

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
BUTLER MEMORIAL HALL  
JULY 16, 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 supervisor Paul Miscione; Town Attorney Herbert Cully; Codes Officer Joseph Booth; Councilman Richard Woodland; 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.

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Draft minutes of the June 18, 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 Board Member John Montrose. All in favor.

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The application of **RB Construction II, LLC for ALC/HTC Living Trust, 213 Higby Road, Utica, New York (Town of New Hartford)**. The applicant is seeking a 2.5'± left side yard Area Variance for the construction of an addition onto the home. The property is located in a Low Density Residential area, which requires a 15' side yard setback, thus, necessitating the Area Variance request. Tax Map #329.020-7-49; Lot Size: 130' x 208'; Zoning Low Density Residential. Mr. Chris Mathews appeared before the Board. Mr. Tom Clark and Mr. Chris Matthews (contractor) appeared before the Board.

Mr. Matthews explained what the addition would look like. Gutters will be placed and rain directed toward the back yard. He will be using the same type of materials as the existing house. He is not going any further than what is there now. There will be a crawl space put in with a slab.

Chairman Bogar asked if there was anyone present to address this application. There being no response, the Public Hearing closed at approximately 6:10 P.M. The 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 Lenora Murad. Vote taken:

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

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

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

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The application of **Ms. Susan Jones, 18 Barley Mow Run, New Hartford, New York**. The applicant is proposing to place a roof over an existing concrete slab projecting an additional 6'± forward. This area is zoned Low Density Residential, which requires the front yard setback to be 30' or the average setback. The applicant is seeking a 10.5'± front yard average setback variance. Tax Map #339.001-2-70; Lot Size: 100' x 138'; Zoning: Low Density Residential. Ms. Jones appeared before the Board.

Ms. Jones presented pictures of the proposed roof. Some of her neighbors have the same type of roofing on their homes. There will be two pillars in the front with a hip roof. She will not be going any further than the slab.

Chairman Bogar asked if there was anyone present to address this application. There being no response, the Public Hearing ended at approximately 6:18 P.M. The 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.
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Motion was made by Board Member Fred Kiehm to approve this application as presented; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Taras Tesak. Vote taken:

Chairman Randy Bogar - yes

Board Member Fred Kiehm – yes

Board Member Byron Elias – yes  
Board Member Karen Stanislaus – yes  
Board Member John Montrose - yes

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

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

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The new application of **Mr. Zachary Burke, 22 Mayberry Place, New Hartford, New York**. A fence has been erected 25'± into a front yard. Town Code prohibits the placement of a fence in a front yard, therefore, the request for a 25'± front yard setback Area Variance. The applicant is proposing landscaping. Tax Map #329.013-1-74; Lot Size: 70' x 175'; Zoning: Medium Density Residential. Mr. & Mrs. Burke appeared before the Board.

Mr. Burke is planning to add landscaping to the fence. They will put in whatever the Board suggests regarding plantings. Moving it would be too costly. About ¾ of the fence was there when they bought the house and they closed it off, not knowing the Code. They are on a dead end street. This house is in a unique situation on the lot – it doesn't impair any vision. The house was in foreclosure and they have spent a lot of money improving the property.

Discussion ensued regarding what type of landscaping across the front of the fence, how much, etc.

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

-Mr. Douglas Berry, 20 Mayberry Place. He has no problem with the fence and he inquired about the landscaping.

-Mr. Mark Powroznik, 24 Mayberry Place. No problem with the fence, also inquired about landscaping.

-Mr. Paul Miscione, Town Supervisor. He addressed the Board Members. He explained the number of complaints the Town Board receives regarding trees between property lines, and trees, etc. in general. They end up becoming a problem down the road – people move and the vegetation is not cared for. It has become a problem with neighbors. Corner lots especially are becoming an issue – some people don't want trees – too much maintenance, etc.

The Board Members explained their role on the Zoning Board and appreciated Mr. Miscione's input. They understand the issues. They review each case individually and take many things into consideration. They appreciate his and the Town Board's input. Perhaps some discussion further on will help resolve some of the issues. Mr. Miscione is open for dialog.

-Mr. Richard Woodland, Councilman 4<sup>th</sup> Ward. He feels this applicant has done a good job at this location. He explained how the Town started regulating fences to make sure people put them where they are supposed to be – years ago permits weren't even required. It is becoming more of a hardship for people and it is being noticed by the Town Board. He feels the Burke's have done a nice job with what was once a deteriorating piece of property.

There being no further input, the Public Hearing closed at approximately 6:35 P.M. Chairman Bogar also stated that a letter was received from Bill & Cindy Yount, 12 Mayberry Place, in favor of this application.

Further, there was no recommendation from Oneida County Planning and NYSDOT.

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: property is a unique situation;
- 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: 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: yes, all in agreement

Motion was made by Board Member Taras Tesak to approve this application and that the applicant should have some type of vegetation along the majority of the fence; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member Byron Elias – yes	Board Member Taras Tesak – yes
Board Member Karen Stanislaus – no	Board Member Lenora Murad - yes
Board Member John Montrose - yes	

Motion was **approved** by a vote of 6 – 1. (Building Permit had already been obtained).

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The new application of **Mr. Haris Sabanovic, 10 Wadsworth Road, New Hartford, New York**. Mr. Sabanovic is seeking a 28'± Area Variance to erect a 5' high fence on the Tilden Avenue side of his property, and relocating the fence to the rear of the house. The property is located in a Low Density Residential zone, which prohibits a fence in a front yard. The property is located on a corner lot, which has two front yards, thus the Area Variance request. Tax Map #340.008-2-47; Lot Size: 126' x 198'; Zoning: Low Density Residential. Mr. Haris Sabanovic appeared before the Board.

Mr. Sabanovic stated that he is moving the fence towards the back corner of the house now. He presented pictures. It will be a 5' brown fence with a scalloped top – total height about 5' 5". Some shrubs will be placed in front of it also. Mr. Sabanovic also presented a picture that was taken in the evening when on his deck – lights from oncoming cars are directed right at his deck – so he wants this fence for privacy reasons also.

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

-Ms. Patricia Hahn, 12 Wadsworth Road. She is concerned that Mr. Sabanovic may have to go on her property to get to a portion of his back lot. Mr. Sabanovic stated there will be access to his back yard without going on to her property. He also has a gate on his fence.

There being no further input, the Public Hearing closed at approximately 6:50 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: no, all in agreement.

Motion was made by Board Member Byron Elias to approve this application this application as presented; and that a Building Permit be obtained within one year of approval date; seconded by Board Member John Montrose. Vote taken:

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

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

Motion was **approved** by a vote of 6 – 1.

Board Member Tesak thanked Town Supervisor Paul Miscione and Councilman Richard Woodland as the last six or seven months this Board has reviewed many fences. The only thing he can do is have our Chairman ask the Town Supervisor and Town Board to relook at the Zoning Laws, especially on fences.

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The new application of **Mr. Robert Van de Wal, 121 Harrogate Court, New Hartford, New York.** The applicant is located in a High Density Residential zone, which prohibits the installation of a fence in a front yard. He is seeking a 15'± front yard Area Variance to place a fence in the front yard of Harrogate Road. He is also proposing landscaping in front of the fence. Tax Map #339.011-3-50; Lot Size: 77' x 151'; Zoning: High Density Residential. Mr. Van de Wal appeared with his mother, Mrs. Eve Van de Wal.

Mr. Van de Wal explained that he moved the 6' fence in closer to his house and further from the road/property line. He plans to place greenery by the fence. As far as the existing shrubs, etc., the storm last winter destroyed them and they need to be removed. The reason for the fence is security, he has a dog, and is planning on a family. This is a high traffic area. There are other fences in this area. He

plans on spending \$13,000 for this fence so it adds to the value of his home, and is aesthetically pleasing to the neighborhood (white with black trim). He would like to stagger putting in any shrubs, bushes, etc. sporadically as it gets costly for those also.

Mrs. Van de Wal explained that most of the bushes are dead. The neighbor behind him has no objection.

Chairman Bogar mentioned that perhaps a contingency might be, if approved, for some type of greenery. She is concerned about what might be dictated regarding shrubbery. Chairman Bogar explained how this Board addresses the law and Code. Board Member Elias also explained we try to work with homeowners so as not to have fences become walls – we try to soften the look.

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

-Mr. Paul Miscione, Town Supervisor. He is in favor of this application. He explained how he talked with the Councilmen specifically with fences on corners. This is to keep things under control; however, this is an expensive fence that will add to the beauty of the neighborhood. The existing shrubs and trees are horrendous. He further referred to how many people don't want to place shrubs, trees, etc. as they become a problem to take care of property. The Code will be critiqued.

Board Member Elias referred to the law as it exists now and what could possibly happen if not followed through. Mr. Miscione said the Town Board will be looking into this issue.

There being no further input, the Public Hearing closed at approximately 7:20 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: difference of opinion;
- 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: difference of opinion.

Motion was made by Board Member Taras Tesak to approve this application as presented; 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 Karen Stanislaus – no  
Board Member John Montrose - yes

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

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Motion was **approved** by a vote of 6 – 1.

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The Board Members received a copy of the unofficial minutes of the June 18, 2018 Zoning Board of Appeals meeting. Motion was made by Board Member Byron Elias to accept these minutes as written; seconded by Board Member John Montrose. All in favor.

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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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