

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD MUNICIPAL BUILDING
SEPTEMBER 21, 2020**

The Regular Meeting was called to order at approximately 6:00 P.M. by Chairman Randy Bogar. Board Members present were John Montrose, Lenora Murad, Byron Elias, Karen Stanislaus, and Fred Kiehm. Board Member absent: Michele Mandia. Also in attendance were Anthony Trevisani, Deputy Town Supervisor, Councilmen David Reynolds and Richard Lenart; Town Attorney Herbert Cully; 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 explained that one Board Member is absent and it is up to the applicant whether to proceed.

The application of **Ms. Joanne Donaruma Wade, 69 Ironwood Road, New Hartford, New York.** The applicant is proposing a 220± square foot addition to the left side of her home. Zoning in this area is Low Density Residential, which requires a 15' side yard setback. The proposed addition will extend into the side yard setback by 7'±. Therefore, the applicant is seeking a 7'± left side yard setback Area Variance. Mr. & Mrs. Wade appeared before the Board with their representative, Mr. Andrew Alesia, AIA of Alesia & Crewell Architects.

Due to the State mandated restrictions, all attendees will be required to wear face masks continuously covering nose and mouth, and six (6) foot "social distancing" will be observed. Applicants and attendees must strictly adhere to the above and to the stated hearing time. The Town of New Hartford further reserves the right to limit the number of participants in each hearing.

Town Attorney Cully addressed the Board and explained that since the application was submitted, Mr. Alesia provided a plot plan. It shows that the requested variance is substantially less, only 3' at the most. There is a letter of support from Mr. & Mrs. LaPorte who live at 67 Ironwood Road and who are the most affected – they support the variance.

Mr. Alesia stated the addition will match the existing home, same exterior, same colors. The reason they need this is to expand the master bedroom on the first floor. Mrs. Wade said her husband isn't able to climb the stairs and this would accommodate his needs.

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

Mr. LaPorte, 67 Ironwood Road. He stated he supports this application and this does not have any impact on him.

There being no further input, the Public Hearing closed at approximately 6:10 P.M. Oneida County Planning and Oneida County DPW were received with no adverse 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 requested/submitted as the applicant has shown a need for the variance; seconded by Board Member Lenora Murad; and a Building Permit be obtained within one year of approval date. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose – yes
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm - yes
Board Member Byron Elias – yes
Board Member Lenora Murad - yes

Motion was **approved** by a vote of 6 – 0.

The application of **Mr. William Brian Mathias, 2 Medford Place, New Hartford, New York**. Mr. Mathias is requesting to expand his existing garage, 8'± into the side yard and 6'± to the back yard. A section of the existing structure is .5'± off the rear property line. Zoning in this area is Medium Density Residential, which requires the rear yard setback to be 30'. Therefore, the applicant is seeking a 29.5'± rear yard setback Area Variance. Mr. Mathias and his representative appeared before the Board.

Due to the State mandated restrictions, all attendees will be required to wear face masks continuously covering nose and mouth, and six (6) foot “social distancing” will be observed. Applicants and attendees must strictly adhere to the above and to the stated hearing time. The Town of New Hartford further reserves the right to limit the number of participants in each hearing.

A packet was distributed to each Board Member outlining the proposal for the expansion. Mr. Mathias has been confined to a wheelchair. There is quite a slope on this property. Mr. Mathias wants to be able to drive into his garage and get out easily to the house, especially in the winter time with ice, etc. This wouldn't be any closer to Merritt Place than some of the houses there already.

At this time, Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing ended at approximately 6:20 P.M. Oneida County Planning and NYSDOT were received with no adverse 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 requested/submitted; seconded by Board Member Karen Stanislaus; and a Building Permit be obtained within one year of approval date. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose – yes
Board Member Karen Stanislaus – yes

Board Member Fred Kiehm - yes
Board Member Byron Elias - yes
Board Member Lenora Murad - yes

Motion was **approved** by a vote of 6 – 0.

-The application of **Poly Enterprises LLC for Ms. Erica Himchak, 302 Heron Court, New Hartford, New York**. The proposal is for a 6' tall picket style fence 18'± off of the side property line parallel to Mohawk Street. This is a corner lot and the proposed fence will extend into the front yard setback. This will require the applicant to seek an Area Variance into the front yard of 18'± off the property line. Tax Map #340.000-4-12.8; Lot Size: approximately 1.54 Acres; Zoning: Low Density Residential. Mr. Dwayne Clement of Poly Enterprises appeared before the Board with Ms. Himchak.

Due to the State mandated restrictions, all attendees will be required to wear face masks continuously covering nose and mouth, and six (6) foot “social distancing” will be observed. Applicants and attendees must strictly adhere to the above and to the stated hearing time. The Town of New Hartford further reserves the right to limit the number of participants in each hearing.

Mr. Clement explained the layout of the proposed fence, which is black aluminum. This fence will provide safety for her children and give them a bigger area to play as they have to work with the layout of their lot. Mohawk Street is a busy street. They will be taking down some trees that are deteriorating and which have bugs and ticks, but will plant thinner new ones in their place. The fence is aesthetically pleasing and the plantings will be the same. The proposed trees will be behind the fence.

Chairman Bogar asked about whether the Homeowners Association was aware of this. Mr. Clement presented a letter from them stating they approved this, which has been made a part of the file.

Ms. Himchak addressed the Board stating that this is the best concept for their needs and she further addressed the layout of her lot. She is concerned with the safety of her children and they are trying to work with this lot the best way they can. Everything planned is aesthetically pleasing to her neighborhood. She went into detail about the kind of trees that will be replaced and some type of plantings in the future.

Board Member Elias asked about placing plantings in the front of the fence and Board Member Murad asked for an idea about the trees inside rather than outside the fence. Ms. Himchak reiterated that they will have beautiful plantings and trees but questioned the plantings on the outside of the fence. However, if this would be part of the approval, she would do so. Board Member Elias explained why he is asking for plantings now rather than later – it would break up the long fence and be more appealing.

Chairman Bogar asked the other Board Members if they had a comment. Board Member Montrose stated if the HOA isn't concerned, he is fine with it. He feels the fence is aesthetically pleasing.

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

Mr. Robert Himmelman, 1909 Tilden Avenue. He didn't see a problem with this request.

Mr. Peter Himmelman, 1909 Tilden Avenue. He frequents this area. He feels this limits the view in this area and the fence would be detrimental.

There being no further input, the Public Hearing ended at approximately 6:47 P.M. OC Planning and Oneida County DPW comments were received with no comments.

Discussion continued regarding plantings, aesthetics and placement of the fence. Some Board Members didn't think outside plantings are necessary. The Public Hearing opened again at approximately 6:52 P.M. Board Member Elias asked how many feet of fence is on Mohawk Street – about 138 feet. Board Member Murad asked if there was some other way to do this without seeking a variance. Mr. Clement explained why it could not. The reopening of the Public Hearing ended at approximately 6:55 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; difference of opinion;
- 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: possibly, all in agreement.

Motion was made by Board Member Fred Kiehm to grant approval of the fence for this application as requested/submitted; seconded by Board Member John Montrose; and a Building Permit be obtained within one year of approval date. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose – yes
Board Member Byron Elias – no

Board Member Fred Kiehm - yes
Board Member Lenora Murad - yes
Board Member Karen Stanislaus – yes

Motion was **approved** by a vote of 5 – 1.

An Interpretation for **Mr. Nhan Ngo, 1918 Tilden Avenue, New Hartford, New York**. Mr. Ngo is requesting the Zoning Board of Appeals to interpret whether chickens are not to be recognized as customary household pets by the Town Codes. Mr. Ngo has chicken(s) as pet(s) at his residence, which is zoned Low Density Residential. Zoning allows for chickens in an Agricultural or Residential/Agricultural zone with three acres only. Attorney Mark Wolber and Mr. Ngo appeared before the Board.

Due to the State mandated restrictions, all attendees will be required to wear face masks continuously covering nose and mouth, and six (6) foot “social distancing” will be observed. Applicants and attendees must strictly adhere to the above and to the stated hearing time. The Town of New Hartford further reserves the right to limit the number of participants in each hearing.

Attorney Cully referred to the packets presented to the Board Members. There is a letter dated July 27, 2020 from Codes Officer Lary Gell to the property owner indicating he received several complaints with regard questioning chickens on this property. Since the property is located in a Low Density Residential zone, it does not allow for chickens. He cites the specific section. After that letter was sent, the applicant made an application – the short form EAF indicates use requested as a Use Variance not an interpretation. The application states the chickens are for his children’s pets. This is not for farming and not for a farm, and not for profit. The applicant is asking for an Interpretation of the Code and this property is in a Low Density Residential district. This lot does not allow for it. Chickens are not recognized as a household pet. He also referred to the animal husbandry section of the Code. He wanted to point out that they are asking for an Interpretation. In connection, a letter was received from the neighbor who lives across the property and he doesn’t have a problem with this request.

Attorney Wolber gave a history of where his client came from, Viet Nam, and that chickens were pets there. He has a fence with a coop. He had letters from people who have no problem with this. The chickens are quiet – there is no rooster. The manure is used for fertilizer. Attorney Wolber felt that if this Board interprets this to include chickens, it would be for the whole town. He referred to the number of acres this client owns. He feels this should be a Use Variance application and at that time he will produce letters from the neighbors. Mr. Ngo asked about adding more land onto his property or to change the zoning. Attorney Wolber is asking for an adjournment for him to file for a Use Variance. Town Attorney Cully noted it is up to this Board to grant the adjournment.

Discussion ensued whether to allow the people here this evening for this application to address the Board.

-Mr. Robert Himmelman, 1909 Tilden Avenue. He is concerned about having the chickens. The smell, etc. is bothersome. There are all kinds of concerns. The chicken coop is big and could house a lot of chickens – who will monitor this. Who limits the number of chickens and who cleans up the mess?

-Mr. Joseph Salerno, Tilden Avenue. He is totally against this, you start with chickens then pigs or goats or sheep. This area is not zoned for this type of use – it is strictly residential. He spoke to a lot of people who do not want to change the zoning. Mr. Ngo is a nice man but perhaps he should get a farm.

-Mr. Rich DePhillips, Tilden Avenue. He has no problem with this as long as there are no roosters.

-Mr. Peter Himmelman, 1909 Tilden Avenue. He feels it is nice to have your cultural things but this sets a precedent. He feels it shifts the area. How would this be enforced. Things like this get out of control – you need to follow the existing zoning.

At this time, motion was made by Board Member Byron Elias to adjourn this and for the applicant to amend his application without prejudice and additional charge; seconded by Chairman Randy Bogar.
Vote taken:

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

Motion approved to amend the application by a vote of 6 – 0.

Attorney Wolber will be in touch with the Zoning Board secretary.

Motion to approved the draft minutes of the August 17, 2020 Zoning Board meeting was made by 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

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