

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
MAY 17, 2010**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present were Tim Tallman, John Montrose, Bob Schulman, George Koury, and Fred Kiehm. Board Member absent: Karen Stanislaus. Codes Enforcement Officer Joseph Booth (arrived at 6:50 P.M.), 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, in particular that one (1) Board Member was absent and it was the decision of the applicant to proceed. He also noted that the meeting tonight is being videotaped.

The application of **Mr. Robert Greer, 3 Greatview Place, New Hartford, New York 13413**, who is proposing to replace his existing/dilapidated garage with a new 1 ½ stall (16' x 22') garage at the same location. Zoning in this area is Medium Density Residential which requires an accessory structure to be placed 5' from the rear property line and 5' from the side property line. Applicant is seeking a 3' left side yard Area Variance and a 4' rear yard Area Variance. Tax Map #328.016-5-40; Lot Size: 100' x 110'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on May 7, 2010 and residents within 500' were notified. Mr. Greer appeared before the Board.

Mr. Greer explained that his existing garage is too small for a car. Also, part of his neighbor's tree broke away onto his garage, it is falling apart and he is worried about it collapsing. He wants to tear it down and build a slightly bigger garage for a car, lawn equipment, etc. Materials will match the existing home. It will be built on the same footprint but about four (4) feet wider. It will not be any closer to the neighbor. Mr. Greer spoke to his neighbors and they have no opposition.

Chairman Bogar asked if anyone was present to address this application – there was no response. There were no calls or letters received. The Public Hearing ended at 6:10 P.M.

The Board Members were in agreement that the new garage is needed and Mr. Greer has demonstrated that need.

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 – no.

Motion was made by Board Member John Montrose to approve the application as presented as a need was demonstrated, i.e. will be built on the same footprint, and it will not encroach any further; materials will match the existing house; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

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

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

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

The application of **Mr. Roger Cleveland, 6 Helen Avenue, New Hartford, NY 13413**, who is requesting to add a 144 sf addition onto the rear of his existing home. Zoning on this property is Medium Density Residential. New Hartford Town Code 118-69A states a house cannot be expanded on a non-conforming lot. Therefore, applicant is seeking a 7' front yard Area Variance to expand to the non-conforming lot. Tax Map #328.016-1-38; Lot Size: 75' x 100'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on May 7, 2010 and residents within 500' were notified. Mr. & Mrs. Cleveland appeared before the Board.

Mr. Cleveland read from a prepared statement (which has been made a part of the file) with the reasons for the variance for the addition and the need. He referred to his lot as non-conforming at this time, and how the front setback did meet the requirements before 1981. He has many grandchildren and great-grandchildren and needs the additional living space. There are no significant environmental conditions in the neighborhood, the hardship was not self-created except by the Town, the addition will enhance the property/neighborhood, and no neighbors are in opposition. He wants to stay in this neighborhood and is willing to invest in his property.

Chairman Bogar asked if anyone was present to address this application – there was no response. There were no calls/letters received except County Planning 239 was received with no recommendation, and NYSDOT also had no recommendation. The Public Hearing closed at 6:20 P.M.

The Board Members felt that this application is a reasonable request and there is no other location on the property to construct this addition.

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 – no.

Motion was made by Board Member Bob Schulman to approve the application as presented as Mr. Cleveland has demonstrated a need, the materials will match the existing home; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

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

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

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

The application of **Ms. Virginia Roth, 58 Cascade Drive, New Hartford, New York 13413**. Zoning for her property is Low Density Residential which requires 120' of frontage. The applicant is seeking a 90' frontage Area Variance to be able to subdivide land into two (2) separate lots. Tax Map #340.007-1-49; Lot Size: 220' x 260'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on May 7, 2010 and residents within 500' were notified. Mr. Michael Bannigan appeared before the Board for Mrs. Roth.

He explained that Mrs. Roth is 87 years old and wants to sell some of her property – he would like to build a single family home. He contacted the Water Board and he can get water and the Town said he could hook into sewers. He has been working with Codes Officer Joseph Booth to prepare for this variance. The Board Members asked him about the location of the Town road and her property. He stated that 60' of it is at the end of the road. Where the driveway ends is where the frontage is. The rest is a private driveway. Her house is on a Town road – they are going to split the 60' frontage at the end of the road. There is an open lot cleared out and that is what he wants to buy, 220' x 260'. He further explained that Mrs. Roth has about 18 acres of land. If approved, this would require a minor subdivision application.

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

-Mr. Mark Cioch, 46 Cascade Drive. He supports this application, especially because the property is being planned for a single-family home. He wouldn't like to see any large development on the rest of her property.

-Mr. Sid Perry, Higby Road. He has no problem with this application.

There were no other calls or letters received, except County Planning 239 stating it was not subject to their review; City of Utica Planning was received with no recommendation.

There being no additional input, the Public Hearing closed at 6:35 P.M.

The Board Members felt the hardship is the owner's, and think what they are trying to do is good for the neighborhood and area.

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 – no.

Motion was made by Board Member Bob Schulman to approve the application as presented as the applicant has shown a need; approval would allow for a single-family home to be built on the property; and that Mr. Bannigan contact Codes Officer Joseph Booth regarding a subdivision, and building information; seconded by Board Member George Koury. Vote taken:

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

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

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

At this time, the Board Members took a brief recess from approx. 6:36 PM to 6:40 PM.

The application of **Mr. James Caramadre, 3 Cherrywood Boulevard, Clinton, New York (Town of New Hartford)**. Mr. Caramadre lives in Cherrywood Development which is located in a Planned Development Mobile Home zone. Applicant is seeking a 2.5' right side yard setback Area Variance to keep the existing shed in its current location. This zone requires a 5' right side yard setback, thus, the Area Variance request. Tax Map #328.000-2-26; Zoning: Planned Development Mobile Home. Legal Notice was published in the Observer Dispatch on May 7, 2010 and residents within 500' were notified. Mr. Caramadre appeared before the Board.

He was notified through Oneida County Health that he needed to move the existing wooden shed 6' feet from the edge of his home (in case of fire). Also, according to Codes, the shed needs

to be five (5) feet from the property line (the shed is about 2.5'). The shed has been there since 1991 and when he bought the house, it was still there. For the Health Department, instead of moving sheds, fireproofing them has been done and Mr. Caramadre said that is what he would like to do to keep the shed in its current location. Mr. Caramadre said he probably couldn't move the shed in its current condition as it is old and may come apart.

Mr. Ralph Humphreys spoke stating the reason why Oneida County Health is involved, and it was his understanding that if we grant the variance, it is okay with them.

Mr. Caramadre wanted to know if he needed to contact Oneida County Health when he does the sheetrock – it was stated yes.

County Planning 239 was received with no recommendation. NYSDOT also had no comments.

Chairman Bogar asked if there was anyone present to address this application – there was no response. There were no calls or letters received. The Public Hearing closed at 6:45 P.M.

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 – no.

Motion was made by Board Member Tim Tallman to approve the application as presented; and that Mr. Caramadre contact Codes Enforcement Officer Joseph Booth to do whatever is necessary for the required fireproofing; seconded by Board Member Fred Kiehm. Vote taken:

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

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

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

The application of **Mr. Anthony DeCarolis, 9270 Grange Hill Road, New Hartford, New York 13413**. Mr. DeCarolis' property is zoned Retail Business 2 which does not permit a storage use. Applicant is seeking a Use Variance to operate the current pole barn building as storage.

Tax Map #349.020-1-70; Total size of property: approximately 2 Acres; Zoning: Retail Business 2. Legal Notice was published in the Observer Dispatch on May 7, 2010 and residents within 500' were notified. Mr. DeCarolis and Mr. Steve Marcoccia appeared before the Board.

Mr. DeCarolis stated that he bought the property 20 years ago. He put this storage building up for his use (52' x 70'). It has become a financial burden and he has been trying to sell it for two years. It is commercial property with many uses, but does not allow for a storage use. He had two offers for a construction yard but he doesn't want to sell it for that type of use. He talked to some of the neighbors and he said they don't have a problem with the variance request. Mr. DeCarolis said Mr. Marcoccia and he came to an agreement on the property but Mr. Marcoccia can't store anything because he doesn't live there (Mr. DeCarolis is selling the property). Mr. Marcoccia wants to store cars/vehicles in that building. He feels the property has become unmarketable – no single-family home can be built there. Mr. Marcoccia's proposed use won't generate traffic. Mr. DeCarolis wanted to do the right thing and approach the Zoning Board for a variance – this is a lesser type use on this site and in this zone.

Mr. Marcoccia said he would be storing some expensive cars, and possibly some recreational vehicles – it will not be a body shop. The current zoning allows for a body shop but he does not want it – just a storage use. There will be no big signage there, perhaps just a small sign that would have a contact number.

Discussion ensued about the number of cars that could be stored at this site.

Chairman Bogar asked if there was anyone present to address this application – there was no response. There were no calls or letters received. The Public Hearing closed at 6:55 P.M.

The meeting was opened again at approximately 6:58 P.M. to address indoor storage only. The Public Hearing closed again at 7:00 P.M.

The Board Members reviewed the file and went thru the criteria necessary for the granting of 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 – it will not alter the neighborhood;
- The alleged hardship has not been self-created – yes.

Motion was made by Board Member George Koury to approve the application as presented for the storage of vehicles and recreational vehicles; that all storage be indoors; seconded by Board Member John Montrose. Vote taken:

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

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

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

Mr. Marcoccia said he may have to keep a vehicle outdoors a short time until he makes room for it inside but that would be the only time. Again, there will not be any outside storage.

The application of **Mr. Richard Widdicombe, 1711 Sherman Drive, Utica, New York 13501 (Town of New Hartford)**, who is requesting to install a low stone wall fence in his front yard on Sherman Drive. According to the Town of New Hartford Code 118-59D2, fences are prohibited in front yards. Therefore, the applicant is seeking a 25' front yard Area Variance for the stone wall fence. Tax Map #341.005-2-1; Lot Size: 160' x 200'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on May 7, 2010 and residents within 500' were notified. Mr. Widdicombe appeared before the Board.

Mr. Widdicombe presented pictures of his property and also a list of neighbors' statements who support his application (which has been made a part of the file). He has started to do some landscaping on his property, decorative trees, and sculpture. He would like to put in the low stone wall to be reminiscent of a farm years ago to tie into the landscaping. It would be aesthetically pleasing to the neighborhood. He and his wife will be doing the work.

Board Member Tallman asked Codes Officer Booth if a stone wall is considered a fence – Mr. Booth said yes.

Mr. Widdicombe explained the location of the stones on the property and they would not be in the right-of-way (he will use the tree line as a fence line and will get the surveyor to put a line through the property for him).

The Board Members felt the request was not substantial and that the fence would enhance the property.

Chairman Bogar asked if there was anyone present to address this application – there was no response. There were no calls or letters received. The Public Hearing closed at 7:10 P.M.

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 – no.

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 Fred Kiehm. Vote taken:

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

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

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

The application of **Mr. Donald Humphreys, 8633 Tibbitts Road, New Hartford, New York**, who is proposing to construct a 182 square foot one-story addition onto the rear of his home (applicant wishes to expand to a non-conforming building). The building is located in an Agricultural zone, which requires a 50' front yard setback and the existing home sets 47' from the front property line. Therefore, the applicant is seeking a 3' front yard Area Variance request. Tax Map #228.000-3-22; Zoning: Agricultural. Legal Notice was published in the Observer Dispatch on May 13, 2010 and residents within 500' were notified. Mr. Donald Humphreys appeared before the Board.

Mr. Humphreys explained that he needs the additional living space. This is the only location on the property where it could be built. There is 100 acres behind his house and this addition wouldn't affect anyone. Materials will match the existing home. The addition does not affect the front of the home at all, except for the setback.

Codes Officer Booth felt this setback law needs to be addressed.

Chairman Bogar asked if there was anyone present to address this application – there was no response. There were no calls or letters received. The Public Hearing closed at 7:16 P.M.

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 – no.

Motion was made by Board Member Bob Schulman to approve the application as presented as Mr. Humphreys needs the additional living space; the materials will match the existing home; 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 Fred Kiehm – yes
Board Member Bob Schulman - yes

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

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

There being no further business, the meeting adjourned at approximately 7:25 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

dbS