

MINUTES OF THE REGULAR MEETING
MAY 22, 2006

The Regular Meeting was called to order by Chairman Randy Bogar at 7:00 P.M. Board Members present were Tim Tallman, Fred Kiehm, Kristen Shaheen, Bob Schulman, John Montrose and Steve Welty. Also in attendance was Councilmen David Reynolds and Codes Enforcement Officer Joseph Booth. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting.

The application of **Mr. Michael Kem, 207 Higby Road, Utica, New York (Town of New Hartford)**, who is requesting to construct a second floor onto the existing one-story structure on the back of their home. Zoning in this area is Low Density Residential, which requires a 15' side yard setback and this structure will be 10' from the side property line, thus necessitating a 5' right side yard setback Area Variance. Tax Map #329.020-7-52; Lot Size: 85' x 165'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on May 11, 2006 and residents within 500' were notified.

Mr. Kem was present with his architect, Mr. Andy Alesia. The applicant stated that they need the additional living space and they are not exceeding the existing home. The same siding will be used to match the existing house and the entire roof will be done over. They stated this cannot be achieved by any other method. Mr. Kem presented letters of support:

- Mr. & Mrs. Patrick Quinn, 208 Higby Road
- Mr. & Mrs. Howard Feldman, 209 Higby Road
- Mr. & Mrs. Steven Cooke, 212 Higby Road
- Mr. & Mrs. Marc Vetter, 2 Allen Road

County 239 Review was received with no comments.

Chairman Bogar asked if there was anyone present to address this application. There being no input, the Public Hearing was closed.

The Board Members went through the criteria 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 addition will enhance the property.
- 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 – the response was no as it will enhance the area.
- The alleged difficulty was self created, which consideration shall be relevant to the decision – response was no.

Motion was made by Board Member Fred Kiehm to grant the Area Variance request as a need has been demonstrated; 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 Kristen Shaheen – yes
Board Member Bob Schulman – yes
Board Member Steve Welty – yes

Board Member John Montrose – yes
Board Member Tim Tallman – yes
Board Member Fred Kiehm – yes

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

The application of **Mrs. Deborah Fitzgerald, 8 Twyndom Terrace, New Hartford, New York**, who is requesting to construct a 14' x 25' addition to her existing garage. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback and this garage will be 7' from the side property line. Therefore, the applicant is seeking an 8' left side-yard setback Area Variance. Tax Map #339.019-1-42; Lot Size: 100' x 174'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on May 11, 2006 and residents within 500' were notified. Mr. & Mrs. Fitzgerald appeared before the Board.

The Fitzgerald's explained that they need the additional garage space to accommodate their vehicles. The siding and roof materials will match. Their neighbor most affected does not have any opposition. They proposed to have two (2) 9' doors. They do not anticipate any drainage problems.

Mr. Fitzgerald was asked if this could be accomplished by any other means – he responded no.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing was closed.

The Board reviewed the plot plan as presented.

At this time, the Board reviewed 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 – that others in the neighborhood have done the same.
- 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 – the response was no as it will enhance the area.
- The alleged difficulty was self created, which consideration shall be relevant to the decision – response was no.

There being no further discussion, motion was made by Board Member John Montrose to grant the Area Variance of the Fitzgerald's as they have met the criteria; that the siding and roof materials will match; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Steve Welty. Vote taken:

Chairman Randy Bogar – yes
Board Member Kristen Shaheen – yes
Board Member Bob Schulman – yes
Board Member Steve Welty – yes

Board Member John Montrose – yes
Board Member Tim Tallman – yes
Board Member Fred Kiehm – yes

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

The application of **Mrs. Marybeth Zalewski, 10 Glencrest Boulevard, New Hartford, New York**, who is requesting to construct a front porch with roof onto the front of her existing home. Zoning in this area is Low Density Residential, which requires a side-yard setback of 15' and the porch will be approximately 13 ½' from the side property line. Therefore, the applicant is seeking an approximate 1.5' side-yard setback Area Variance. Tax Map #339.016-1-17; Lot Size: 119' x 134'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on May 11, 2006 and residents within 500' were notified. Mrs. Zalewski appeared before the Board.

Mrs. Zalewski stated that the porch will come flush with the house. The porch is in front of the house not the garage. Mrs. Zalewski said she has owned the house for twelve (12) years. Codes Enforcement Officer Booth stated that she meets the front setback but requires a side yard setback. It will be a wood porch with shingles to match the existing home. She presented a letter from Mr. Brad Davis, 12 Glencrest Boulevard who supports her application.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing was closed.

The Board 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 – that it would enhance the area.
- 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 – the response was no as it will enhance the area.
- The alleged difficulty was self created, which consideration shall be relevant to the decision – response was no.

Motion was made by Board Member Bob Schulman to grant the Area Variance of Mrs. Zalewski in that a need/improvement was demonstrated; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Kristen Shaheen. Vote taken:

Chairman Randy Bogar – yes
Board Member Kristen Shaheen – yes
Board Member Bob Schulman – yes
Board Member Steve Welty – yes

Board Member John Montrose – yes
Board Member Tim Tallman – yes
Board Member Fred Kiehm – yes

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

INTERPRETATION for Mr. Donald Backman, 3847 Oneida Street, Washington Mills, New York 13479. Mr. Backman is seeking an interpretation as to whether the business that was operating at 3847 Oneida Street (Jim's Valley Garage) constituted a legal retail auto dealership or whether or not he was granted a Use Variance to operate an

auto dealership on February 27, 1975. Tax Map #339.020-1-53; Lot Size: 0.12 Acres; Zoning: Retail Business 2. Mr. Backman appeared before the Board.

Mr. Backman stated that he bought the property in October 1974 with the express interest in fixing and selling cars. Former Codes Officer Leslie Dean had told him this was an allowed use. However, upon filing for the Building Permit, he was denied a permit and sent to the Zoning Board for a Use Variance. The Use Variance was denied and Mr. Backman hired an attorney and reapplied. The Zoning Board, at that time, determined that a Use Variance was not necessary and Mr. Backman could use the property for auto sales and service. In the late 1980's/90's, Mr. Backman left the business and then leased the property to someone who conducted an auto service and he felt the lease included a covenant to reserve the right to use the property for auto sales and office space. This business closed in 2004 – it was known as Jim's Valley Garage and he just fixed cars, did not sell them.

Mr. Backman said Codes Enforcement Officer Booth called to tell him he could not use the property for auto sales. Backman stated that nearby businesses sell cars and he had applied for a variance thirty (30) years ago to do so. He wanted to know how many times he needed to go back to the Zoning Board on the same property – he's the same person with the same use.

Chairman Bogar addressed Codes Enforcement Officer Booth's letter of February 6, 2006 wherein it was stated that the Department of Motor Vehicles did not have a prior registration for a use as a Retail Motor Vehicle Dealership.

He felt there is not a lot of use for a concrete two-bay garage. He feels the use is attached to the property.

Codes Enforcement Officer Booth was asked to read the allowed uses in an RB1 zone, which allows auto sales because the former Pharmhouse Plaza is routinely used for occasional auto sales (this plaza is zoned RB1).

It was determined that Jim's Valley Garage did not sell cars, excluded by lease and was there for twelve (12) years.

Board Member Tallman asked if he had interest in the cars –Mr. Backman said no, he enjoyed the profit from sales. He owns the land but others have sold cars.

Board Member Schulman asked when the last car was sold. Mr. Backman said last year. The current business there, he does not get any profit of car sales.

Reference was made about a 29th covenant and the lease was read. Board Member Shaheen said the lease carries out exception but if not permitted by zoning, it is still not legal.

Codes Enforcement Officer Booth said he did not notice a registered NYS auto dealership sign prior to the current size that has been erected; the property is zoned RB2 which doesn't allow auto sales; he notified Mr. Backman of this; he met with Mr. Backman and the Town Attorney; gave formal notice to Mr. Backman and Mr. Backman decided to go for this interpretation.

Board Member Kiehm asked Mr. Booth, does auto repair fall under RB2 – Mr. Booth said auto repair is allowed, but not the sale of vehicles, simply a service station – no body repair. Mr. Booth said anyone can sell five (5) cars per year from their property in New York State.

Board Member Tallman asked if he had proof of cars sold – Backman supplied a letter from a Mr. Peters that stated he sold cars from this property. Mr. Backman retained the copy of this letter because it was his only copy.

Mr. Michael Duffy, 3859 Oneida Street addressed the Board stating he has his business next door and he can't sell his property as a used car lot; he's grandfathered in but is a registered dealer; he has sold vehicles for thirty (30) years with a sign and has a Motor Vehicle MV-50 dealer in there. He feels this Board would set a precedent.

Codes Officer Booth stated that a grandfathered use is good as long as use not discontinued more than one (1) year

Mr. Abounader wanted to put cars on Mr. Duffy's lot – neighbors don't want this – balloons, etc. State legal dealership to grandfathered in – would like to buy the Duffy property but maybe not with the sale of cars next door.

Mr. Backman said all cars sold by registered dealer, by MV-50's; had inspection sign, had used car certificate; NYS never looked for use car sign. Mr. Backman presented pictures of the property within ten (10) years but not given for file.

Mr. Backman said in the early 1990's he gave up a license to sell and again sold the last car sold under other license ended 2004-2005.

Codes Enforcement Officer Booth stated the neighbors in this area were not notified of this interpretation as it is before the Board only for discussion – only notified when an application is made.

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Board Member Welty referred to the use going with the property. Board Member Tallman mentioned that the use lapsed. Board Member Kiehm questioned whether a Use Variance was required.

The Board Members agreed that it was a permitted use in 1975 but stopped being a permitted use in 1999 when the zoning went from B2 to RB2. Board Member Kiehm felt it officially stopped in 1990 for sales.

Board Member Montrose felt no proof was submitted that tenants had a license to sell cars.

Codes Enforcement Officer Booth said the DMV had no record of retail auto dealership for fifteen (15) years and a vehicle cannot be sold from the property without a NYS Retail Dealership sign being posted.

Chairman Bogar stated Jim's Valley Garage did not sell cars.

Motion was made by Board Member Tim Tallman for an interpretation to Mr. Backman that they agree with Codes Enforcement Officer Jerry Back's interpretation of the Zoning Law that the business ran without a certified NYS retail dealership license for more than one (1) year and doesn't conform with RB2 zoning; and that no proof was submitted to support Mr. Backman's claim; seconded by Board Member Montrose. Vote taken:

Chairman Randy Bogar – yes	Board Member John Montrose – yes
Board Member Kristen Shaheen – yes	Board Member Tim Tallman – yes
Board Member Bob Schulman – yes	Board Member Fred Kiehm – yes
Board Member Steve Welty – yes	

Motion for denial was approved by a vote of 7 – 0.

The next Zoning Board of Appeals meeting will be Monday, June 19, 2006.

There being no further business, the meeting adjourned at 8:30 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

*Notes were taken by Board Member Kristen Shaheen in Dory Shaw's absence.