

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
APRIL 16, 2018**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Lenora Murad, Karen Stanislaus; Byron Elias; Taras Tesak and Fred Kiehm. Board Member absent: John Montrose. 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. He also stated that one Board Member is absent tonight and if the applicants wanted to postpone to another meeting, they may do so.

Draft minutes of the January 22, 2018 Zoning Board of Appeals were received by each Board Member. Motion was made by Board Member Byron Elias to approve these minutes as written; seconded by Board Member Karen Stanislaus. All in favor.

Mr. Joseph Parisi project, 4752 & 4754 Commercial Drive, New Hartford, New York. Request to remove the variances previously secured at the Zoning Board of Appeals meeting of August 21, 2017. Tax Map #317.017-4-21.3 and 317.013-3-18.1; Zoning: C1 General Commercial.

Town Attorney Cully referred to a request from John A. Mancuso, Esq., (representing respondents Holland Trotta, Inc. and Raymond F. Trotta), wherein the adjacent property owner brought an action in challenging the variances granted. Subsequently, the applicant revised the plan reducing the size and no longer needs the variances. They have requested a resolution to withdraw the variances granted.

Motion was made by Board Member Fred Kiehm to remove the variances granted to Mr. Joseph Parisi's project, 4752 & 4754 Commercial Drive, New Hartford, New York effective immediately as they are no longer needed; seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar – yes	Board Member Fred Kiehm – yes
Board Member Lenora Murad – yes	Board Member Byron Elias – yes
Board Member Karen Stanislaus – yes	Board Member Taras Tesak – yes

Motion **granted** by a vote of 6 – 0.

The application of **Mr. Trevor Kalwara, 79 Merritt Place, New Hartford, New York.** The applicant is seeking a 5' 6" ± front yard setback Area Variance to erect a fence 5' 6" ± forward of his house on the Hilltop Terrace front yard. This area is Zoned Medium Density Residential which does not allow a residential fence to be positioned forward of the front most property of the residential building. The applicant is located on a corner lot (Merritt Place & Hilltop Terrace). Tax Map #328.016-4-40; Lot Size: 57' x 110'; Zoning: Medium Density Residential. Mr. Kalwara appeared before the Board.

Mr. Kalwara referred to the fence being on the Town right-of-way. He is applying now for a variance to move the fence onto his property – it is in the front most part of his yard.

Chairman Bogar asked if it is going to comply with the Code – Mr. Kalwara said no. Discussion then ensued regarding the location of the fence – it will be all on his property but still a 6' fence in the front yard. The 6' fence is there as he was repairing what was existing. The fence had been there for at least twenty years. He is trying to comply with Code.

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

Mr. Justin Latus, 85 Merritt Place. He is in support of this application.

There being no further input, the Public Hearing closed at 6:10 P.M. Discussion ensued regarding previous responses by neighbors in favor, and the fence was originally there.

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: 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 Byron Elias to approve this application as presented; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - no
Board Member Byron Elias – yes
Board Member Karen Stanislaus – no

Board Member Fred Kiehm - no
Board Member Taras Tesak – no
Board Member Lenora Murad - yes

Motion was **denied** by a vote of 4 – 2.

Mr. Kalwara stated he may come back with a different application. Board Member Tesak asked Town Attorney Cully if we could waive the fee for Mr. Kalwara to come back. Attorney Cully said if we denied it without prejudice.

The application of **Mr. John Lupino, 4340 State Route 12, New Hartford, New York**. Mr. Lupino is seeking a 21'± front yard Area Variance to place a shed in the front yard. Accessory structures are not permitted in a front yard located in a Low Density Residential zone. Tax Map #329.017-1-1; Total Lot Size: 3.2 Acres; Zoning: Low Density Residential. Mr. Lupino appeared before the Board.

Mr. Lupino explained how he purchased this property and the amount of money he has spent building his house. He needs this shed for his equipment and can't get to it by any other means other than where it is placed, and he doesn't have the capacity to move it. He went to the Town website before he purchased the shed but didn't see any information for sheds/permits. He has three acres with no adjoining neighbors and he feels the shed isn't any threat to anyone's property. It is 150' from the front property line and another 50' to the road. There are thirteen trees between the shed and the road and he will be planting more.

Chairman Bogar asked why he didn't call the Codes Office for information. Mr. Lupino said he didn't think there was an Ordinance against it.

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

-Mr. Louis Skhane, Laurelwood Drive. He doesn't have a problem with this request.

There being no further comments, the Public Hearing closed at 6:30 P.M. County 239 Planning and NYSDOT was received with no comments.

Discussion ensued regarding the location of the shed and that it visually doesn't affect any properties. Board Member Elias referred to maintenance of the trees. The Public Hearing opened again at 6:35 P.M. Mr. Lupino said he will be planting four more cedars and he will maintain all trees. Public Hearing closed again at 6:37 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, 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: 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: yes, all in agreement.

Motion was made by Board Member Fred Kiehm to grant the variance as presented and that a Building Permit be obtained from the Codes Department; seconded by Board Member Taras Tesak. Vote taken:

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

Motion was **approved** by a vote of 4 – 2.

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The application of **Mr. Omar Massoud for vacant property located on Mohawk Street, Town of New Hartford**. This property is located in a Residential/Agricultural zone, which requires 150 feet of frontage. Mr. Massoud is seeking a 110'± frontage Area Variance to create a 6± acre lot. Tax Map #350.000-2-61.3; Total Lot Size: approximately 31 Acres; Zoning: Residential/Agricultural. Mr. Omar Massoud appeared before the Board with his son.

Mr. Massoud explained that he has a buyer interested in some property and he needs 150' of frontage but he doesn't want to buy a lot of property, just enough frontage for a driveway to get to the property. He is looking to add a 40' driveway. He can have access to Mohawk Street but can't from Sessions Road.

-Ms. Edith Bueno looked at the map as she owns the property next to this.

Town Attorney Cully explained that if a variance is granted, they are agreeing that this lot can never be built on as a residence. Mr. Massoud said the buyer wants to build a house there.

Reference was made to the letter submitted by Oneida County DPW and their comments (which has been made a part of the file).

It was explained to Mr. Massoud that he is trying to make a substandard lot. Board Member Elias explained to Mr. Massoud what the problems would be with this variance request. It was asked of Town Attorney Cully if Mr. Massoud could withdraw his application – yes. Discussion continued regarding the process for development of this land and what options Mr. Massoud has for this property.

Mr. Massoud said he would withdraw his application.

Motion was made by Board Member Taras Tesak stating that Mr. Massoud has a misunderstanding of this process and may come back to this Board, without prejudice, once he has an understanding of the County DPW's letter; seconded by Board Member Lenora Murad. All in favor.

There being no further business, the meeting adjourned at approximately 7:05 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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