

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
OCTOBER 26, 2009**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present were John Montrose, Bob Schulman, Fred Kiehm, and Tim Tallman. Also in attendance was Councilman David Reynolds, Codes Enforcement Officer Joseph Booth and Dory Shaw, Secretary . Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members, in particular, the newest Board Members: Karen Stanislaus, Esq. and George Koury II; and explained the procedures for tonight's meeting.

Mr. Michael McCarthy, Longworth Acres, Tibbitts Road, New Hartford. Mr. -The application of Mr. Michael McCarthy regarding vacant Lot #2 at Longworth Acres, Tibbitts Road, New Hartford, New York. Lot 1 will/may compromise the average setback required for Lot 2. Applicant is seeking an Area Variance to keep the minimum setback on Lot 2 at 149'. Tax Map #339.000-2-21.11; Lot Size: approximately 10 Acres; Zoning: Residential/Agricultural 2. Legal Notice was published in the Observer Dispatch on October 9, 2009 and residents within 500' were notified. Mr. Earl McCarthy appeared before the Board. Representing his son, Michael.

Codes Enforcement Officer Joseph Booth stated that this application is a precautionary step in the event Mr. McCarthy builds a house on the deep lot first – he'd like a variance in advance so there is no hold up. The Town has an average setback from the property line. Two existing homes are already set back 149'. If he goes back 400', it would affect up the average setback. The applicant is seeking a future Area Variance to meet the average setback of 149' of the existing houses so it will be in line with these existing homes – it will be no closer to the road. He explained that you could go back further, but no closer than 149'. Mr. McCarthy is trying to be proactive at this time.

Chairman Bogar asked how far back the property goes – Codes Officer Booth said it backs up to Snowden Hill Road.

Board Member Montrose asked Codes Officer Booth to explain the setback requirements again as he had concerns. He explained that there is a minimum requirement except you have to meet the average setback. This applies to houses within 300' to the left and 300' to the right and those houses are already in.

Chairman Bogar asked if there was anyone present to address this application. There was no response. The Public Hearing closed at 6:15 P.M.

County 239 Planning and County 239 DPW comments have been made a part of the file stating no adverse impacts. The Board Members reviewed the file and went thru 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 – no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no;
- The requested variance is substantial – no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – possibly.

Motion was made by Board Member Bob Schulman to approve the application as presented; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar – yes	Board Member Tim Tallman – yes
Board Member Bob Schulman – yes	Board Member John Montrose – no
Board Member Fred Kiehm – yes	Board Member George Koury – yes
Board Member Karen Stanislaus - yes	

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

Mr. Antonio Cristiano for property at 3917 Oneida Street, Washington Mills, New York. Mr. Cristiano is requesting to sell dessert items at a vacant section of his building at 3917 Oneida Street. This request violates the Zoning Board of Appeals approval of July 21, 2008 at this site, therefore, the applicant is seeking a Use Variance to place desserts at this site. Tax Map #339.016-1-72/70; Lot Size: 100' x 73'; Zoning: Retail Business 2. Legal Notice was published in the Observer Dispatch on October 9, 2009 and residents within 500' were notified. Messrs. Antonio and Frank Cristiano appeared before the Board.

Mr. Frank Cristiano stated that he would like to get some income for his vacant rental property – it has been in the hands of a realtor for about a year. He has baked goods at his pizzeria building but would like to bring desserts to the new location for sale – there

would be no production on the site – just retail in nature. He's hoping for a larger clientele and he would like to have the desserts not associated with the pizzeria. He is looking to have a new name, Sweet Toot, for his business. This portion of the building is only 1100 sf. He tried to get office space rented but to no advantage.

Chairman Bogar referred to the seven (7) variances given to him on July 21, 2008 where there would be no food. When he appeared at that time the Board reviewed this site for a lesser type use, mercantile or office and he believes that is why this Board looked at the parking situation also.

Mr. Frank Cristiano said it would look better for the Town to have this vacant portion of the building occupied. Board Member Kiehm asked how many customers he may have as he is concerned about parking – Mr. Cristiano said he hopes to have about 50-75 customers through the door a day. He doesn't feel there would be an impact to parking or traffic – other adjacent business owners have people park at the site – people are in and out of that site all day. Mr. Cristiano said he could always walk his products up to the site from where they are located now in his back building. He intends to close at 6:00 P.M. Mr. Cristiano said because of the commercial area, this is a good place for him to sell his products – why rent in another area of the Town when he has this site available.

Board Member Tallman asked he was going to have tables – Mr. Frank Cristiano said just a waiting table – no serving – as he would like to have a place for his customers to place their orders. His business is featured toward wedding cakes, chocolates, pastries. Board Member Tallman asked if he was going to have beverages – Mr. Antonio Cristiano said he would like to offer coffee and cappuccino and would like a few tables and chairs.

Board Member Stanislaus referred to Mr. Frank Cristiano's comments regarding the expansion of the business for the baked goods; that Mr. Cristiano can do more volume to move the baked goods/desserts out of the existing location and bring it up front; to change the name to Sweet Tooth so people would recognize the dessert business and not associate it with the pizza business. He will still sell some baked goods at the pizza business but wants to feature them at another location.

Discussion ensued regarding tables/chairs at this location, which some Board Members felt could attract more customers with a coffee-shop type atmosphere. At this time, Mr. Antonio Cristiano became upset and very vocal about discussion of the tables/chairs and coffee/cappuccino and directed his comments to the Board Members.

Board Member Schulman asked Codes Officer Booth, with this type of use, what is the required parking – Mr. Booth said no increase – the variance previously granted based this on a mercantile or office use – the entire spot has 9 parking spaces – just the one building, which is a separate property. He would have been required to have 12 spaces, but this Board granted him the parking variance. The only variance is for the food sales.

Board Member Montrose tried to review the request with Mr. Antonio Cristiano.

Chairman Bogar addressed the responses of NYSDOT, County 239 Planning, County DPW 239 (which have been made a part of the file) and they addressed no negative impacts.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 6:40 P.M.

The Board Members addressed the parking situation at this site, traffic, and previous variances granted to this site. Especially the parking spaces as he felt this Board thought a lower type use would be at this site. Board Member Kiehm is concerned about this becoming a coffee/pastry shop. Chairman Bogar mentioned sometimes it makes it difficult to put so many restrictions to have Codes reviewing what we may have as restrictions. He felt that the original request/restrictions were made by them and not us.

Board Member Montrose doesn't see anything wrong with a bakery that sells coffee – he felt tables aren't needed; just the availability of getting a baked good and cup of coffee and leaving.

Board Member Koury is comfortable with this request as long as it is strictly baked goods – people picking them up and leaving. Although, he doesn't have a problem with having coffee if it is kept at a minimum.

Chairman Bogar opened the meeting again at 6:45 P.M. Mr. Frank Cristiano asked if he eliminated the tables, would this Board be more receptive - the consensus was yes, it would. Mr. Frank Cristiano would like to sell coffee but he doesn't need the tables to do it – there will be counters on site. Mr. Antonio Cristiano again expressed his opposition to not having tables/coffee/cappuccino. The Public Hearing closed again at 6:50 P.M.

Board Member Stanislaus feels when you have a cake or coffee shop, you will need tables because people will come in and want to sit – that is the nature of this that type of business. It lends itself to that type of use in her opinion. Perhaps the applicant would want another request next year is the business is doing well. Monitoring becomes a problem.

Board Member Tallman felt that if they had tables and people can't get in, then it is the applicant's loss.

Board Member Schulman expressed his concerns with tables and coffee availability at this location.

The Board Members reviewed the material submitted and went through the criteria necessary for a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – the property has been vacant for at least 12 months with the information in the file;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – no;
- The requested variance, if granted, will not alter the essential character of the neighborhood – no;
- The alleged hardship has not been self-created – no.

Motion was made by Board Member Bob Schulman to grant the application to sell desserts and coffee at this premises with the condition that it is a to-go use with no tables and chairs, and no people to eat in and congregate at the site; also, no ovens and no on-site baking; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes
Board Member Bob Schulman – yes
Board Member Fred Kiehm – nay
Board Member Karen Stanislaus - yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member George Koury – yes

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

Mr. Frank Cristiano was asked if these conditions are satisfactory with him – Mr. Frank Cristiano said yes.

The application of **Dr. Fayez Chahfe, 131 Sylvan Way, New Hartford, New York** (who is represented by Mr. John Rich, Contractor). The applicant is requesting a 60' x 140' x 30' accessory building. The average height of the proposed building is 25'. This property is zoned Low Density Residential which precludes any building from exceeding 15' in average height. Therefore, the applicant is seeking a 10' average height Area Variance. Tax Map #330.018-3-12; Lot Size: 10" Acres; Zoning: Low Density

Residential. Legal Notice was published in the Observer Dispatch on October 9, 2009 and residents within 500' were notified. Dr. Fayeze Chahfe and Mr. John Rich appeared before the Board.

Mr. Rich explained the location of this structure, which is about 800' back in the woods – not seen from the road. Mr. Rich met with the adjacent property owners and they had no objection. He explained that Dr. Chahfe's recreation is tennis and basketball with his children and he needs the height to accommodate this activity. The building will be steel siding, and earth tones.

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

- Mr. J. Webber, 134 Sylvan Way – he got a notice and wanted to see the plan.
- Mrs. Cathy Newell, 206 Stonegate Road – she is not in opposition.

At this time, the Public Hearing closed at 7:25 P.M.

The Board Members reviewed the application, especially the location of the structure.

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

Motion was made by Board Member John Montrose to approve the application as presented; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member George Koury. Vote taken:

Chairman Randy Bogar – yes
Board Member Bob Schulman – yes
Board Member Fred Kiehm – yes
Board Member Karen Stanislaus - yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member George Koury – yes

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

The application of **Mr. Gordon Tibbitts, 8874 Tibbitts Road, New Hartford, New York**. Mr. Tibbitts is requesting a 30' x 36' addition to the back of his existing sap house. This expansion would require 10 acres in an RA2 zone and the applicant has 2.11 acres. Therefore, the applicant is seeking an Area Variance of 7.89 Acres. Tax Map #339.000-2-11; Lot Size: 2.11 Acres; Zoning: Residential/Agricultural 2. Legal Notice was published in the Observer Dispatch on October 9, 2009 and residents within 500' were notified. Mr. Tibbitts appeared before the Board.

He presented photos of the existing building. He will be adding to the back of that building. The existing tanks he will move into the new addition. He may add tanks later on. At this time he has about 300 gallons of sap he ends up with. He hopes it will allow him to tap more trees and process more sap. This addition will allow him to buy more equipment to process more sap.

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

-Mr. Vincent Keavney, Tibbitts Road. He is concerned about a retail operation. He is not opposed to the application but he doesn't want to see a store.

Mr. Tibbitts said he sells syrup from the house and he doesn't do a lot of business; he deals with people on the telephone. He is not changing the way he does business, just adding on to increase his capacity.

There being no further input, the Public Hearing closed at 7:35 P.M.

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

Motion was made by Board Member Fred Kiehm to approve the application as presented; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member George Koury. Vote taken:

Chairman Randy Bogar – yes	Board Member Tim Tallman – yes
Board Member Bob Schulman – yes	Board Member John Montrose – yes
Board Member Fred Kiehm – yes	Board Member George Koury – yes
Board Member Karen Stanislaus - yes	

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

The application of **Mrs. Cheryllyn Tallman, 40 Jordan Road, New Hartford, New York**. The existing property is located in a Low Density Residential zone, which permits one (1) in-law apartment with a special permit. Applicant has created an additional apartment without permits and added two (2) additions without permits. Applicant is seeking a Use Variance to approve a second in-law apartment and an addition to an existing in-law apartment. Legal Notice was published in the Observer Dispatch on October 16, 2009 and residents within 500' were notified. Mrs. Tallman appeared before the Board.

Board Member Tim Tallman recused himself from the meeting at 7:36 P.M.

Chairman Bogar stated that this property at 40 Jordan Road is in Cheryllyn Tallman's name but he had the Town Attorney contact the Association of Towns to get a ruling from them if this is the proper venue for this application. Chairman Bogar continued stating that due to Tim Tallman's standing on the Zoning Board of Appeals, he wanted to ask any Board Member whether he/she feels they may have a conflict. If not, we will proceed accordingly and that every Board Member be objective. All Board Members said yes - they felt this application could proceed as presented and they could be objective.

Mrs. Tallman stated they bought the house with an in-law apartment and since the apartment was there, they wanted to Mr. Tallman's mother there so they would be able to take care of her. Also, she wouldn't have to worry about expenses. She is 82 years old and has become to experience health problems. They added a bedroom/apartment to the lower part of the garage so she could be moved downstairs. They enclosed the upstairs patio to eliminate the water problems that they experienced. They no longer have water problems.

Mrs. Tallman said neighbors on each side, behind them and across the road were contacted informing them of their application, and they signed a petition in favor (this has been made a part of the file) – there are 22 signatures. The Use Variance is for the downstairs.

Board Member Kiehm asked Mrs. Tallman, if we condition this to say in the future, for whatever reason, we did not allow them to rent to anyone else, would she be okay with this. Mrs. Tallman said she doesn't want anyone else on the property. This is the only grandparent her children have. Her son is downstairs to keep an eye on her as she has some mobility issues.

Board Member Koury felt as long as it is not for rent and is a family member, and the structure is set back far enough, he has no issue with it.

Board Member Stanislaus asked what the apartment consisted of – Mrs. Tallman said a bedroom, kitchen, bathroom and closet, and it is already there. The original apartment has been there since 1957 but the addition has been there for about 1 ½ years.

Chairman Bogar asked about not securing a Building Permit. Mrs. Tallman said she thought it was taken care of and it was not done intentionally at all. She just assumed it was taken care of.

Board Member Kiehm stated that if we consider and agree to this, we will have to require a building inspection to make sure it meets all Codes. Codes Officer Booth said he could not perform this inspection and that it would have to be done by a certified independent electrical inspector, and an engineer or architect. Board Member Kiehm said this Board could put reasonable conditions on it that this be used as an in-law apartment and never to be rented out – family use only.

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

Mr. Joseph Cifarelli, 6 Crawford Lane. He lives in back of Mrs. Tallman. He supports this application and noted that they have done a good job taking care of their property. He wasn't even aware of an apartment. He feels their application should be approved.

Chairman Bogar noted that in addition to the petition, Mr. & Mrs. Dropkin, 30 Jordan Road called in support of the application; and Mr. William Morris, Jordan Road, also called in support.

There being no further input, the Public Hearing closed at 7:45 P.M.

The Board Members reviewed the material submitted and went through the criteria necessary for a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – yes;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – yes;
- The requested variance, if granted, will not alter the essential character of the neighborhood – won't alter the neighborhood
- The alleged hardship has not been self-created – no

Chairman Bogar addressed the family/relative issue and enforcement of it. Codes Enforcement Officer Booth was asked by Board Member Kiehm, do regulations allow an in-law apartment. Codes Enforcement Officer Booth said it is referred to as an accessory apartment.

Motion was made by Board Member Fred Kiehm to approve the application as presented with the condition of family owned as far as the apartments are concerned and it passes inspections done by a certified independent electrical inspector, and an engineer or architect; and that any Building Permit be obtained immediately (per Codes Officer); seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar – yes
Board Member John Montrose – yes
Board Member George Koury – yes

Board Member Bob Schulman – yes
Board Member Fred Kiehm – yes
Board Member Karen Stanislaus - yes

Motion was **approved** by a vote of 6 – 0.

Chairman Bogar discussed meeting times for the future. It was decided that 6:00 P.M. should remain the meeting time.

There being no further business, the meeting adjourned at 8:00 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals