

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
JANUARY 22, 2018**

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; Asst. Codes Officer Eric Barcomb; 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 also explained that several Board Members are on their way to the meeting. He referred to the number of votes that would be needed for approval on the applications. The Board paused for a short time and the meeting resumed at approximately 6:15 P.M.

Draft minutes of the December 18, 2017 Zoning Board of Appeals were received by each Board Member. Motion was made by Chairman Randy Bogar to approve these minutes as written; seconded by Board Member Fred Kiehm. All in favor.

The application of **Mr. Frank Curriere, Jr., 210 Higby Road, Utica, New York (Town of New Hartford)**. Mr. Currier's fence has been placed forward of the front most point of home and in the public right-of-way. Therefore, the applicant is seeking two front yard Area Variances of approximately 56'± and 40'±. Tax Map #329.020-7-72; Lot Size: 113' x 174' (corner lot); Zoning: Residential/Agricultural. Mr. Curriere appeared before the Board with his attorney, Patrick Quinn. (This application was adjourned from the December 18, 2017 Zoning Board of Appeals meeting to this evening).

Patrick Quinn, Esq. referred to Town Code 118-80 Frequently Asked Questions on what can be done without a Building Permit and about making ordinary repairs. He feels the work done at this address was a repair not an installation. He referred to the purchase of this property by his client in 2014 – the fence was there and had been there since approximately 1997 at the same location. In 2016 there was an accident when someone drove across his lawn and took down the fence on portions of Higby and Bradley Roads. Mr. Curriere hired Gateway Fence to repair it and he did not seek a permit as it was a repair. To his knowledge Oneida County DPW did not have any issues and he doesn't know why they do now. Attorney Quinn referred to 2' off the front property line and the section in the Code. This fence is well within 2' of the front property line. He doesn't believe this split rail fence could cause any issues with the Town or County. The fence is in the same footprint as years past.

Chairman Bogar asked how many section of the fence had been repaired – it was stated 8 or 9 sections.

Attorney Quinn wants this Board to consider this a repair and not a new installation. The only reason this came up was the third party causing the accident. If the Board feels it is a variance, he understands.

Board Member Tesak referred to Codes Officer Booth and what happened to billboards in the Town years ago. They were allowed to deteriorate than to seek a variance. Codes Officer Booth referred to non-conforming clause, billboards, damaged or destroyed. Board Member Tesak feels we should take this into consideration. He also asked if Mr. Curriere looked for an alternative way to be in compliance. Attorney Quinn stated they did not know they were not in compliance.

Chairman Bogar read the letter from Oneida County DPW with their comments (which is a part of the file). He also asked Codes Officer Booth about how far back would you have to move the fence – Codes Officer Booth said it cannot be moved in front of the house. He also stated that Attorney Quinn read an Ordinance that doesn't apply to this zone. Attorney Quinn said he is only going off the complaint issued to Mr. Curriere.

Board Member Montrose asked if the fence is on Oneida County property – answer: yes. He asked Town Attorney Cully if this Board would be liable if we give permission for this fence to remain – he said yes.

Board Member Kiehm normally would not have a problem with repair but it is in the County right-of-way. We should not be granting variances on property that belongs to the County. Attorney Quinn reiterated he feels this doesn't need a variance. This was a repair.

Attorney Quinn was asked how many posts were replaced – 8 or 9 sections were replaced. There are about 16 or 17 total sections.

Town Attorney Cully said there is no interpretation before us. Simple issue as to whether or not we grant the variance. We might deny a variance that he did not need a Building Permit, but the issue is in front of us – variance or no variance.

Board Member Murad needs to know because of the discussion whether a variance is actually needed or not. Board Member Elias does not have a problem with the fence but it is on property owned by the County. Board Member Murad agrees but she does not know if he can do a repair.

Chairman Bogar asked Codes Officer Booth where the property begins and the County right-of-way ends. The file has a survey. Attorney Quinn feels the County does not own the property. His client owns that property. The County has a right to take more of the property but his client gets taxed on that property. Town Attorney Cully said the survey shows the metes and bounds. The whole purpose of the right-of-way is in case the County needs to do something. That is why the Highway Law protects the integrity of the right-of-way. Board Member Elias referred to the right-of-way and Oneida County DPW.

Board Member Tesak asked Codes Officer Booth to read from the Building Permit application why he turned this application down – Mr. Booth did so. Is it in the exact location since 1996 – yes.

Board Member Montrose asked what the purpose of the fence is as it is a split rail – it doesn't provide privacy. Attorney Quinn said it is a nice barrier to keep his kids in the yard, it is a busy road – there is practical benefit to it.

Board Member Murad asked Codes Officer Booth if he withdraw this right now and he did the repairs, would he still need a permit. Mr. Booth said it was the extent as a majority of the fence was replaced as noted by his assistant at the time. Attorney Quinn referred to the statute and about 50% replacement.

Chairman Bogar asked Highway Superintendent Rick Sherman if he had any comments. Mr. Sherman stated the right-of-way is there for a reason. If he has to put in a storm water ditch it gives him permission to do so and that is why the right-of-way is there. Board Member Murad asked, if this did not happen to his fence and you had to put in some type of drainage, what would happen? Mr. Sherman said everything would be at the owner's expense.

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

-Mr. Paul Miscione, 18 Juniper Lane. The gentleman took the time to fix his fence. It is on the County right-of-way but he does not know if it's the Town's decision. He referred to another area in the Town where there is a similar situation. He does not feel it is an obstruction. To make a decision for him to possibly spend money out of his pocket is not right. That is his opinion.

-Ms. Sarah Dudajek, 216 Higby Road called in on December 18, 2017 – she supports this fence.

There being no further input, the Public Hearing closed at 6:50 P.M. Oneida County Planning 239 was received with no comments; Oneida County 239K DPW had comments, which are a part of the file.

Attorney Cully referred to Section 118-111 non-conforming use of buildings and talks about lawful use of structure or building. This refers to 50% of the fair market value. This does not apply to single family dwellings.

Codes Officer Booth feels this needs to be re-addressed in our Code. This is deemed a replacement, however, Town Attorney Cully read once 50% is down, you lose your grandfather clause. The first part refers to structure but the second part is building.

Discussion ensued regarding repair or replacement. If there is a problem, it would be at the owner's expense and responsibility to remove or replace the fence.

Town Attorney Cully suggested taking a vote on the variance application and give Codes Officer Booth some guidance. Board Member Tesak asked if this fence impairs any vision – answer is no.

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: 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 grant the variance as presented; however, the Board determined this is a repair not a replacement; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member John Montrose - no	Board Member Byron Elias – no
Board Member Taras Tesak – yes	Board Member Karen Stanislaus – no
Board Member Lenora Murad - yes	

Motion was passed by a vote of 4 – 3. **NOTE; THE BASIS OF THE BOARD’S RATIONAL IS IT IS A REPAIR NOT A REPLACEMENT AND THIS IS FINALIZED AS FAR AS THE CODES DEPARTMENT IS CONCERNED.**

The application of **Mr. Zachary Burke, 22 Mayberry Place, New Hartford, New York**. Mr. Burke is located in a Medium Density Residential zone, which prohibits the installation of a fence in a front yard. The applicant is seeking a 25'± front yard Area Variance to place the fence in the front yard. Tax Map #329.013-1-74; Lot Size: 70' x 175'; Zoning: Medium Density Residential. Mr. & Mrs. Burke appeared before the Board.

Mr. Burke presented a sketch of what their property looked like before and after they took the existing bushes down and replaced them with a 6' fence. The fence is in the same exact location of the old fence except for the front where the trees were. There was a fence behind the trees that extended out then stopped. When they put up the new fence, they closed it off. He had a permit to do this but they went outside where they were suppose to go.

Mrs. Burke felt if their house was faced another way it would not be an issue. They were asked, when you originally applied for the permit, why didn't you do it the way it was supposed to be done? They thought they would be able to apply for a variance afterward and they were told such. Someone told them it was better to put it up then ask for a variance. They are on a dead end street and feel this looks better.

Codes Officer Booth stated that this particular fence is on their own property; he never received a complaint on this, and it has been there for months.

Board Member Montrose asked, is the address of the house still the front and the road side – answer: yes.

Board Member Tesak asked why they built it this way and not in compliance? This is why we have laws and the Zoning Board of Appeals. Mrs. Burke said she did not think it was a big deal to get a variance – they never owned a house or property before.

Chairman Bogar feels the fence really sticks out, especially being 6' tall.

Board Member Montrose said the neighbors do not seem to be concerned.

Board Member Stanislaus felt they were granted a permit to do something but they changed it. She does not feel you can apply for a variance afterwards. Mrs. Burke said this is how it was explained to them – to seek a variance after the fact.

Board Member Elias explained the law to the Burke's.

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

-Mr. Mark Powroznik, 24 Mayberry Place. He does not have a problem with the fence. They maintain their property. The section by the road where the trees once were has better visibility backing out now.

-Mr. Doug Berry, 20 Mayberry Place. He has no opposition.

There being no further input, the Public Hearing closed at 7:15 P.M. Oneida County Planning 239 and NYSDOT were received with no comments from each.

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: difference of opinion;
- The requested variance is substantial – response: yes, the whole side of fence, 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: yes, all in agreement.

Motion was made by Board Member Byron Elias to deny this application as presented; seconded by Board Member Karen Stanislaus as it did not meet the criteria. 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 – nay	Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes	

Motion to **DENY** was carried by a vote of 6 – 1.

Board Member Tesak wanted it noted that sometimes ignorance isn't an excuse of the law, but it does happen. He referred to some applications that were addressed in the past. He feels that sometimes we need to consider what the applicant was thinking and the cost of restructuring compared to what the law is.

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

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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