 John Montrose to approve this application as presented; 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 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. Chris Forbes for **Wendy's, 8505 Seneca Turnpike, New Hartford, New York**. The applicant is seeking a quantity Area Variance to place an additional sign on the front of the building. This area is zoned C1 General Commercial, which allows one sign, thus, the request for an Area Variance. Tax Map #328.012-1-66; Zoning: C1 General Commercial. Mr. Chris Forbes appeared before the Board.

Mr. Forbes said the sign will be on the front of the building. The other signs are all set. The sign size is 15' 7" long by 1' 2" high. This is something that all the Wendy's are using. It is their branding.

The Board Members said that the new building looks good. Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at 6:25 P.M. Chairman Bogar stated that NYSDOT and Oneida County Planning have no recommendations or 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 Fred Kiehm to approve this application as presented; seconded by Board Member Karen Stanislaus; 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.

The application of **Attorney Mark D. Levitt for Friend B. & Dorothy C. Tibbitts Trust, 8791 Tibbitts Road, New Hartford, New York**. The applicant is located in an Agricultural zone, which requires 200' of frontage. The applicant is seeking a 139'± Area Variance for frontage. They are providing 61'± of frontage in the event a Town road is ever needed. Tax Map #339.000-1-19; Total Lot Size: approximately 112 Acres; Zoning: Agricultural. Mark Levitt, Esq., appeared before the Board.

Attorney Levitt referred to a map of this property. The proposal is to divide the parcel so that the parcels owned by Ms. Freiermuth and one other are increased in size and the remaining 108 acres is sold to an adjacent neighbor. This would eliminate all existing frontage except 61' to the western side of the parcel. The back land has three exists to Tibbitts Road. By making lots larger, we are eliminating two exits. They have a contract for this land. He did not want to address the contract until we presented this proposal to the Zoning Board of Appeals and Planning Board. This neighbor has no interest in further subdividing the land at this time. If in the future someone wants to develop this land, he would like a 60' right of way to put in a road to meet Town specifications. If he wanted to buy this back land and meld it into his existing land, he wouldn't have to be before this Board because then it would be a minor subdivision. He stated that someday someone will come to have access to the back land. A variance would take care of a future issue and there can be a Town road. He said that either way they simply have the back land picking up into another tax parcel with an approved road in the future. It is better to have a plan – better to have a future road than leave it up in the air.

Board Member Elias stated that if someone came to buy it then the 60' would become a bigger deal. The person who owns the adjoining land would have enough land to meld into one.

Attorney Levitt referred to the map and identified parcels and how the land would be split to the family members. He stated that if this isn't granted, we can go to the Planning Board to put the existing tax parcel on the back land. We don't need a variance unless they approve the roadway. The buyer would like to have a separate tax map parcel now. If we do this tonight, fine. If we don't do it, it would have to go to the Planning Board – he feels it will happen sooner or later.

Board Member Tesak asked if there was another point of entry – yes but Attorney Levitt isn't at liberty to name the buyer. The person interested in the property thinks this is a better planning approach to do it now to let the Town know what is happening. The property is owned by the Trust but benefits all the family. There are three places to get to the back land. They are eliminate three and want to make it one. No more access to Parcels C & B. There is a farm road there now. The person buying it can get to it through his own property. If he doesn't buy it, it will still be part of the Trust. All access roads will be eliminated as it goes to the one.

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

-Mr. Michael Coupe, 8769 Tibbitts Road. He feels there is another way of accomplishing this. There has never been any access where the 61' is being asked to be granted and his residence from where the road would go would only be 12' from his property. Is there any stipulation regarding setbacks for a road. He said there is potential for four accessed as it exists and at least two of the other ones are much more acceptable and less disturbing than putting in that sole 61' road. He wanted to know if there is anything on the books as to how far an actual structure has to be from a road.

Codes Officer Booth stated in that zone he believes his lot now becomes a corner lot and it would be 30'. It is when a road is already there and the house put there after.

Mr. Coupe asked why aren't we considering the existing farmland including that in the sale to the prospective buyer. Attorney Levitt said family members want more property. Mr. Coupe asked Codes Officer Booth, to put a Town road does it have to be a 60' right of way – Mr. Booth said yes. Generally speaking it is down the center of the right of way but it can be designed differently. Paving is about 24'. Mr. Coupe said why can't it go where the existing dirt road is. Mr. Coupe stated he has been there for 40 years and he can't see moving the road to a smaller parcel.

Attorney Levitt stated the reason they didn't move it is the prospective buyer wasn't interested in it. The family members want to keep properties all together and they don't want to be separated by a road. The families have been there for over 100 years.

Board Member Elias stated that once you put in the driveway and make it a public road, it makes Mr. Coupe's house a corner lot.

Ms. Diane Freiermuth, 8787 Tibbitts Road. She referred to the 108 acres actually having a road abutting up to Pippinwood. Attorney Levitt didn't mention it as there is no current plan to do any development. There is frontage on Pippinhill.

Attorney Levitt still feels this is a good thing to do because there is another exit to this land.

Board Member Tesak asked, if we disturb the dirt road, we would have to divide the family. If we go to the corner lot that would create more traffic. Is there any other port of entry right now. Attorney Levitt doesn't know at this time. He stated Ms. Freiermuth doesn't have 200' of frontage.

There being no further input, the Public Hearing ended at 7:00 P.M. Chairman Bogar stated Oneida County Planning has no recommendations or comments.

Board Member Montrose asked if there is a certain reason why they want to come in this way – answer: the family doesn't want to separate themselves.

Board Member Murad feels the potential buyer is disturbing the neighborhood, which will be adversely affected. If there is another way to make an access road, there should be. Board Member Kiehm feels the neighbor will be inconvenienced and the family doesn't want a road between them for the same reason.

Board Member Elias feels the same as Board Member Murad, there are alternative ways to get in and out. Chairman Bogar feels the same, it is not land locked.

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; yes, 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: yes, difference of opinion;
- 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 Chairman Randy Bogar to deny this application as presented; 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 Taras Tesak – yes	Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes	

Motion to **deny** was carried by a vote of 7 - 0. Board Member Tesak stated that Attorney Levitt said this would happen one way or the other. Let the buyer look for another avenue where the port of entry is.

The application of **Mr. Michael Macrina, 1 Gerry Avenue, New Hartford, New York**. Mr. Macrina is seeking an 8'± Area Variance to place a 6' privacy fence eight feet in front of his home. Section 118-80D does not allow the placement of a fence forward of the principle structure, thus, the request for an Area Variance. Tax Map #329.010-2-21; Lot size: 181' x 80'; Zoning: Medium Density Residential. Mr. Macrina appeared before the Board.

Mr. Macrina stated the in ground pool was there when he purchased the property. There was no fence at the time – he planted cedars. He put a 4' fence on the inside of the cedars not thinking it would ever be a problem. The cedars eventually died off. Now the fence is there with a direct view from the neighbors. He would like to put in a 6' fence. It is still 2'-4' in from where the old cedars used to be.

Discussion ensued regarding the location of the pool. Mr. Macrina explained cedars take a while to grow then they need a lot of care. Mr. Macrina said he could put the 6' fence up with cedars in front. He wants the 6' fence for privacy and also for his neighbor who has to look into his yard.

Board Member Tesak asked how long he hasn't had a fence – about five years. However, he home will become more active with his son moving in and adult children. He feels the trees wouldn't be as nice as the fence. However, he isn't opposed to putting cedars in front of the 6' fence.

The Board Members stated that the pool is already there and basically at the house. How far will the fence be off the road? It was determined to be about 9' from the front property line.

Chairman Bogar asked if there was anyone present to address this application – no response. No calls or letters were received. The Public Hearing closed at 7:20 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; yes, 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; no, all in agreement;
- The requested variance is substantial – response: no, difference of opinion;
- 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, difference of opinion.

Motion was made by Board Member Byron Elias to grant the 6’ fence because of the pool, and to put a row of cedars to shade the fence every 6’; seconded by Board Member John Montrose; and that a Building Permit to be obtained within one year of approval date. Vote taken:

Chairman Randy Bogar - no	Board Member Fred Kiehm - no
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 **did not carry** by a vote of 4 – 3.

Draft minutes of the October 16, 2017 Zoning Board meeting were received by each Board Member. Motion to approve the minutes as written was made by Chairman Randy Bogar; seconded by Board Member Byron Elias. All in favor.

There being no further business, the meeting adjourned at 7:30 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals
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