

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
BUTLER MEMORIAL HALL
JUNE 18, 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; John Montrose; and Fred Kiehm. Board Member absent: Taras Tesak. Also in attendance were Town Attorney Herbert Cully; Asst. Codes Officer Eric Barcomb; 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. The applicants need four votes out of six for approval.

Draft minutes of the May 21, 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 Chairman Randy Bogar. All in favor.

The application of **Mr. Robert Volz, 3 Oakdale Avenue N., New Hartford, New York**. The applicant is seeking a 4'± right side yard Area Variance for the construction of a covered patio. He lives in a Medium Density Residential zone, which requires a 10' side yard setback, thus, necessitating the Area Variance request. Tax Map #328.012-1-7; Lot Size: 70' x 120'; Zoning: Medium Density Residential. Mr. Volz appeared before the Board.

Mr. Volz presented a letter from Peter & Nicole Hayes, 1 Oakdale Avenue N. who support this application. He spoke to the other neighbors who support this also. He has a patio and he just wants to cover it. The issue is the existing garage – it is grandfathered in but it comes too close to the property line. The roof will not exceed what is already existing. He will maintain the same roofline. He provided stamped drawings. He will maintain the same style as the converted garage. The pad has been there for at least 17 years.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at approximately 6:10 P.M. Oneida County Planning 239 and NYSDOT comments were received with no recommendation. Board members had no further questions.

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; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member John Montrose - yes
Board Member Lenora Murad - yes

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

The application of **Mr. Lawrence Schulman, 5 South Hills Drive, New Hartford, New York**. The applicant's property is located in a Low Density Residential zone, which prohibits fences in a front yard. This property is located on a corner lot, which has two front yards. The applicant is seeking an 84'± Area Variance to erect a fence on the Tilden Avenue side of the property and a 39'± Area Variance to erect a fence on the South Hills Drive side of the property. Tax Map #340.008-2-42; Lot Size: 1.08 Acres; Zoning: Low Density Residential. Mr. & Mrs. Schulman appeared before the Board.

Mr. Schulman explained he has a baby and dog – he would like privacy and also needs it for safety. He spoke to his neighbors and they don't have any issues. The 5' chain link fence is set back 8' from the property line – all on his property. He knows he has to maintain the property as there is a small area to mow.

Chairman Bogar asked if he could live with anything less than this request. Mr. Schulman then stated the variance won't be needed for the South Hills side as he and his wife discussed changing it. He submitted a revised map.

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

-Gus DeTraglia, Jr., 10 South Hills Drive. He is against this variance request: doesn't meet criteria, undesirable change, no other type fences of this type in the neighborhood, litter in the area and this fence will catch additional litter, intersection is four-way stop with heavy traffic-difficult to see, Police monitor this area for speeders, etc., visibility issues, alternative method for the dog, self-created hardship, feels Codes need to be followed and are there for a reason. He questioned the pine tree on the corner.

Mrs. Schulman is concerned about her son's safety. She doesn't think the fence will impede the view.

-Michele DeTraglia, 29 South Hills Drive. If the fence is approved, is it far enough from the drainage area. She is concerned as there is an easement that might be affected. Response: The fence will be on his property only.

Town Attorney Cully said he doesn't know if the street line is the front property line. It is not stated on the survey. You can't build on a right-of-way.

Mr. Schulman reiterated that he is withdrawing his request for a variance on the South Hills Drive side.

There being no further input, the Public Hearing closed at approximately 6:30 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; Chairman Bogar yes; Karen Stanislaus yes; Byron Elias no; Lenora Murad no; Fred Kiehm no; John Montrose no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response; Chairman Bogar yes; Karen Stanislaus yes; Byron Elias no; Lenora Murad no; Fred Kiehm no; John Montrose no;
- The requested variance is substantial – response: Chairman Bogar yes; Karen Stanislaus yes; Byron Elias no; Lenora Murad no; Fred Kiehm no; John Montrose no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: Chairman Bogar no; Karen Stanislaus no; Byron Elias no; Lenora Murad no; Fred Kiehm no; John Montrose no;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: Chairman Bogar yes; Karen Stanislaus yes; Byron Elias yes; Lenora Murad yes; Fred Kiehm yes; John Montrose yes.

Motion was made by Board Member Byron Elias to **approve** this application with 8' off the property line, not from the road (and the change to remove the South Hills Drive variance request); and that a Building Permit be obtained within one year of approval date; seconded by Board Member John Montrose Vote taken:

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

Board Member Fred Kiehm - yes
Board Member John Montrose - yes
Board Member Lenora Murad - yes

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

The application of **Mr. Haris Sabanovic, 10 Wadsworth Road, New Hartford, New York**. The applicant's property is located in a Low Density Residential zone, which prohibits fences in a front yard. This property is located on a corner lot, which has two front yards. The applicant is seeking a 28'± Area Variance to erect a 6' fence on the Tilden Avenue side of the property. Tax Map #340.008-2-47; Lot size: 124' x 198'; Zoning: Low Density Residential. Mr. Sabanovic appeared before the Board.

Mr. Sabanovic displayed a picture of the fence, solid with open weave top. He is placing this from the bush towards the end of the house. He was asked why the 6' – he said this is what the contractor recommended, and it looks nice. He prefers to stay with the 6'. Why can't you put bushes where the

28'± is – He feels it is easier to take care of fence and less expensive. The fence will have a gate. He explained that the lot in the back is owned by him also.

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

-Ms. Stefanie Hahn, 12 Wadsworth Road. She asked for an explanation where the 28' comes in. She is concerned about visibility and traffic. It was explained to her how the fence would be set. If it is from the cedars towards the house, she doesn't think it would interfere with traffic.

Board Member Elias asked if he would consider pushing it back to the back of the house by the deck – Mr. Sabanovic said yes. Mr. Sabanovic said he has spent thousands of dollars trimming the trees.

-Gus DeTraglia, Jr. and Mrs. DeTraglia, 10 South Hills Drive. He has the same concerns as mentioned with the Schulman application. The cedars may be in the right-of-way and close to the road. The cedars are very mature but they do allow the headlights to trickle through at night. There aren't any fences like this in the neighborhood – there is a lot of foot and vehicular traffic. The Code is there for a reason unless there is no other alternative. He is also concerned about maintenance; also, Mr. Sabanovic just bought the house knowing what he has.

Board Member Murad asked if he would be willing to make the bottom part 4' with open at the top. Board Member Elias asked if he would consider pushing that fence that faces Wadsworth Road back at least to the back of the garage – Mr. Sabanovic said he would have to talk to his wife, but then decided to stay with what is proposed. By doing so, it helps with site distance and it would look more attractive.

Mr. DeTraglia feels moving the fence wouldn't make any difference – it is a solid fence and that is the bigger issue.

There being no further comments, the Public Hearing closed at approximately 7:00 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: Chairman Bogar yes; Karen Stanislaus no; Byron Elias yes; Lenora Murad yes; Fred Kiehm yes; John Montrose yes;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: Chairman Bogar yes; Karen Stanislaus yes; Byron Elias yes; Lenora Murad yes; Fred Kiehm yes; John Montrose yes;
- The requested variance is substantial – response: Chairman Bogar yes; Karen Stanislaus yes; Byron Elias no; Lenora Murad no; Fred Kiehm no; John Montrose yes;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: Chairman Bogar no; Karen Stanislaus no; Byron Elias no; Lenora Murad no; Fred Kiehm no; John Montrose no;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: Chairman Bogar yes; Karen Stanislaus yes; Byron Elias yes; Lenora Murad yes; Fred Kiehm yes; John Montrose yes.

Motion was made by Board Member John Montrose to **deny** this application as presented as it did not meet the criteria; seconded by Chairman Randy Bogar. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member John Montrose - yes
Board Member Lenora Murad - yes

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

Mr. Sabanovic asked if he could reapply if he changed the application – yes and another application fee.

The application of **Mr. Robert Van de Wal, 121 Harrogate Court, New Hartford, New York**. The applicant's property is located in a High Density Residential zone, which prohibits fences in a front yard. The applicant's property is located on a corner lot, which has two front yards. Mr. Van de Wal is seeking a 16' ± Area Variance to erect a 6' fence on the Harrogate Road side of the property. Tax Map #339.011-3-50; Lot Size: 77' x 151'; Zoning: High Density Residential. Mr. Van de Wal appeared before the Board.

Mr. Van de Wal explained that he is taking all the trees down, as they are an eyesore. He presented pictures of what the fence would look like – solid white 6' high. He feels the fence is attractive. He has a dog and he would like privacy – also, this is a high traffic area. His property goes beyond the trees about 6'. There is still an additional 25' from the fence to the road.

Board Member Murad asked if he could put the fence on the inside and leave the shrubs. He cannot as the trees are past trimming – vines have taken over. He would consider not having a solid fence.

Board Member Montrose tried to compare setbacks, i.e., with a garage in relation to setbacks for a fence. It was explained to him the difference.

Chairman Bogar asked if he could put in cedars instead – Mr. Van de Wal said it was too expensive and he doesn't like the look of cedars.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed at approximately 7:15 P.M. Oneida County Planning 239 has no recommendation.

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; Chairman Bogar yes; Board Member Stanislaus no; Board Member Elias yes; Board Member Murad no; Board Member Kiehm yes; Board Member Montrose yes;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response; Chairman Bogar yes; Board Member Stanislaus yes;

Board Member Elias yes; Board Member Murad yes; Board Member Kiehm yes; Board Member Montrose yes;

- The requested variance is substantial – response: ; Chairman Bogar yes; Board Member Stanislaus yes; Board Member Elias yes; Board Member Murad yes; Board Member Kiehm yes; Board Member Montrose yes;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: Chairman Bogar yes; Board Member Stanislaus no; Board Member Elias no; Board Member Murad no; Board Member Kiehm yes; Board Member Montrose yes;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: Chairman Bogar yes; Board Member Stanislaus yes; Board Member Elias yes; Board Member Murad yes; Board Member Kiehm yes; Board Member Montrose yes.

Motion was made by Chairman Bogar to **deny** the application as presented as it did not meet the criteria; seconded by Board Member Karen Stanislaus. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member John Montrose - yes
Board Member Lenora Murad - no

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

Mr. Van de Wal's father asked the Board what his son's recourse it. The property was neglected and he is trying to make it better. The Board suggested bushes or trees. They also advised him to call the Codes Department for any further options.

The application of **Mrs. Erin Matt, 114 Gilbert Road, New Hartford, New York**. Mrs. Matt would like to erect a fence in a front yard. She lives in a Low Density Residential zone, which prohibits fences in a front yard. The property is located on a corner lot, which has two front yards. The applicant is seeking a 36'± Area Variance to erect a fence on the Sanger Avenue side of the property. Mrs. Matt appeared before the Board.

Mrs. Matt explained that she has three young children. The purpose of the buffer is to keep her children from going near the road. The fence will not be 100% visible from the road. On the side of the property, there is very dense growth and bushes. She would like a 4' high standard white picket fence. A white fence would match the white in her existing home. She is flexible about the length of the fence.

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

-Mrs. Mary Bradley, 124 Gilbert Road. She is in favor of the application as she feels the fence is appropriate and necessary. It is not a nuisance.

An email was received from Ms. Tish Todd who had concerns about visibility and traffic. (This has been made a part of the file).

There being no further comments, the Public Hearing closed at approximately 7:30 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; Chairman Bogar no; Board Member Stanislaus no; Board Member Elias no; Board Member Murad no; Board Member Kiehm no; Board Member Montrose no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response; Chairman Bogar yes; Board Member Stanislaus yes; Board Member Elias no; Board Member Murad no; Board Member Kiehm no; Board Member Montrose no;
- The requested variance is substantial – response: Chairman Bogar yes; Board Member Stanislaus yes; Board Member Elias no; Board Member Murad no; Board Member Kiehm no; Board Member Montrose no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: Chairman Bogar no; Board Member Stanislaus no; Board Member Elias no; Board Member Murad no; Board Member Kiehm no; Board Member Montrose no;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: Chairman Bogar yes; Board Member Stanislaus yes; Board Member Elias yes; Board Member Murad yes; Board Member Kiehm yes; Board Member Montrose yes.

Motion was made by Board Member Byron Elias to **approve** this application with the 4' fence starting going to the island and then picking up on the other side of the island (keeping the island as it is); and that a Building Permit be obtained within one year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

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

Board Member Fred Kiehm - yes
Board Member John Montrose - yes
Board Member Lenora Murad - yes

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

Minutes of the May 21, 2018 Zoning Board of Appeals meeting were approved by Board Member Byron Elias; seconded by Chairman Randy Bogar. All in favor.

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There being no further business, the meeting adjourned at approximately 8:00 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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