

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD MUNICIPAL BUILDING
AUGUST 19, 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, Tim Tallman, Michele Mandia, Lenora Murad and Byron Elias. Also in attendance were Town Attorney Herbert Cully, Councilman David Reynolds, Anthony Trevisani, Codes Officer Lary Gell, 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, and that this meeting is being taped.

The application of **GPO Federal Credit Union, 4311 Middle Settlement Road, New Hartford, New York**. The applicant is proposing to erect a 40± square foot freestanding sign on their property. The maximum square footage allowed is 32 square feet. Therefore, the applicant is requesting an 8± square foot Area Variance. Tax Map #328.000-2-34; Zoning: Institutional (I). Mr. Adam Copeland appeared before the Board.

Mr. Copeland stated they need to modify their existing sign with an additional 8 square feet (for their message board). It will not be a flashing sign, but solid, he explained how it operates. Codes Officer Gell will check with Codes Officer Farley who wrote up the variance as to how the sign operates, re movement, etc. Mr. Copeland said during the night they would lower the illumination, but it does stay lit for 24 hours. It was mentioned that their business has grown and they need the exposure.

Chairman Bogar opened the Public Hearing and asked if anyone was in attendance for comments – no response. However, Mr. Frank Basile, CPA, 4305 Middle Settlement Road, wrote in that he has no objection. The Public Hearing closed at approximately 6:10 P.M. NYSDOT and Oneida County 239 had no recommendations.

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 Lenora Murad to approve the application as presented for the sign, and that a Building Permit be obtained within one year of approval date; and also that the applicant check with the Codes Department for compliance; seconded by Board Member Byron Elias. Vote taken:

Chairman Randy Bogar – yes
Board Member Byron Elias – yes
Board Member Lenora Murad - yes
Board Member Tim Tallman - yes

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

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

The application of **Mr. Thomas Casella, 109 Washington Drive, New Hartford, New York**. Mr. Casella is proposing to construct a 536± square foot addition to the rear of his home. The applicant is seeking an Area Variance for this addition as his home is a pre-existing, nonconforming structure due to the side yard not meeting the Town standards. Thus, the request for this Area Variance. Tax Map #317.015-1-15; Lot Size: 100' x 200'; Zoning: Low Density Residential. Mr. Casella and his contractor, Mr. Nick Palmieri appeared before the Board.

Town Attorney Herbert Cully explained the non-conforming process. Mr. Casella explained that he needs the additional living space for his children -it is a first floor addition with a master bedroom and bath. The addition will match the existing home with siding.

Chairman Bogar opened the Public Hearing and asked if anyone was in attendance for comments:

-Mr. Donald Peavy, 171 Merritt Place. He referred to the procedure for submittal to this Board and the public in attendance. Chairman Bogar explained the process and an agenda is posted on the Town website and also property owners within 500' circumference are notified by mail.

There being no further comments, the Public Hearing closed at approximately 6:16 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 Michele Mandia to approve the application as presented for this addition; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Tim Tallman.
Vote taken:

Chairman Randy Bogar – yes
Board Member Byron Elias – yes
Board Member Lenora Murad - yes
Board Member Tim Tallman - yes

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

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

The application of **Ms. Kelly Conroy-Scott, 25 Wilbur Road, New Hartford, New York**. Ms. Scott is proposing to replace an existing fence in the same location of the front yard with a 6' tall wooden privacy fence. The applicant is seeking an Area Variance for a 6' wooden privacy fence into the front yard setback. Tax Map #329.013-2-22; Zoning: Medium Density Residential. Ms. Conroy-Scott appeared before the Board.

Ms. Conroy-Scott explained that the replacement fence is needed for the protection and safety of her children. Her driveway faces the entrance and exit of the New Hartford Shopping Center. Traffic is out of control in this area. Her residential home faces a commercial property. She has a child with special needs and she wants to provide

whatever type of safety requirements for this child. There was a fence there previously but she wanted to make it better. She believes in following Codes to the letter. Tonight she provided additional information, i.e., a survey of the property; a picture of what the decomposing fence looks like now; pictures of other fences nearby; and a picture of the new proposed stockade fence. It is a matter of replacing what was there before but safer. She feels it doesn't change the aesthetics of the neighborhood as there are other fences.

At this time, she also presented pictures of encampments behind the New Hartford Shopping Center and behind Carl's Furniture with debris, mattresses, etc. (near 6 Andover Avenue). She tries to alert her children to understand homelessness, however, she has to look at this unsightly mess.

Town Attorney asked if she could give us this information to pass along to the Police Department. Christina Lacy will give this information to the Police and also the Codes Department to check into.

Discussion ensued regarding the height of the proposed fence and location. Ms. Conroy-Scott said she needs the 6' fence, but is open to suggestions about location. Board Member Elias would like to relocate the fence behind the tree on the right instead of in front of it. Ms. Conroy-Scott would like to preserve as much yard space as possible. Board Member Elias would be comfortable behind the front tree.

Chairman Bogar referred to a comment from the New Hartford Highway Department to be made aware of any new fences in front yards. Cods officer Gell is okay with this placement as well as Chairman Bogar. Highway Superintendent Rick Sherman will be shown this application.

Discussion continued with the Board Members with the placement of this fence.

Chairman Bogar opened the Public Hearing and asked if anyone had comments. No public input but Mr. Robert Sosnowski of Wilbur Road wrote in that has no objection to this request. The Public Hearing ended at approximately 6:40 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 but depends on where she places it;
- 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 place the fence at or behind the tree so it is closer to her home; there was no second. Motion failed.

Motion was made by Board Member Dan McNamara to place the fence within 1 foot of the tree closest to the road; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes
Board Member Byron Elias – yes
Board Member Lenora Murad - yes
Board Member Tim Tallman - yes

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

Motion was **approved** by a vote of 7 – 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 law 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 Tax Map #340.000-2-23.1; Zoning: Low Density Residential. Attorney Ralph Fusco, Esq. and Mr. James Salerno appeared before the Board.

Attorney Fusco stated this is an issue on how the Local Law 118-74 should be interpreted. He feels Mr. Salerno should have the opportunity to present his plan. He can address the water problem in the area and also donate land for retention ponds to cure the problem, and the proposal he has cannot be seen from the street. He also referred to an Article 78 proceeding to challenge the decision of this Board if necessary. He explained how it may affect his client.

Town Attorney Cully stated he is citing a case that there is a procedure to be followed for an Article 78.

Chairman Bogar opened Public Hearing for anyone who is in attendance for comments:

-Dr. Richard Chimielewski, 1905 Sherman Drive. This project puts his future property value of his home in jeopardy and changes to the natural landscape as well. Environmental concerns also. Where does the money come from for this project. He objects to this application. How do we proceed - what is the process? It is not allowed.

Codes Officer Gell stated this is the proper course of action and he explained the process.

Chairman Bogar added this Interpretation is not just for Mr. Salerno, however he is front of us now. This could affect any property that is residential in the Town of New Hartford. We are interpreting it for the whole Town.

-Mr. DuRoss, 1907 Tilden Avenue. Our properties are affected.

-Ms. Roseanne Gerace, 23 Wadsworth Road. Concerned about water runoff and how this affects her property. Also, she enjoys the deer and wildlife in her backyard.

-Mr. Robert Himmelman, 1909 Tilden Avenue. This local law seems pretty clear.

-Michele DeTraglia, 29 South Hills Drive. She referred to local law 118-74 regarding free standing or ground mounted systems in residential districts. She feels the statute speaks for itself, Schedule A Permitted Uses. It says no freestanding in residential districts. The Town Board already thought about this not to be redone, fixed or changed.

Board Member Elias addressed the people and had maps to present. He explained the process and what is before the Board this evening. The only thing the Town Board can do is change the law and he explained how it is done. This Board is going to make a determination of how to proceed. This has nothing to do with this project, but the entire Town. He defined the Special Use Permit or Special Permit. He explained what is permitted and not permitted in certain districts and the process.

-Dr. Richard Chimielewski noted again that he is here as a landowner and homeowner. He objects to the project and how it is being done. What if something else is presented, i.e., nuclear power plant in his backyard? He feels it is ridiculous to change as law that is already there.

Chairman Bogar stated the Town Board already thought about this. Town Attorney Cully stated we spent a lot of time with this legislation. He explained the time that was spent on this legislation and procedures followed. There was never any Article 78 challenging that statute and he can't argue for or against. He is required to be neutral but this legislation was very carefully thought over and the Town Board had a lot of input.

Discussion ensued regarding a Special Permit use and if it could be a typographical error.

Attorney Fusco: the fact this statute has not been challenged in regard to Article 78 – it must be reconciled with the law. He expressed his opinions regarding Article 78 and Special Use applications.

-Michele DeTraglia asked what is the remedy for the water situation – Attorney Fusco referred to retention ponds to alleviate this. Tonight we are just examining the applicant's right to bring an application – the interpretation of that statute to address the rights of people to bring the application must be interpreted in a way to give them the right to review.

More discussion ensued regarding Special Use and Interpretations.

Attorney Cully stated we can do an Interpretation but the bottom line is the Town Board should look at this and if we need to make an Interpretation, the Town Board is a legislative body.

Board Member Mandia feels we go by the law - no free standing solar farms in a residential district. Town Attorney Cully referred to what was done in 2022 then modified in 2023 regarding this.

Board Member McNamara reiterated that this isn't about Mr. Salerno's property, it is about the entire map. The Town Board can rectify this. Chairman Bogar noted that it is crystal clear regarding Section 118-74 where free standing or ground mounted systems shall not be permitted in residential districts.

-Mr. Andy Lavalle, 1915 Tilden Avenue. He doesn't blame Mr. Salerno for wanting this. But this is a huge project with impacts. The law is the law. Concerned about what happens to the property 20 years from now.

Codes Officer Gell stated the future of this type of use is built into the law. Town Attorney Cully said they are required to post a bond of \$250,000 to secure decommissioning at this time.

-Anthony and Karen Giannotti, 42 South Hills Drive. All backyards are affected regarding water especially because of the terrain.

Town Attorney Cully stated the Board will render an Interpretation of the Ordinance to determine large scale solar will or will not be permitted in residential districts – modified in an LDR district and modified 118-74. If there is a change, it is done at the Town Board, a notice for a Public Hearing for the entire Town. The process is Town Board, the Planning Board for their approval, then back to the Town Board.

This Interpretation discussion closed at approximately 7:44 P.M.

Board Member Michele Mandia stated this is no reflection on Mr. Salerno. Board Member Mandia made a motion that we stay with the verbiage that says free standing or ground mounted systems shall not be permitted in a residential district; seconded by Board Member Tim Tallman. Vote taken:

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Chairman Randy Bogar – yes
Board Member Byron Elias – no
Board Member Lenora Murad – recused herself
Board Member Tim Tallman - yes

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

Motion of Board Member Mandia was **approved** by a vote of 5 in favor, 1 recusal and 1 no vote.

Draft Zoning Board minutes of the June 24, 2024 meeting were approved by motion of Board Member Byron Elias; seconded by Chairman Bogar. All in favor.

Motion to adjourn made by Board Member Byron Elias; seconded by Chairman Randy Bogar at approximately 8:00 P.M. All in favor.

Respectfully submitted,

Dolores Shaw
Secretary, Zoning Board of Appeals

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