

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
SEPTEMBER 20, 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, Julius Fuks, Jr., and Fred Kiehm. Board Member absent: Karen Stanislaus. Also in attendance was Town Supervisor Patrick Tyksinski, Deputy Town Supervisor Matthew Bohn, Town Attorney Herbert Cully, 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. Minutes of August 16, 2010 approved by Board Member John Montrose; seconded by Board Member Julius Fuks, Jr. All in favor.

Chairman Bogar explained that there is one (1) Board Member absent this evening and it is the decision of the applicant whether to proceed.

Continuation of the application of Mr. Ned Walker of Walker Planning & Design for **Jay-K Lumber, 8448 Seneca Turnpike, New Hartford, New York**. The applicant's property is zoned Manufacturing which does not permit a mercantile occupancy. Therefore, the applicant is seeking a Use Variance to construct a 15,400 square foot mercantile occupancy. Tax Map #328.011-1-20.1; Lot Size: 13.97 Acres; Zoning: Manufacturing. This application was tabled at the August 16, 2010 meeting to be addressed further this evening. Mr. Ned Walker, Mr. Dean Kelly and Attorney Dan Cohen appeared before the Board.

Mr. Walker wanted to address the traffic study he submitted. They retained Lochner Engineering, Mr. Brian Mundrick, Traffic Engineer. Middle Settlement Road, Seneca Turnpike, Commercial Drive, Routes 5 and 5A have been studied with response to background traffic. The latest information they obtained was from NYSDOT 2008 traffic counts and accident report histories. Mr. Walker delivered the reports to NYSDOT, OC DPW, NH Police and OC Planning. (Reports were delivered on September 10, 2010 and mailed to Zoning Board members on September 13 or 14, 2010).

Mr. Walker feels this report is very understandable – it shows function of the intersections now and what level of service and the level of service with an Aldi's. He feels they are not degrading any of the intersections. Mr. Walker continued addressing left hand turns out of the site, the interior and location of Aldi's on the site.

Chairman Bogar referred to the agencies who responded and those who did not. Board Member Schulman would like to wait to hear from NYSDOT. Board Member Fuks has a concern as he looked at the numbers for what is transpiring at the intersection, auxiliary lane to see how it backs up. He would like a determination of the traffic study that could cause increased congestion and he didn't see any report where the auxiliary is addressed. Mr. Walker felt exhibits 2 – 8 and all of the different scenarios address this. Board Member Fuks would like to wait for the NYSDOT comments.

Mr. Kelly was asked about exiting onto Middle Settlement Road. Mr. Kelly said they have two properties but at this point he is not sure how big of a challenge it might be.

Board Member Montrose referred to parking spaces at the Yorkville Aldi's and the stackable cars on site. He feels this Aldi's may draw more people – Mr. Walker feels the numbers are not big but reasonable.

Chairman Bogar feels it is the consensus of the Board Members to wait for the specific agencies to respond and then proceed as they are interested in the comments. The Board Members agreed.

Mr. Walker reiterated that he has submitted whatever this Board needs and also addressed the criteria for a Use Variance.

Chairman Bogar will advise Mr. Walker of the next meeting date for this Board.

The application of **Mr. Michael Sheridan for #2 Ellinwood LLC**. The applicant is proposing to construct additional medical office space at the middle of the building at **2 Ellinwood Drive, New Hartford, New York**. The existing building is non-conforming – the existing structure is 12' too close to the front property line for the proposed use. Zoning in this area is RB1 which requires a 50' front setback for a medical building. The applicant is seeking a 12' front yard setback Area Variance. Legal notice was published in the Observer Dispatch on September 10, 2010 and residents within 500' were notified. Tax Map #316.020-1-8; Lot Size: 3.06 Acres; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on September 10, 2010 and residents within 500' were notified. Richard Compson, Esq. and Mr. Michael Sheridan appeared before the Board.

Attorney Compson explained that when they took ownership of the building, and as a result of the movement of the roads, it created a non-conforming use. Also, there were two (2) different zones at this location – now the same zone applies. They will be increasing the size of the building, adding a second floor. Mr. Sheridan referred to the map.

Board Member Kiehm asked if the 100 sf is not a part of the area that is out of spec – Attorney Compson said yes. Of the two (2) buildings, one is the drive-thru to enclose some of the space beneath the roof structure and there is about 100 sf of additional space created on the side of the building. This structure and the drive-thru canopy are non-conforming. This property is on a corner lot with double frontage.

Comments received were from OC DPW with no impacts; County Planning 239 – no comments. Chairman Bogar asked if there was anyone present to address this application - no response. There being no further input, the Public Hearing closed at 6:25 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, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no, all in agreement;
- The requested variance is substantial – no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no, all in agreement;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – no, all in agreement.

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 John Montrose. Vote taken:

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Julius Fuks - yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Bob Schulman - yes

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

The application of **Mr. John Jarosz, Jr., 34 Janet Terrace, New Hartford, New York**, who is proposing to place an 8' x 12' storage shed on his property. Zoning in this area is Low Density Residential, which requires a 10' side yard setback and a 5' rear yard setback. The applicant is seeking a 7' side yard setback Area Variance and a 2' rear yard Area Variance. Legal notice was published in the Observer Dispatch on September 10, 2010 and residents within 500' were notified. Tax Map #339.011-1-74; Lot Size: 100' x 150'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on September 10, 2010 and residents within 500' were notified. Mr. John Jarosz appeared before the Board.

Mr. Jarosz displayed a picture of a neighbor's shed which is also angled on the property. He explained that there are several properties with sheds that are placed the same way in his neighborhood – it makes the properties more aesthetically pleasing. He needs the additional storage.

Board Member Schulman asked if the existing fence is on the property line – Mr. Jarosz said he feels it is, but will make check it. Mr. Jarosz said the shed will be stained and similar to the existing home.

Chairman Bogar asked if there was anyone present to address this application – there was no response. There being no further input, the Public Hearing closed at 6:35 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, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no, all in agreement;
- The requested variance is substantial – no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no, all in agreement;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – no, all in agreement.

Motion was made by Board Member Bob Schulman to grant the application of Mr. Jarosz as presented; materials will match existing home; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Julius Fuks, Jr. Vote taken:

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Julius Fuks - yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Bob Schulman - yes

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

The application of **Mr. Francis Gerace, 9509 Mallory Road, New Hartford, New York**. Mr. Gerace is proposing to construct an 11'4" x 11'4" addition to the rear of his home. This home is a legal non-conforming structure. Zoning in this area is Residential/Agricultural 1, which requires a 30' front yard setback and a 15' side yard setback. Therefore, Mr. Gerace is seeking an 11' front yard setback Area Variance and an 8' side yard setback Area Variance. Tax Map #340.000-4-31; Lot Size: 100' x 138'; Zoning: Residential/Agricultural 1. Legal Notice was published in the Observer Dispatch on September 11, 2010 and residents within 500' were notified. Mr. Gerace appeared before the Board.

Mr. Gerace explained that he would like to add a 120 sf addition onto the back of his non-conforming home to use as a bathroom as he needs the additional living space. The location is in the middle of the home. He spoke to his neighbors and they support his application. The materials will match the existing home.

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

-Ann Serth, 9503 Mallory Road called with no objection.

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

Motion was made by Board Member John Montrose to approve the application as presented; materials to match the existing home; 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 Fred Kiehm – yes
Board Member Julius Fuks - yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Bob Schulman - yes

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

The application of **Mr. Samuel Edwards representing Mr. & Mrs. David Williams, 2 Marley Place, New Hartford, New York**. The applicant is proposing to construct a 200 square foot \pm dormer onto the back right corner of the existing home. The home is legal non-conforming. Zoning is Medium Density Residential, which requires a 30' front yard setback. Therefore, the applicant is seeking a front yard setback Area Variance of 10'. Tax Map #328.016-4-6; Lot Size: 52' x 152'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on September 11, 2010 and residents within 500' were notified. Mr. Samuel Edwards appeared before the Board.

Mr. Edwards explained that the Williams' have a small Cape Cod home. They are proposing to build an additional bedroom and a storage area to be approximately 22' x 10' as they need the additional living space. They are not changing the footprint of the home, just building up. They will be taking off the steep part of the roof in the back with an 8' wall for ceilings to use as floor space. He presented some pictures of the existing

home and a sample picture of what the dormer would look like. Materials will match the existing home; same style windows and roof.

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

Mr. Jack Anna, Marley Place: he was not present but contacted the Codes Office and said he was not in opposition.

County Planning 239 was received with no comments. There being no further input, the Public Hearing closed at 6:55 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, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no, all in agreement;
- The requested variance is substantial – no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no, all in agreement;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – no, all in agreement.

Motion was made by Board Member Bob Schulman to approve the application as presented; that materials 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 Julius Fuks - yes

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Bob Schulman - yes

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

The application of **Affordable Senior Housing Opportunities of New York, Inc.** represented by **Mr. Christopher Trevisani in conjunction with property owners James & Harold Julian, and Realtor Dominic Pavia** who is representing the Julian's. The applicant is proposing a 126 unit senior housing complex located to the rear of the building formerly housed by the Julian's at 4752-4756 Middle Settlement Road, New Hartford, New York. This area is zoned RB3 (Office Business) which does not allow for multi-family or congregate housing. Therefore, the applicant is seeking a Use Variance to build a senior housing complex in an RB3 zone. Tax Map #316.016-6-64; Lot Size: 13.25 Acres; Zoning: RB3 Office Business. Legal Notice was published in the Observer Dispatch on September 10, 2010 and residents within 500' were notified. Mr. Christopher Trevisani of Affordable Senior Housing and Mr. Dominick Pavia, Realtor, appeared before the Board.

Mr. Trevisani knows there are agencies that need to submit replies but he wanted to introduce himself and answer any questions. This is a for-profit organization and cater to individuals living independently. They aren't a nursing home or assisted living; no meals or medical services provided. This is affordable housing for senior citizens. Rent for a one-bedroom is approximately \$800 a month and a two-bedroom is approximately \$900 a month. He displayed communities which developed this concept. There are about 100 2-bedroom units and about 26 one-bedroom units.

Mr. Trevisani stated this property has three (3) different tax parcels. They are not interested in developing the entire property, just the back portion. He referred to a map indicating this. Chairman Bogar invited residents to review the map. Mr. Julian operates out of his building and that structure will stay. Mr. Trevisani explained where the driveway location is now. The buildings are 3-stories; about 35' in height; no curb cut onto Middle Settlement Road - NYSDOT will address this in their review. They will acquire an access easement from the Julian's – it will not be a deeded right-of-way. They will maintain the road in the summer and winter – road is a minimum of 24' wide. One exit and entrance onto Middle Settlement Road. Traffic was addressed with Mr. Trevisani indicating that this is an age restricted community, residents are allowed one (1) parking space per dwelling.

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

-Diane Nasso, 12 Liberty Avenue. concerned with additional traffic, wastewater. (Wastewater will be addressed through one of the agency responses. Also, waiting to hear about the sewer district).

Codes Officer Booth said there are sewer credits to buy for this property, all evaluated through Mr. Steven Devan of OC Water Pollution Control.

Mr. Trevisani stated that he feels this Use Variance application is less intrusive, especially with traffic, than what the RB3 zone allows, i.e., office, bank, restaurant, etc.

-Mr. James Toomey, 28 Liberty Avenue: concerned about Route 840 which comes out to BOCES – there is a right on red that is a concern. He likes the concept, but would like to hear comments from NYSDOT. Mr. Toomey wanted to know if any noise barriers would be put up, especially because of Route 840 traffic. (It was stated they aren't proposing to do so at this time).

-Geri Campola, 128 Powell Avenue: concerned with wetlands. Mr. Pavia referred to where the wetlands are located and they will stay the way there are now. All development is closest to the highway.

-Ann Fernicola, Roberts Avenue: future development. Mr. Pavia stated the Julian's will retain ownership of the front portion of the property which is RB3 and that is eligible for development.

Mr. Trevisani stated that after this process, it needs to be before the Planning Board and sent out to agencies under SEQR.

-Patrick Mineo, 6 Liberty Avenue: what about taxes. Mr. Trevisani said this is taxable; they are seeking a PILOT (payment in lieu of taxes) agreement. He is concerned with traffic as you can't get out of Liberty Avenue now and with the construction of the proposed Hampton Inn, there will be more traffic. He stated he is not against this project, just hope traffic is addressed.

Mr. Pavia explained the PILOT process and how it affects the Town, county and school district.

The public said they still deal with traffic congestion, etc. in this area.

-Mr. Ed Waitr of Concerned Citizens Group: he has reviewed urban sprawl and taxes. He has concerns with regard to PILOT programs and the expectations. Also, he feels every piece of property reduces the ability of the Town of New Hartford to collect their fair share of sales tax. He disputes what Mr. Pavia is saying. He feels everyone has to pay their fair share.

Board Member Schulman stated that this application is here this evening to address the Use Variance.

Chairman Bogar to the applicant: when addressing all the criteria for a Use Variance; being a lesser use doesn't mean it is acceptable. Our concern is to balance the application, what the neighbors have to say and how they are affected. He questioned the purchase of property over the years and the reasonable return as outlined in one of the criteria.

The actual need for this facility was addressed, the occupancy levels of nearby units such as this, and any specific studies done in this area.. Mr. Trevisani explained that surveys were performed and explained that process. They do not get grants or funds. The age limit is federal statute – 55 and over. Management will be at the site to oversee the functions. Security is a big concern with residents and which they take seriously.

Board Member Fuks addressed the criteria and wants to make sure each is addressed.

Mr. Pavia said the property has been for sale for approximately twelve (12) years. There has been no interest in this property until now. Mr. Julian acquired more land as it became available. He referred to the allowed uses at this site. When you stop development, taxes go up. Construction jobs would be created, materials purchased, etc. He feels it is an improvement for this area. Mr. Pavia understands everyone's concerns and stated that Mr. Trevisani will bring more information about the company and this project at the next meeting.

-Nadine Campola: she is concerned with lighting and how visible it will be, especially from her home. It was stated to her that street lighting will probably be on the road to the complex. She would also like to see the criteria addressed.

Mr. Trevisani addressed the Board stating that 1) this property can't realize a reasonable return. Mr. Pavia has tried to sell it for a long time – there is a hardship. This type of project would help get the owners a reasonable return; 2) The uniqueness of this property we are bound by National Grid easements, wetlands, railroad, and the site has minimal frontage and more length; 3) This will not alter the character of the neighborhood. Their neighbors are BOCES, Wal-Mart, and a highway. He feels this project will enhance the area; 4) Self-created: although the Julian's purchased additional properties, without the purchase the argument still exists with not enough frontage, and without the additional property, there wouldn't be any interest in this property.

Codes Officer Booth questioned Mr. Trevisani about what he mentioned earlier, subdivision. Will this be on a newly created parcel or existing – Mr. Trevisani said they

are going to have to do a reconfiguration of this lot line and change #3 or create a new lot. He will leave that to the Planning Board. Mr. Booth mentioned that he would need a variance because of the lack of frontage – Mr. Trevisani said he knows this. There will be an easement for the entire property for the road.

Nadine Campola: you may still end up with a retail use? Mr. Pavia said there is an office there now. A retail project today cannot fit into that piece of land. Once the back piece of land is gone, those opportunities disappear.

Patrick Mineo to Codes Officer Booth: are we going to be able to come back if lights shine in houses or for the noise? Mr. Booth said yes. If this goes through the Planning Board, there will be a Site Plan Review.

Discussion ensued regarding the tax parcels involved. Codes Officer Booth said they are creating a new subdivision that would have to comply with zoning so you might be in need of another Area Variance – he wanted the applicants to know this. The parcel between the road and Route 840 will not be used.

Board Member Montrose asked, are you buying both properties and using part of it – no – buying one property and a portion of the other property – there is a part behind there they aren't going to own.

Chairman Bogar asked if there were any other questions. It was the consensus of the Board Members that this application is tabled until the next meeting. The neighbors will be notified when the next meeting will take place. The applicant was advised to address all the criteria in detail when they come back.

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

Respectfully submitted,

Dolores Shaw, Secretary
Planning Board

dbb