

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD MUNICIPAL BUILDING
JUNE 24, 2024**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present are Dominick Timpano, Dan McNamara, and Byron Elias. Absent: Board Members Tim Tallman, Michele Mandia and Lenora Murad. Also in attendance were Town Attorney Herbert Cully, Town Councilmen John Latini and David Tehan, Highway Superintendent Richard Sherman, Secretary Dory Shaw, and Christina Lacy, Secretary. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting. In particular, that there are three Board Members that are not in attendance this evening. The applicants would need all the Board Members votes this evening for approval – total of 4. If the applicants would like to postpone until the July 15, 2024 meeting, just advise the Chair.

Chairman Bogar welcomed newest Board Member Dominick Timpano.

The application of **Utica Karen Baptist Church, 140 Clinton Road, New Hartford, New York**. The applicant is in a Medium Density Residential zone on a corner lot of Clinton Road & Sycamore Drive as well as Sycamore Drive and Tamarack Drive. The applicant is proposing a four (4) foot± tall chain link style fence along the western property line 412± feet from Tamarack Drive south to Clinton Road then turn east for 250± feet parallel to Clinton Road. Therefore, the applicant is seeking an Area Variance for a four (4) foot± tall chain link fence into the front yard area setback. Tax Map #328.019-1-4; Zoning: Medium Density Residential. Attorney David G. Goldbas, Esq. appeared before the Board.

Attorney Goldbas explained the type of fence proposed and how this will benefit the Church and surrounding neighbors. He explained the activities of this Church, which they hold many events for the parishioners, children, etc. They need the fence to be able to contain the outdoor activities, balls, etc. which at times spills into the neighbors' yards. This is for safety reasons and being good neighbors to the area. There have been parking problems also and they want to alleviate this – the fence would help. The Church feels this is an improvement and would make better relations with the neighbors. Attorney Goldbas wanted to address the full Zoning Board, however, there are many Church members here and wanted to speak in their behalf. Town Attorney Cully suggested to wait to make that decision. Public comments will be received. He also explained about the four votes needed for approval. Attorney Goldbas stated their project is not inflexible – the type of fence and height could be adjusted – the Church agrees on this.

Chairman Bogar opened the Public Hearing to the public.

-Councilman 4th Ward David Tehan: He feels the fence is a good idea and it allows for the safety of the Church and residents of the neighborhood. There are some concerns about activities going on and the fence would be a good addition and not unsightly. There is a lot of traffic in this area. He supports the material and height as well as any recommendations. He feels a chain link fence is good because of visibility being better.

Chairman Bogar referred to the fence height, is it tall enough. Councilman Tehan feels the Board should consider this and the applicant is flexible about style and height.

-Mr. Desmond Mandoza, member of the Church. He explained the need for the fence as they have many events and do many fundraisers. He explained what happens with outdoor activities, balls going into neighbor's yards, etc. The fence would help. They have a maintenance crew doing their lawn and a fence would help with property lines, etc. The fence would not change the character of the neighborhood – they also have support from the neighbors and Church members.

Chairman Bogar referred to the number of activities – do you think a 4' fence is high enough? Mr. Mandoza said they are flexible and at least the 4' fence would eliminate children running around, etc.

-Mr. Bhaw Htoo is the Church secretary. The Church is very flexible with the height, and feels a 6' fence would be better with height and material.

-Mu Kler Soe represents the Church Youth Group. The higher fence would be good as it would also protect the neighbors and secure the boundaries. Also, reduce potential accidents. They can consult with security experts.

Board Member McNamara wants to know what the fence would look like and questions the height. He questions whether this would be able to stop the balls from flying over.

-Anne Kallassi: she is concerned about safety of the children and explained the types of activities held there.

-Karen Wrate: she asked if the fence could be brought in more from the property line as there are beautiful trees that are there, that have been there for many years, and she is concerned about the care of them. Also, perhaps a gate could be placed by her area. By coming away from the property line, it would be easier to mow and also to care for the trees/roots. The Church said they are willing to accommodate.

Board Member McNamara asked if there is a problem with mowing. Mrs. Wrate said that is why she is asking them to come in from the property line as it makes it easier for people to mow.

-Mr. Greg Rys is representing Ms. Caroline Boris at 144 Clinton Road. They support this application for a fence as they are the most involved neighbor. The Church has worked with them. The 4' height is okay but a 6' fence would be better. He would like the Church and neighbors to enjoy their property at the same time. He would also like to make a donation to the Church (which he gave the Church member a donation at this time).

A Church member stated that the fence will be located about 10' from the property line.

-Bob Kelsey lives across from the Church. He asked about the placement of the fence. Attorney Goldbas stated about 10' from the property line. Mr. Kelsey feels there is plenty of room for this fence.

Attorney Goldbas stated the Church is expressing a preference along the western border 6' high north to south.

There being no further comments, the Public Hearing closed at approximately 6:30 P.M. County Planning 239 and New York State DOT have no opposition to this request.

The Board Members discussed this application regarding height, etc. 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: yes, all in agreement.

Motion was made by Board Member Byron Elias to **approve** the application but for a 6' black chain link fence along the western property line and 4' as it crosses Clinton Road; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Dan McNamara. Vote taken:

Chairman Randy Bogar – yes
Board Member Byron Elias – yes

Board Member Dan McNamara - yes
Board Member Dominick Timpano - yes

Motion was **approved** by a vote of 4 – 0.

The application of **Mr. Lawrence Spetts, 2 Davis Place, New Hartford, New York**. Mr. Spetts is requesting to construct a 6' fence in the side and front yard. Residential fences shall not extend or be positioned forward beyond the frontmost point of a residential building. The proposed fence will be forward of the frontmost point of the building. Therefore, the applicant is seeking an Area Variance of approximately 26'± to construct this fence. Tax Map #328.012-3-6; Zoning: Medium Density Residential. Mr. & Mrs. Spetts appeared before the Board.

The proposed stockade fence is replacing one that was previously there (he presented a picture). People continually cut through his yard to go to the mall and make a mess. He has a toddler and wants to protect him. They are on a corner lot but the fence is nowhere in the roadway. A neighbor on the other side also has a 6' fence. It does not intrude and does not pose a visibility problem. He will stain the fence as shown on the picture he submitted.

Chairman Bogar opened the Public Hearing.

-Councilman David Tehan spoke to Mr. Spetts and he supports this application especially for the safety of his family.

There being no further input, the Public Hearing closed at approximately 6:45 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: 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: yes, all in agreement.

Motion was made by Board Member Dan McNamara to **approve** the application as presented for a 6' stained stockade fence, and that a Building Permit be obtained within one year of approval date; seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar – yes
Board Member Byron Elias – yes

Board Member Dan McNamara - yes
Board Member Dominick Timpano - yes

Motion was **approved** by a vote of 4 – 0.

The application of **Mrs. Olivia Sebastian, 201 Fairway Drive, New Hartford, New York**. Mrs. Sebastian is requesting the addition of a new 10' x 12' shed on her property, which will be the third accessory structure. Chapter 118 Zoning Section 23 Additional Accessory Use Structures states there shall not be more than two accessory buildings or structures on a residential lot. Therefore, the applicant is seeking a quantity Area Variance to allow for this additional shed. Tax Map #317.015-1-46; Zoning: Low Density Residential. Mrs. Sebastian appeared before the Board.

Mrs. Sebastian explained right now they have one shed and they are a family of six. They need the additional storage space for bikes, etc. In 2020 they put in an above ground pool. They desperately need another shed for storage of pool supplies, children's toys, bikes, etc. She has a lot of property and room for another shed. The new shed will match the existing one.

Chairman Bogar opened the Public Hearing: there was no one present to address this application. The Public Hearing closed 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: 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: yes, all in agreement.

Motion was made by Board Member Byron Elias to approve the application as presented for a 10’x12’ shed, and that a Building Permit be obtained within one year of approval date; seconded by Chairman Randy Bogar. Vote taken:

Chairman Randy Bogar – yes
Board Member Byron Elias – yes

Board Member Dan McNamara - yes
Board Member Dominick Timpano - yes

Motion was **approved** by a vote of 4 – 0.

The application of **Mr. James Salerno, 1910 Tilden Avenue, New Hartford, New York**. Zoning: Low Density Residential. Mr. Salerno is requesting an **Interpretation** for a large scale solar energy system on vacant land to the rear of his property at 1910 Tilden Avenue. An Interpretation is needed as Local Law 118-74 states free standing or ground mounted systems shall not be permitted in residential districts; however, the Town’s Schedule “A” shows that ground mounted, free standing energy systems/collectors are allowed in all zoning districts with an “SP” designation. An **Interpretation** is also needed on what an SP means as it is not listed in Schedule “A”. The Code sections and schedules can all be found on the Town of New Hartford website www.townofnewhartfordny.gov This application was tabled at the May 20, 2024 Zoning Board meeting. Attorney Ralph Fusco appeared.

Attorney Fusco feels the Interpretation is inconsistent. He feels the SP designation really is a Site Plan Review and to give Mr. Salerno an opportunity to present his plan to the Planning Board.

Chairman Bogar mentioned again that there are only four Board Members in attendance this evening. Attorney Fusco is aware of this and he would request an opportunity to present this to the full Board at the July 15, 2024 Zoning Board meeting. If the Board agrees, he will wait to address this on July 15th. He feels this law requires fact finding by the Board, and referred to an Article 78.

He would suggest that Mr. Salerno as others would have to be able to present a plan and considered on the merits and consistent with Schedule A which permits a review on the site plan. The issue before the Board tonight is an Interpretation of that law. He couldn’t find minutes to explain this decision in residential areas. He feels there is no review and he doesn’t think that is what the law is. He referred to some case law. He feels Mr. Salerno is entitled to a variance as the plan is a good one. This area has a water problem and he is willing to have residential ponds to be turned over to the Town of New Hartford to address this. He sees this problem in this area. It is more than five acres. Where it is planned would be on his own vacant land that can’t be seen from the street and neighbors. A major problem will be resolved with the building of this project. This should be interpreted as permitted for Mr. Salerno as a variance. He feels there is an inconsistency of the law.

Attorney Fusco is asking for this Board to review this and he asks to be placed on the next Zoning Board meeting, which is July 15, 2024 before a full Board. He would also like to hear what the

neighbors here this evening have to say. Mr. Salerno would bring the basic plan to this Board so we can see what he has in mind.

At this time, Councilman John Latini (Ward 2) appeared before the Board. He explained in detail to everyone about the major water problems in this area of Town. He explained how Mr. Salerno is willing to work the Town as water is a big problem here. He is not saying the solar will go through or not, but until we get all the facts together, he is bringing this up. To get some residential ponds is a good thing. He is also speaking as a resident in this area. He will also make an appointment with Mr. Salerno next week to see where the proposed solar will be placed.

Highway Superintendent Rick Sherman explained to the residents exactly what a retention pond does and where some are located in the Town.

-Mr. Richard Chmielewski, 1905 Sherman Drive. He previously sent in an email for the Board's review regarding the solar application. He came to the meeting to discuss that and not water. He wanted this Board to know that he put in a drain on his property and now he doesn't have a water problem so he feels there are alternatives other than retention ponds. He feels solar panels do not increase property values. He gave samples of what does improve property values, not solar panels. Also, properties in his opinion will be destroyed and doesn't see a benefit to property owners.

-Ms. Rosanne Gerace, 23 Wadsworth Road. She is concerned about property values and she will still see the panels from her property. She asked if the EPA knows about this as there are a number of deer in the area. How high will the panels be and are they lit. She is concerned about the removal of trees and their regrowth - trees take a long time to grow.

Mr. Latini, for everyone's information, gave a description of the process for a solar project review/process with the Planning Board and Town Board.

-Ms. Barbara Morris, Sherman Drive. She has lived on Sherman Drive all her life and the area is single family homes/residential. She feels solar panels makes the properties commercial, and devalue the properties.

-Ms. Michele DeTraglia, 29 South Hills Drive. She feels we are moving away from the definition of solar. She feels solar panels don't curb water. Concerned about wild life. She addressed the SP designation, free standing or ground mounted just not permitted. The chart is obviously a mistake. There is a water problem, but it is not on the Interpretation application. How is the solar farm and residential pond linked? She is not comfortable with this conversation tonight as it is moving away from an Interpretation. She questions this solar request going to happen on this part of town. How do you make an Interpretation at this point?

Chairman Bogar said the Interpretation won't be voted on tonight. It will be addressed during a full Board with each member's input.

Town Attorney Cully said the Board Members will look at the language that is spelled out in the statute, and listen to comments and make an interpretation of the intent of the Ordinance to allow these ground mounted solar projects in residential areas.

-Mathew Dzedzic, 151 Clinton Road. He referred to a pond matter near his property, flooding concerns. He wanted to state that residential ponds need to be built correctly as problems can occur. He stated that Highway Superintendent Richard Sherman did a good job in correcting his situation.

At this time, motion was made by Board Member Dan McNamara to table the application of Mr. James Salerno until the July 15, 2024 Zoning Board meeting; seconded by Chairman Randy Bogar.

Chairman Randy Bogar – yes
Board Member Byron Elias – yes

Board Member Dan McNamara - yes
Board Member Dominick Timpano – yes

Motion **approved** by a vote of 4 – 0.

Motion was made by Board Member Byrn Elias to approve the minutes of the May 20, 2024 Zoning Board meeting; seconded by Chairman Randy Bogar. All in favor.

Motion was made by Board Member Byron Elias to adjourn; seconded by Chairman Randy Bogar at approximate 7:50 P.M. All in favor.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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