

MINUTES OF THE REGULAR MEETING
DECEMBER 17, 2007

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Kristen Shaheen, John Montrose, Tim Tallman, Fred Kiehm and Bob Schulman. Board Member absent: Steve Welty. Also in attendance were Councilman David Reynolds; Codes Enforcement Officers Joseph Booth and Thomas Rowlands; 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 mentioned that one (1) Board Member was absent and it was the decision of the applicants to proceed or not.

The application of **Mr. Samuel Edwards who is representing Mr. Robert Kelsey, 3 Larchmont Drive, New Hartford** for the purpose of constructing a 16' x 23' new garage to be attached to the existing home. Zoning in this area is Medium Density Residential, which requires a side-yard setback of 10' and the new garage will be 3' from the side property line (The new garage will not go any further to the side than the existing garage). Therefore, the applicant is seeking a 7' side-yard setback Area Variance. Tax Map #328.011-2-77; Lot Size: 60' x 222'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on December 7, 2007 and residents within 500' were notified. Mr. Robert Kelsey and Mr. Sam Edwards, contractor, were present.

Mr. Kelsey appeared before the Board and explained that his mother is elderly and he is worried about her safety walking to the existing detached garage from her home. He would like to have a new garage attached to the home enabling her to have access to the garage from her existing porch. Materials for the garage and roof will match the existing home. He explained that the existing garage floor is breaking apart and it can't be fixed without collapsing the garage. He would be positioning the garage in the same footprint, just going 2' closer to the house. (Mr. Edwards appeared after this discussion).

Chairman Bogar asked if there was anyone present to address this application, or calls/letters received – there was no response. The Public Hearing closed at 6:35 P.M.

The Board Members went through the criteria necessary for the granting of 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;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no;
- The requested variance is substantial – response: no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision but shall not necessarily preclude granting the variance–response: no.

Motion was made by Board Member Bob Schulman to approve the application as presented as long as the siding and roof materials match the existing house; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Tim Tallman – yes

Board Member Fred Kiehm - yes
Board Member Kristin Shaheen - yes
Board Member Bob Schulman - yes

Motion for **approval** was passed by a vote of 6 – 0.

The application of **Mr. John Stemmer, 192 Paris Road, New Hartford, New York** who is requesting a 10” height Area Variance on a newly erected fence along his property where the height varies. Zoning in this area is Low Density Residential, which requires that a fence be constructed to a maximum height of 4’ in the front yard and a maximum of 6’ on a side or rear yard. Therefore, the applicant is requesting a 10” height Area Variance. Tax Map #338.000-3-6.3; Lot Size: 100’ x 200’; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on December 7, 2007 and residents within 500’ were notified. Mr. Stemmer appeared before the Board.

Mr. Stemmer presented photos of his property and the adjacent neighbor’s. He stated the reason why he installed the fence was that the people next door have a wire fence, private property signs up and dog feces placed along the property line. He doesn’t want to look at this any longer. Before he contacted Butler Fence, he contacted the Codes Department for information about fencing. He said nothing was mentioned about enhanced property grades and he feels that would have made a difference in the installation. For 2 ½ years there has been a berm of topsoil along a section of his property. Also, to have all the rose bushes on his side, he had to do this. Mr. Stemmer presented a height analysis of the installed fence for the Board’s review – he measured every 8’. It would be a financial burden for him to change 172’ of fence as Butler Fence told him it would be expensive.

Mr. Stemmer presented another picture of how the fence looks all around; going through woods and he feels it will blend in. He mentioned that there are other fences in the area.

Board Member Montrose asked how far the fence is off the property line – Mr. Stemmer said about 12” on his side.

Mr. Stemmer reiterated that he does not want to look at the neighbor’s sign; dog feces or pool and he’d like some privacy.

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

-Ms. Laura Stooks, 194 Paris Road. She is the adjacent neighbor. She explained that she has had ongoing issues with Mr. Stemmer. Ms. Stooks said Mr. Stemmer built up his yard with mulch, which drained into her yard about a year ago. This was after he demanded she put a fence up. She feels he is very well aware of the Codes because he called them about her property. Codes has been to her home several times. As far as him not being aware, she believes it is not true. She feels he built the fence higher for his own use. Ms. Stooks said she doesn’t put things (feces) purposely by the fence, she rotates it and she can move it anywhere she wants. Ms. Stooks has three (3) dogs.

-Mr. Kevin Troxell, 194 Paris Road. He installed the wire fence, and a surveyor was contacted to do Ms. Stooks’ property. He placed a yellow string from one end to the other when they did the installation. He feels that Mr. Stemmer tried to annex over on Ms. Stooks’ property and that is why they wanted their fence up. Mr. Troxell explained why they place the dog feces in different locations – he was told it would help the soil.

Board Member Kiehm asked Ms. Stooks why she has private property signs up, and she explained why and also about a silo on her property. She has lived at this location for seventeen (17) years and has never had a problem. Now, the Highway Dept., Police and Codes are always being sent to her home because of complaints by Mr. Stemmer.

Board Member Shaheen asked Ms. Stooks if she believes Mr. Stemmer had knowledge as to the fact that he was exceeding the variance – Ms. Stooks said yes. Board Member Shaheen asked her to explain why – Ms. Stooks said Mr. Stemmer constantly contacts Codes and she feels he knew what to do. When she put her fence up he kept telling her what to do. Mr. Troxell mentioned a Police matter when they put their stakes in for the fence to make sure they were in Codes compliance.

Board Member Shaheen asked Ms. Stooks if she agrees the 10” is the maximum he is seeking and in some places it is less. Ms. Stooks said it is too high and it looks like a fortress. She took her own measurements and in some places it is higher.

-Ms. Amy Galligano, 36 Morgan Lane. She lives on the backside of Mr. Stemmer's property. The back of her house faces the fence. She explained about her variance application in 2004 and she still has the same ongoing property line issue. There is a question about property lines and she has had an ongoing situation with Mr. Stemmer. Her existing trees became an issue and he requested that they be taken down. She took down twelve (12) trees because he assumed it was his property. She also put in a garden and sidewalk. She has spent about \$3,000 and she isn't finished yet. She said that Mr. Stemmer has a private property sign also. She never stepped on his property except for the time he wanted her to see the dog feces. Ms. Galligano said she has done everything to concede and please him.

Chairman Bogar explained to everyone that this application is for a fence, not property line issues and that this Board reviews each case individually.

-Ms. Lorraine Humphreys, 4 Morgan Lane. She presented pictures, which displayed a 4' fence that was there prior to his putting up the fence. She does not have any fences. She feels his fence is not uniform.

-Mr. Jack Jones, 9 Morgan Lane. He is not an adjoining neighbor but has a vested interest in this issue. He believes in abiding by all the Codes and laws. He has a similar situation in his neighborhood regarding fences. He believes the Codes on fences should be changed, as they are outdated. He also referred to deed restrictions. Mr. Jones is frustrated about problems existing in neighborhoods lately and how issues like this have affected people and property values.

Chairman Bogar explained that the Codes on fences aren't addressed through this Board, and the Town does not enforce deed restrictions. He advised Mr. Jones to contact the Town Board for direction on how to proceed with changing Codes.

-Mr. John Glorioso, 1 Morgan Lane. He would like to see compliance of Codes. His neighborhood has gone through a lot of deviations, which have caused problems. He feels deviations such as this shouldn't be allowed unless for specific reasons.

-Mrs. Janet Butler, 28 Morgan Lane. She feels that the neighborhood has become a toxic issue and by giving Mr. Stemmer this variance is not going to solve the problem. She has seen signs on Mr. Stemmer's deck also.

-Ms. Galligano approached the Board again with more photos of trees and now she has to look at his fence. She continued with issues she has had with Mr. Stemmer.

-Mr. Jack Jones reapproached the Board stating that granting any 10” is his way of solving a neighborhood dispute. To allow this variance sets a precedent.

Mr. Stemmer stated that he is the new person in the area and he has made changes. He explained his survey that was done, the Galligano’s driveway issue, the dog feces, and why he wants the fence – for privacy and not to look at what exists on the other side. He is trying to groom his property properly – he wants this problem to end and that is why he put the fence up. If he knew about the un-natural grade, maybe he could have done something different.

Board Member Montrose asked Mr. Stemmer when this fence was put in – October.

At this time, Chairman Bogar needed to remind the residents that this Board is addressing the fence issue and not matters unrelated to it.

There being no further input, the Public Hearing closed at 7:25 P.M.

The Board Members discussed this application in detail. Mention was made of putting in a fence on top of bushes/mulch/berm, the fence issues this Board has addressed in the past, specific Codes on fences, and whether this fence could be trimmed to meet the Codes as it is a wood fence and able to be cut.

Board Member Shaheen felt this request is minimal. She feels that the 10” variance is not the issue; that the neighbors don’t get along. She feels the property is maintained, the fence is not an eyesore and she doesn’t feel it would detract from the neighborhood.

Chairman Bogar asked Mr. Stemmer if he would be able to take 10” off the top of the fence. Mr. Stemmer said he called Butler Fence and explained what they told him – he was advised it would not be easy and it would be expensive.

Chairman Bogar feels this request is not substantial and he reviewed the photos again.

The Board Members went through the criteria necessary for the granting of 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, as the fence could be shortened, but there is a difference of opinion;

- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no as it would be financially cumbersome, but there is a difference of opinion;
- The requested variance is substantial – response: no, but there is a 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: difference of opinion;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance–response: yes, but there is a difference of opinion.

Motion was made by Board Member John Montrose to deny the application, as it did not meet the criteria necessary; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - no	Board Member Fred Kiehm - yes
Board Member John Montrose - yes	Board Member Kristin Shaheen - no
Board Member Tim Tallman – yes	Board Member Bob Schulman - yes

Motion for **denial** was passed by a vote of 4 – 2.

There being no further business, the meeting adjourned at 7:50 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

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