

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
DECEMBER 17, 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; Code Officer Joseph Booth; 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. Brenda Donovan Jackson for 3481 Oneida Street, Chadwicks, New York 13319**. Ms. Jackson has installed a fence 47'± forward of her home and 2'-3'± in the Town right-of-way. The applicant is seeking a 47'± front yard Area Variance as the property is zoned Medium Density Residential and fences are not permitted to be placed in a front yard. Tax Map #349.016-1-64; Lot Size: 54' x 167'; Zoning: Medium Density Residential. Mr. & Mrs. Jackson appeared before the Board.

Mr. Jackson explained he owns this home and rents it out. A tree had fallen and destroyed their existing fence. They replaced it with this new one. They weren't aware of any permits needed. Their renter has children and asked if the fence could be extended towards the front. Their neighbors have an existing chain link fence so they extended their fence for privacy and safety of the children. They weren't aware that they were in the right-of-way. Mr. Jackson presented pictures of what was there at one time for a fence and other fences in the area that look like they're in the right-of-way and that also extend out to the front.

A lengthy discussion ensued regarding fences in the surrounding area and why their fence is erected the way it is. Also, it was noted that the good side of the fence does not face the neighbor. Also noted is that they got a survey but after the fence was up. This fence is on her property, but in the Town right-of-way also. It was stated that 47'± would have to come down to meet the Code requirements.

Board Member Tesak asked what the purpose was to put this fence up – Mr. Jackson said it looked nice and their renter asked them to go forward more and they just followed it out by the existing chain link fence that is the neighbor's.

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

-Mr. William Kress and Ms. Debra Smith, 3485 Oneida Street. They live adjacent and behind their neighbor. They submitted a letter of support.

-Mr. Kelly, address not given. With this fence, they can't see the cars coming down the road. It is difficult to back out of the driveway. People should be able to look out and see the road – they can't. It is his opinion that there are no other fences like this in that area.

Discussion ensued regarding the good side not facing the neighbor but that is not on the application to be addressed at this time.

There being no further discussion, the Public Hearing ended at approximately 6:25 P.M.

Board Member Tesak referred to the tenant – what happens if she leaves. Consensus is that it doesn't matter. The fence is on Town property and visibility is limited. If we approve it and there is an accident, are we held responsible.

Chairman Bogar referred to the pictures presented and most of the fences shown are split rails and not solid. The Public Hearing opened again at approximately 6:30 P.M.

Mr. Donovan explained how it would be costly to take down a part of the fence. He referred to the others in the area who have fences – does he have to file a complaint on those? He doesn't think it is fair.

The Public Hearing ended again at 6:35 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; 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, all in agreement – physical and environmental;
- 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.

It is the Board's feeling that the fence is too far out and too big. Discussion ensued as to how this application was brought before this Board. Code Officer Booth said he couldn't issue a permit as this is illegal so it went for a variance.

Motion was made by Board Member John Montrose to deny this application as presented; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes
Board Member Byron Montrose - yes
Board Member Karen Stanislaus – yes
Board Member Byron Elias - yes

Board Member Fred Kiehm - yes
Board Member Taras Tesak – yes
Board Member Lenora Murad - yes

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

The applicant wanted to know how he could proceed without taking a portion of the fence down and wanted options. He was explained our role as the Zoning Board, but if he didn't like our decision, he could take out an Article 78 against this Board. Alternatively, he could change his application and to speak with the Code Officer.

The application of **Mr. Andy Lopez-Williams at 8387 Seneca Turnpike, New Hartford, New York 13413. (PAR Technology property)**. The applicant is proposing to install a freestanding sign on property he does not own nor where his business located. He is seeking a Use Variance to place a business sign off site, which is prohibited by Section 118-84H2A and Section 118-84E6. Tax Map #328.000-3-10.2; Zoning: C1 General Commercial. Mr. Andy Lopez-Williams appeared before the Board.

Mr. Lopez-Williams explained what has transpired between him and PAR. He bought the former Paragon gym. When he tried to get the lines right, they had to rezone. There were some utilities to be changed and lines moved. He bought the property and building. The old Paragon had a sign up but lines had shifted (the property was subdivided). Code Officer Booth explained that the former gym was part of PAR's large parcel. In order to sell it, they had to carve the property out – they adjusted the line to meet all the setbacks and accommodate his building they allowed him use of the driveway and easement and possibly some parking easements exist. The line was configured to accommodate the lot size and frontage to accommodate the sale of the property as an entity of its own.

Mr. Lopez-Williams said where the sign can be placed is in no relation to the entrance. It is a safety hazard. He found out he needed a variance. Discussion ensued regarding placement of the sign and how it affects his business. He feels people will miss the driveway into his business if the sign isn't placed in the right area. It could become a big liability problem, i.e., accidents.

It was brought to the attention of the Board Members that Mr. Lopez-Williams has a signed signage license agreement with PAR. Town Attorney Cully reviewed this.

Board Member Elias feels the applicant has an equitable interest and doesn't feel this requires a Use Variance. Discussion ensued regarding this issue. Code Officer Booth stated he is in violation of two sections of the Code and that is why he is here this evening. It is still advertising a business that is not on his property.

Town Attorney Cully stated this is an unusual lot. However, he has an agreement with PAR.

Mr. Lopez-Williams said he has been waiting to put a sign up and needs this to make his business successful. He went about this as honestly as he could. The sign will not be lit and it won't impair any visibility.

It was mentioned tabling this application or withdrawing until a suitable solution could be found. It was explained to Mr. Lopez-Williams how a Use Variance is determined and how this Board has to address it. This state law is very specific. Code Officer Booth stated perhaps this can be re-subdivided again and the land extend his frontage more towards the driveway.

At this time, Mr. Lopez-Williams withdrew his application.

The Board Members discussed the possibility of addressing this as an Interpretation, especially with the Signage License Agreement presented.

Town Attorney Cully stated that the applicant is now seeking an Interpretation as to whether the license agreement between PAR Technology and 57 West Properties, LLC (Andy Lopez-Williams) dated October 25, 2018 gives 57 West Properties, LLC (Andy Lopez-Williams) which owns and operates a business on an adjacent parcel to the rear of the proposed sign location, creates a sufficient interest in the proposed location to satisfy New Hartford Town Code 118-84.

Motion to interpret that the license agreement creates a sufficient interest when the applicant operates a business on an adjacent parcel and the sign location will not impede traffic flow in the area was made by Board Member Taras Tesak; seconded by Board Member John Montrose. Vote taken:

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

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

Minutes of the November 19, 2018 Zoning Board of Appeals meeting were approved by motion of Board Member Byron Elias; seconded by Board Member Fred Kiehm. All in favor.

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

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

dbS