

**TOWN OF BALLSTON  
ZONING BOARD MEETING**

November 2, 2022 7:30 pm

Town Hall Meeting Room  
323 Charlton Road  
Ballston Spa, NY 12020

**ATTENDEES:**

Mike Lesniak, Chairman  
Steve Merchant, Vice Chairman  
Annetta Dunham, Board Member  
Joanne Hull, Board Member  
Tim Long, Board Member  
Dan Mertzluft, Board Member  
Patrick Whitton, 2<sup>nd</sup> Alternate  
Matt Vaverchak, Code Enforcement Official  
Bill Keniry, Attorney

**ABSENT:**

Samuel Dorsey, 1<sup>st</sup> Alternate  
Robin Kane, Board Member

**Call to Order**

The meeting was called to order at 7:30 pm.

**Pledge of Allegiance** was led by Mr. Merchant.

**Approval of Previous Minutes**

**MOTION:** Mr. Merchant made a motion to accept the October 5, 2022 meeting minutes as drafted. Mr. Long seconded the motion. All in favor. **CARRIED.**

**OLD BUSINESS**

**Burnt Hills Family Dental Area Variances (ZBA 2022-012)**

154 Lakehill Road; SBL 257.10-1-75

Application for an area variance for expanding a nonconforming business, and a side yard setback area variance for a proposed building addition to an existing dental clinic. SEQR Unlisted Action, closed.

**Mr. Patrick Mulkern** of Colliers Engineering & Design and **Ms. Kristen Houghten** of Hyman Hayes Associates, LLC represented the applicant, **Mr. James Hansen** of Burnt Hills Family Dental.

**TOWN OF BALLSTON  
ZONING BOARD MEETING**

November 2, 2022 7:30 pm

Town Hall Meeting Room  
323 Charlton Road  
Ballston Spa, NY 12020

Chairman Lesniak stated that the Board went through everything last month and was pretty much in agreement. At that time, they didn't have the Saratoga County Planning Board referral response, but they do now; he read the comments aloud:

Although related to site plan review, the Board questioned how access will be gained to the garage structure and whether or not the existing curb cut onto Lake Hill Road will be abandoned since the proposed addition impedes the use of the existing driveway.

Mr. Mulkern stated that in speaking with the applicant, he confirmed that they will propose removal of the curb cut.

Chairman Lesniak stated that the County mentioned a garage; he thought it was just an addition.

The applicants stated that there is an existing garage; it will be a shed.

Chairman Lesniak asked where the addition is on the drawing.

Mr. Mulkern stated that it is the hatched area on the drawing and indicated the location.

Chairman Lesniak polled the Board for questions; he stated that SEQR was done and the Public Hearing was extended.

Mr. Mulkern stated that, after reading the minutes from last month's meeting, he wants to clarify that the variances they are applying for are the 8.2-foot side setback variance and the extension of a nonconforming use structure in the Hamlet District. They are not applying for a minimum lot size area variance; he wants to confirm that the correct variances are being considered.

Chairman Lesniak stated that they are just coming in for the side yard and expansion of an existing nonconforming use.

Mr. Mulkern stated that that is correct. The minutes from last month said that the minimum lot size was the second variance they are applying for because the lot size does not meet code, but they are not applying for a variance for that. In speaking with the Town Code Enforcement Officer, that is an existing condition and the project is not affecting that, so only the nonconforming use and the side setback are the two variances that they are applying for.

Chairman Lesniak stated that in the past the Board went into that, so that it was documented. He asked Mr. Vaverchak to comment.

Mr. Vaverchak stated that all of his discussions with Mr. Stickles (Code Enforcement Official) pertained to the area variances, not a use variance.

Mr. Lesniak stated that it's not a use variance.

Mr. Mulkern stated that they initially submitted a fee of \$300 to account for the three variances. The Code Enforcement Officer in the Building Department corrected him that the third variance was not needed for the lot

**TOWN OF BALLSTON  
ZONING BOARD MEETING**

November 2, 2022 7:30 pm

Town Hall Meeting Room  
323 Charlton Road  
Ballston Spa, NY 12020

size and refunded the extra \$50. He just wants to make sure that the two variances they are applying for will show up in the resolution, and that the minimum lot size variance does not show up in the resolution.

Chairman Lesniak asked Mr. Vaverchak if he is okay with that as he is representing the Building Department.

Mr. Vaverchak stated that his department determined that it is a preexisting nonconforming use.

Chairman Lesniak stated that there's no question about that and asked for Mr. Keniry's opinion.

Mr. Keniry stated that with the clarification having been made by the applicant on the record, that should be sufficient.

Chairman Lesniak polled the Board for questions; there were none. He stated that they should close the Public Hearing.

Mr. Keniry stated that the Public Hearing was closed on October 5, 2022.

Chairman Lesniak stated that he thought they left it open in case something came up.

Mr. Merchant stated that he thought it was contingent on getting the paperwork back from the County.

Mr. Keniry stated that the Public Hearing is closed but the vote on the application itself was contingent; the Board stopped short on the vote.

Chairman Lesniak stated that everything else is done and the area variance criteria were read aloud last month.

Mr. Keniry stated that the Board stopped short of the vote; he suggested starting from the beginning in terms of addressing the vote on the merits of the application. He stated that he would state the nature of the relief, the 8.2 feet, and the section of Code being discussed is §138-6 (C). That's the extension; limited extension of nonconforming use may be allowed by the ZBA (Zoning Board of Appeals). That covers it.

Mr. Merchant asked if the 0.177 is the area variance the applicants need.

Chairman Lesniak answered no and stated that they don't need the lot size variance, just the side yard setback and the fact that there's an extension of a nonconforming use for the §138-6 (C).

Mr. Keniry answered affirmatively and explained how to state the motion: it is relief in the nature of 8.2 feet for a side yard setback and acknowledging an extension of the preexisting nonconforming use. The citation is §138-6 (C).

**MOTION:** Mr. Merchant made a motion to approve the zoning changes for the James Hansen dental clinic at 154 Lakehill Road; §138-6 (C) for the extension of the preexisting nonconforming use and the side yard setback variance of 8.2 feet. Mr. Long seconded the motion. All in favor. **CARRIED.**

Chairman Lesniak thanked the applicant for bringing it to the Board's attention.

The applicants thanked the Board.

**TOWN OF BALLSTON  
ZONING BOARD MEETING**

November 2, 2022 7:30 pm

Town Hall Meeting Room  
323 Charlton Road  
Ballston Spa, NY 12020

**20 Sherwood Lane Area Variances (ZBA 2022-014)**

SBL 257.10-1-7

Application for side yard setback and rear yard setback variances for the construction of a garage. SEQR Type 2 Action, closed. Public Hearing scheduled.

**Ms. Heidi Childs and Mr. Chad Wallimann** of 20 Sherwood Lane.

Chairman Lesniak stated that the applicants are looking for side yard and rear yard area variances. 20 feet is required for each, and they have five feet, so they need 15-foot variances. He stated that the Board covered everything at the last meeting except the Public Hearing, which is tonight. He polled the Board for questions; there were none.

Public Hearing open at 7:43 pm.

No one chose to speak.

Public Hearing closed at 7:44 pm.

Ms. Dunham read aloud the area variance criteria for the Board to consider:

- [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (Board members stated no.)
- [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (Board members stated no.)
- [3] Whether the requested area variance is substantial; (Board members stated yes.)
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (Board members stated no.)
- [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance. (Board members stated yes.)

Chairman Lesniak polled the Board for questions; there were none.

**MOTION:** Mr. Merchant made a motion for 20 Sherwood Lane for the construction of a garage in the back; zoning law §138-131 (G) for a side yard setback area variance of 15 feet and a rear yard setback area variance of 15 feet. Ms. Hull seconded the motion. All in favor. **CARRIED.**

The applicants thanked the Board.

**TOWN OF BALLSTON  
ZONING BOARD MEETING**

November 2, 2022 7:30 pm

Town Hall Meeting Room  
323 Charlton Road  
Ballston Spa, NY 12020

**92 Connolly Road Area Variances (ZBA 2022-015)**

SBL 239.10-2-10

Application for a variance for two accessory structures within the high-water mark. SEQR Type 2 Action, closed. Public Hearing Scheduled.

**Mr. Jim Hathaway** represented Mr. Michael Palma, property owner of 92 Connolly Road.

Mr. Hathaway stated that he is filling in for Mr. Palma as he and his wife are on vacation.

Chairman Lesniak stated that the Board covered everything last month except the Public Hearing. The application is for 92 Connolly Road; the applicant wants to install an inground swimming pool. The problem is that he wants to put two accessory structures within the high-water mark. He stated that the Board came to the conclusion that all the houses there are in the high-water mark; how are they going to deny an inground swimming pool.

Public Hearing open at 7:47 pm.

There were no members of the public present.

Public Hearing closed at 7:48 pm.

Ms. Hull stated that they discussed fencing at the last meeting. She asked if they are planning to install a pool alarm; she had to install one when she installed a pool. She stated that she thinks it is a NY State law.

Mr. Vaverchak stated that it's a NY State requirement.

Mr. Hathaway stated that Mr. Palma said he will do everything around the pool per State code.

Ms. Hull stated that you're supposed to put an alarm in so that if a child or someone comes in, the alarm rings in the house.

Mr. Long asked if it detects motion.

Ms. Hull answered affirmatively and stated that if it detects motion it rings in the house. She suggested that Mr. Hathaway pass that information along to the applicant.

Mr. Hathaway stated that he thought it was only if the pool was attached to the back of your house.

Ms. Hull stated that he would have to ask the Building Inspector, but it is her understanding that the law says it doesn't matter what kind of pool it is, you must have it.

Mr. Vaverchak stated that there's the pool alarm for the pool itself; any door or window with direct access to the pool area will require an alarm as well. If the pool is in a fenced area by itself then the house doesn't require any alarms, just the pool.

Ms. Hull stated that a hot tub doesn't need an alarm, but the pool does.

**TOWN OF BALLSTON  
ZONING BOARD MEETING**

November 2, 2022 7:30 pm

Town Hall Meeting Room  
323 Charlton Road  
Ballston Spa, NY 12020

Chairman Lesniak stated that he is thankful to his colleague for bringing this up as the Board hasn't done anything with this before.

Ms. Hull stated that she noticed that it's not in the Town ordinance; someone reading it would know that they have to install a fence, but it doesn't say the pool has to be alarmed. Maybe when people come to the Building Department for a pool it should be an addendum, so people know.

Mr. Vaverchak answered affirmatively.

Ms. Dunham stated that the applicant's plans state: fenced to meet existing pool code equipped with pool alarm.

Ms. Hull stated that it wasn't brought up at the meeting; the Board needs to be address it so that the applicant is aware.

Chairman Lesniak asked Mr. Vaverchak if the same rules apply to an above-ground pool.

Mr. Vaverchak stated that the same requirements apply: the side of the above-ground pool meets the barrier requirements as long as the pool is 48 inches in height. If an above-ground pool is partially backfilled, it must meet the 48-inch threshold, or another barrier is required.

Chairman Lesniak stated that he just wanted to know.

Mr. Vaverchak stated that he'd like to make Mr. Hathaway aware that if things move forward at this level, if the work being done in the future requires fill, etc., he highly recommends looking at the waterfront zoning district requirements for grading and filling because it could trigger the Planning Board stage.

Mr. Hathaway, Mr. Vaverchak, and Mr. Keniry discussed the requirements; Mr. Vaverchak stated that the applicant must meet the requirements that the Department of Environmental Conservation (DEC) provided to him.

Mr. Merchant asked if the motion should state: to install the two structures in the high-water mark area.

Mr. Keniry stated that the permission granted, if the Board is so inclined, would be for the relief that the applicant may construct two accessory structures between the shore and the high-water mark as depicted on the map dated September 13, 2022.

Chairman Lesniak asked if it should mention the pool alarm.

Mr. Keniry stated that it's in the minutes and is part of State code but if Ms. Hull wants to add it, it's no problem.

Ms. Hull stated no, as long as the applicant is aware; she thinks people are shocked when they find that out.

Ms. Dunham read the area variance criteria for the Board to consider:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (Board members stated no.)

**TOWN OF BALLSTON  
ZONING BOARD MEETING**

November 2, 2022 7:30 pm

Town Hall Meeting Room  
323 Charlton Road  
Ballston Spa, NY 12020

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (Board members stated no.)

[3] Whether the requested area variance is substantial; (Board members stated no.)

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (Board members stated no.)

[5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance. (Board members stated no.)

Chairman Lesniak polled the Board for further questions or comments; there were none.

**MOTION:** Mr. Merchant made a motion for 92 Connolly Road for construction of two accessory structures between the shore and the high-water mark; this is a Type 2 Action under SEQR and is exempt from review. Mr. Whitton seconded the motion. All in favor. **CARRIED.**

**NEW BUSINESS**

**Katz Outlet Road Area Variances (ZBA 2022-016)**

SBL 239.-1-80

Application for a lot size area variance and lot width area variance for a minor subdivision for four residential building lots.

There was no representation for the Katz Outlet Road project this evening.

**MOTION:** Ms. Dunham made a motion to table Katz Outlet Road Area Variances for a minor subdivision of four lots. Mr. Whitton seconded the motion. All in favor. **CARRIED.**

**MOTION:** Mr. Whitton made a motion to adjourn the meeting. Mr. Mertzlufft seconded the motion. All in favor. **CARRIED.**

Meeting was adjourned at 7:56 pm.

Respectfully submitted,

*Kerri Mains*

Kerri Mains  
Zoning Board Secretary