

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
AUGUST 15, 2011**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Fred Kiehm, Tim Tallman, Taras Tesak, John Montrose, and Karen Stanislaus. Also in attendance was Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, and Dory Shaw, Recording Secretary.. 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. Bradlee Barfield, 46 Beechwood Road, New Hartford, New York** who is proposing to construct dormers onto the existing home. Zoning in this area is Low Density Residential, which requires a side-yard setback of 15'. The applicant is seeking to expand a legal non-conforming structure which is prohibited by Section 118 of the Code of the Town of New Hartford. Therefore, the applicant is seeking a 9' right side-yard setback Area Variance and a 5' left side-yard setback Area Variance. Tax Map #339.000-3-50; Lot Size: 75' x 165'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on July 15, 2011 and property owners within 500' were notified. (This application was postponed without prejudice at the July 26, 2011 meeting).

Mr. Barfield presented pictures, drawings and plans of the proposed dormers – what his home looks like now and what it would look like after construction. He has roof issues which need to be corrected. He has a growing family and needs the additional living space.

Board Member Tesak asked if it would change the character of the neighborhood – Mr. Barfield said no. He is not changing the footprint of the home. Board Member Tesak asked Codes Officer Booth to explain exactly what the violation is. Mr. Booth explained about legal, non-conforming structures and the procedure to follow if a variance is needed.

All shingles and siding will match the existing home. Mr. Barfield said he will have a regular set of architectural plans when he applies for the Building Permit.

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.

At this time, 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 – response: 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 – response: no, all in agreement;
- The requested variance is substantial – response: 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 – response: 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 – response: no, all in agreement.

Motion was made by Board Member John Montrose to approve the application as presented and that the materials used will match the existing home and that the addition stays within the existing footprint of the home; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Taras Tesak. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus – yes
Board Member Taras Tesak - yes

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

The application of **Mr. Francis Aiello, 9493 Chapman Road, New Hartford, New York**, who would like to construct a bedroom and a garage addition to the existing home. This home is a legal non-conforming structure. Also, the house is located in a Low Density Residential zone which requires that homes be set back an average of any home within 300'. The applicant is seeking a 4' average front yard setback Area Variance. Tax Map #340.000-1-17; Lot Size: 100' x 200'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on August 9, 2011 and property owners within 500' were notified. Mr. Aiello appeared.

Mr. Aiello explained that his family has expanded and he needs the additional living space, i.e., second bathroom, extra stall garage, bedroom and walk in closets, and garage – it is a two-story expansion. Currently he has a one-stall garage and four (4) cars. He needs an additional bathroom and currently there is only one (1). He will enhance the entire property. This is a corner lot with an address on Chapman Road but fronts on Weston Road. The expansion will be toward Chapman Road.

Board Member Tesak asked if there was any other way to accomplish this expansion – Mr. Aiello said no and he had an engineer look at it – this is the only feasible solution. From a cost aspect, it would be more expensive and the property slopes in the back. Aesthetically, this is the best way to apply for the expansion.

Reference was made to his application and Option 1. Mr. Aiello said there is no Option 1.

Board Member Montrose asked he plans on running a business out of his home – Mr. Aiello said definitely not.

Board Member Kiehm asked Codes Officer Booth to explain the average setback and how it is determined – Mr. Booth explained the Code.

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

-Mr. Christopher Cobb, 9461 Chapman Road: he has no objection.

County Planning 239 was received - no recommendation. The Public Hearing ended at 6:25 P.M.

At this time, 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 – response: 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 – response: no, all in agreement;
- The requested variance is substantial – response: 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 – response: 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 – response: no, all in agreement.

Motion was made by Board Member Taras Tesak to approve the application as presented in that the applicant has demonstrated the need for the additional living space and there will be no visual change; materials will match the existing home and roof; 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 John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus – yes
Board Member Taras Tesak - yes

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

The application of **Michelle Potoczny, Esq., representing Ai Lua Li of the China House Restaurant, 3913 Oneida Street, New Hartford**, New York, who would like to improve a storage building located on site. The property is located in a Retail Business 2 zone, which requires a 20' side yard and a 25' rear yard setback. Applicant is seeking a 14' side yard setback Area Variance and an 11' rear yard setback Area variance. Also, the building is a legal, non-conforming structure. Tax Map #339.016-1-65.2; Lot Size: .38 Acres; Zoning: Retail Business 2. Legal Notice was published in the Observer Dispatch on August 9, 2011 and property owners within 500' were notified. Attorney Potoczny appeared before the Board with her client.

Attorney Potoczny presented pictures of the property as well as a survey map. Her client is a

tenant in this building and has been there for ten (10) years – Mr. Gino Lorenzo owns the property and he is present this evening. There is an existing storage building in the back of the restaurant and it is the only storage available. There is no expansion, they just want to improve the building and bring it up to Codes.

Chairman Bogar stated he saw someone working on it. Attorney Potoczny said they are not adding on – they tore the building down without a permit and that is when Mr. Booth got involved. They wanted to enclose it and put outer walls on. It is the same size as the shed that was there before. It doesn't encroach anyone's property. Codes Officer Booth stated this is an improvement to what was there before and said they are well above the flood plain.

Board Member Tesak inquired as to why the owner of the property didn't apply. Mr. Lorenzo appeared before the Board and said he didn't have an issue with the tenant applying for the variance. The structure that is there was in need of repair. Once they started and Mr. Booth got involved, this whole process began. Mr. Lorenzo said it is on the same slab.

Board Member Tesak asked Town Attorney Cully if the applicant has the right to ask the Zoning Board of Appeals to determine the application – Attorney Cully said yes, the owner has the right to give consent. Mr. Lorenzo then added on the application in his writing that he gives consent.

Board Member Tallman asked Mr. Booth if the structure is done – Mr. Booth said it has to comply with the Building Code, they need a set of plans, and they are cooperating with Codes.

Chairman Bogar asked if there was anyone present to address the application – there was no response. County Planning 239 was received with no recommendation. The Public Hearing ended at 6:35 P.M.

At this time, 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 – response: 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 – response: no, all in agreement;
- The requested variance is substantial – response: 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 – response: 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 – response: 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 Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes
Board Member John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus – yes
Board Member Taras Tesak - yes

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

The application of **Mr. Charles Tomaselli, 23 Geraldine Avenue, New Hartford, New York.** **Mr. Tomaselli** would like to split a 240' x 100' lot into two (2) lots. Property is located in a Medium Density Residential zone which requires lots to be 15,000 square feet. The applicant is seeking a 3,000 square foot Area Variance for each of the lots in order to subdivide. Tax Map #328.016-2-41; Lot Size: 240' x 100'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on August 9, 2011 and residents within 500' were notified. Mr. Tomaselli was represented by Mr. John Attili who is associated with Tomaselli Architects. Mr. Tomaselli was out of town.

Mr. Attili stated Mr. Tomaselli's parents had the lots and they are large. There is a buffer of trees behind it and on the side. The original intent of Mr. Tomaselli's parents was to subdivide but they never did and the Code changed.

Chairman Bogar asked when Mr. Tomaselli took ownership – Mr. Attili said his father passed away a few months ago and his mother passed last year. Originally they were 30' lots and they purchased them as one back in 1953.

Board Member Montrose asked about the existing road as it doesn't go all the way down and how do you get frontage without a road. He also has a concern with Lot 2 because it is very steep. He further asked about the shed – Mr. Attili said it is part of Lot 1.

Codes Officer Booth said that would trigger a major subdivision. If this Board grants him the variance of the lot size, the Planning Board would address the road and water runoff. It would be the developer's expense to extend the road. They won't do it at all unless they get the variance.

Board Member Montrose also had concerns with water flows down the hill that would affect the residents in another development. He asked if someone would have to extend that road – Mr. Booth said yes. He also stated if it is determined a road cannot be extended, then they can go for a frontage Area Variance. Board Member Tallman agrees with Board Member Montrose's comments and concerns.

Board Member Kiehm feels this is a big change that could affect the neighborhood.

Board Member Tesak questioned whether this is a self-made hardship because it changed the character of the neighborhood, and feels it is a Planning Board issue.

It was stated that there isn't a full Board here this evening and explained what the applicant needed for votes to receive approval. Mr. Attili said he would like to table this and reappear at the next meeting.

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

-Ms. Roxanne Brady, 26 Geraldine Avenue. She has concerns because this is a small road. She is concerned about grading and water/flooding problems. She foresees that her quality of life would be interrupted with adding homes into a small area. Ms. Brady is opposed to this variance.

-Ms. Martha Chopchic, 19 Geraldine Avenue – opposed.

-Ms. Sylvia Banas, 21 Oakdale Avenue S. drainage from the road goes into the back area. She feels more water would be a problem. There is a mosquito problem there now. She is opposed.

-Mr. & Mrs. Tom Jones, 15 Osborn Road. Their property abuts this. There are two (2) storm drains and water comes out like a fire hydrant. They get a lot of water runoff – both are opposed. They also inquired about snow removal - snow would be placed at the dead end.

Chairman Bogar advised the residents that if they have water problems, they should contact the Highway Department or their Councilman, Richard Woodland.

Mr. Jones also wanted the Board to know that there was an in ground pool which was filled in and that is where they will use the lot – the pool was on the vacant lot.

Board Member Montrose asked if they make this road longer, does it have to be to the width of the new Code or under the old Code. Town Attorney Cully said he thought it would have to conform to the new Code.

There being no further discussion, this application was tabled until the next meeting, which is September 19th. Residents will be notified.

Zoning Board of Appeals draft minutes of July 26, 2011 were approved by Board Member John Montrose; seconded by Board Member Karen Stanislaus. All in favor.

There being no further business, the meeting adjourned at 7:00 P.M.

Respectfully submitted,

Dolores Shaw
Recording Secretary

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