

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
SEPTEMBER 19, 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, Lenora Murad, and Karen Stanislaus. Board Member absent: John Montrose 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 and welcomed newest Board Member Lenora Murad, the Board Members, and explained the procedures for tonight's meeting. Chairman Bogar also stated there are six (6) Board Members in attendance this evening and it is up to the applicants whether to proceed or wait for a full Board.

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. (This was tabled at the August 15, 2011 meeting). Mr. Tomaselli appeared before the Board.

Mr. Tomaselli presented the Board Members with aerial photos of the property. He familiarized the Board Members with what transpired with this property when his parents bought it in 1953. They purchased eight (8) lots with the residence on the upper 4 lots. At that time the zoning required ¼ acres. He stated his parents intent was to sell the other lots as none of the children wanted to build there.

He referred to a wet area that adjoins the property in the rear – that is separate and off the property. He stated a majority of the houses in this area are not even on ¼ acres. Mr. Tomaselli feels he is not affecting the character of the neighborhood. He wants to proceed with what his parents had intended to do in the first place. The property is for sale as one lot. They have no intents of maintaining the property. They want to sell it and recoup the value of it. There is no undesirable aspects to the property. He doesn't feel there is any other way to achieve this benefit. Mr. Tomaselli feels from the Town's standpoint it will increase the tax base.

Mr. Tomaselli was asked how long the property has been for sale – he stated a short time – maybe a month.

Chairman Bogar referred to the pool that was there – he was told it was filled in as they didn't use it any more.

Board Member Tesak asked if there were any remarks with the realtor that it could be subdivided – Mr. Tomaselli said no. Any remarks about drainage issues – no. Mr. Tomaselli was asked if this is a level lot – Mr. Tomaselli said there is a slope to the back.

Board Member Tallman felt the lots were steep.

Board Member Tesak asked, if a house is placed on the lot, would it infringe on today's zoning. Codes Officer Booth explained the minimum requirements for this zone.

Chairman Bogar stated that water issues were brought up – Mr. Booth said there has to be a provision to make sure water does not create a problem to adjoining lots and has to be controlled.

Board Member Murad asked how would we determine where a new problem would be coming from if there is water there now . Water runs faster from the roof. She mentioned grading to control water.

The Board Members and Mr. Tomaselli addressed further his intentions to sell the property, what the properties would be worth with one lot or two, drainage issues, existing road, ponding, etc.

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

-Ms. Roxanne Brady, Geraldine avenue. She lives across the street and read from a letter she prepared (it will be made a part of the file). It addresses aesthetics, Zoning Law requirements, drainage, etc. She is against this variance.

-Ms. Banas, 21 Oakdale Avenue. There is no outlet for drainage. Access water would be created.

-Mr. Jones, Osborn Road. He is concerned about storm water. Also, the road would have to be modified as it is narrow.

Mr. Tomaselli said the Town decided to stop the road where it is. It was mentioned that the road is already dedicated to the Town. It was stated that whatever happens to that area would be up to the Town Engineer to review.

Mr. Booth was asked if there is enough road frontage there now – Mr. Booth said no.

Chairman Bogar introduced Lis DeGironimo, contract engineer for the Town, about the water issue. Mrs. DeGironimo said she has been a member of the Town's storm water Committee for years and she hasn't spoken to the Highway Superintendent about this yet. However, she has never been approached about the conditions in this area. She would need to talk further with the Highway Superintendent.

-Barbara Jones, 15 Osborn Road. She has complained about the standing water and mosquitoes a few years ago. Mrs. DeGironimo said she hasn't seen any reports.

There being no further input, the Public Hearing ended at 6:45 P.M.

The Board Members extensively went through the file and the applicant's request. It was stated that Mr. Tomaselli does not live at this property. Board Member Kiehm felt it would alter the character of the area. He doesn't feel it is a viable request. Board Member Tesak doesn't see the hardship and feels the criteria will be self-explanatory.

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: yes, 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: yes, all in agreement;
- The requested variance is substantial – response: yes, 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: yes, 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: yes, all in agreement.

Motion was made by Chairman Randy Bogar to deny the application as presented as it did not meet the criteria; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes
Board Member Lenora Murad - yes
Board Member Fred Kiehm – yes

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

Motion for **denial** was passed by a vote of 6 – 0.

The application of **Mr. Chris Giambrone, 35 Augusta Drive, New Hartford, New York**, who is requesting to place a shed on his property (corner lot). Zoning in this area is Low Density Residential, which requires a 30' front yard setback. Applicant is seeking a 25' front yard setback Area Variance. Tax Map #340.003-1-57; Lot Size: 116' x 150; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on Friday, September 9, 2011 and property owners within 500' were notified. Mr. Giambrone appeared before the Board.

He presented a photo of his property and where he'd like to place the shed (behind the cedars). He'd like the shed to be 10' or 12' in height. He stated he talked to the neighbor most affected who didn't have a problem with this request. The materials of the shed will mirror his home.

Board Member Tesak asked why this location for the shed. Mr. Giambrone stated the opposite corner has a swing set 15' wide and it is too difficult to move it.

County Planning 239 was received with no comments. There were no calls or letters received on this application. The Public Hearing closed at 6:55 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: possibly;
- 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 Karen Stanislaus to approve the application as presented and that it has met the criteria; that the materials used will match the existing home; as long as the building height isn't increased any higher after this shed is built in case he'd like to add on in the future; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes
Board Member Lenora Murad - 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. Eric Christensen, 3 Allman Place, New Hartford, New York**, who is requesting to construct an 8' x 22' addition to the rear of his home. Zoning in this area is Medium Density Residential, which requires a 10' side-yard setback from the property line. Therefore, the applicant is seeking a 5' right side-yard setback Area Variance. Tax Map #328.012-3-30; Lot Size: 50' x 120'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on September 9, 2011 and property owners within 500' were notified. Mr. & Mrs. Christensen appeared before the Board.

Mr. Christensen stated his home is 880 square feet. They are expecting a child soon and they need the additional living space - he needs to get the nursery ready for the baby. They would like to go 8' out and make a mud room and possibly extend the kitchen. He isn't going any wider

with the addition than the existing home. The entire house and addition will be resided and insulated. Their contractor said they have to go up about 2' to maintain the pitch of the roof. They gave up about 8' of their backyard.

Chairman Bogar asked if there was anyone present to address this application – there was no response. County Planning 239 was received with no comments. The Public Hearing ended at 7:10 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 it met the criteria; that the materials used will match the existing home; and 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 Lenora Murad - 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. Mohammad Tariq, 3566 Oneida Street, Chadwicks, New York**, who is requesting an Area Variance to a legal, non-conforming use to add a sunroom onto his existing home. Any expansion to a legal, non-conforming use must receive an Area Variance. Tax Map #349.012-1-32; Lot Size: 46' x 117'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on September 9, 2011 and property owners within 500' were notified. Ms. Carla Loving appeared before the Board representing Mr. Tariq.

There is an existing deck and he will not extend any further to the end of the deck or out the sides. He just wants to enclose it. He has a good tenant who has a special needs child and he would like them to stay. The sunroom will enable them to have extra living space for their child to sit in the

room, get some sunshine without having to go outside – the yard is not fenced. Mr. Tariq wants to help this family. This won't be vented for heat.

At this time, Ms. Loving had Mr. Tariq on the cell phone and communicated with him and the Board Members (Mr. Tariq was in California – he does not live at this property).

Board Member Tesak asked if there was any other way to achieve this – it was stated Mr. Tariq said he is only enclosing an existing deck, 6' x 15'. He is not utilizing any more property. Board Member Tesak said he understands it, but has questions regarding the submittal of the paperwork.

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

-Ms. Pat Savicki, 3565 Oneida Street. She asked if the Zoning Law was the same for a deck than an enclosed property. She stated this is a nice family living there. Codes Office Booth explained this and stated they are not the same.

-Mr. Ray Savicki, 3565 Oneida Street. Is there a second floor above this – Mr. Tariq said yes – they are building underneath that second floor. It does not extend the length of the deck – estimating about 4' of the deck. A slanted roof will extend from the second floor.

Codes Officer Booth said Mr. Tariq would have to get a Building Permit, address ceiling height and meet Code requirements.

-Ms. Mary Shepard, 3568 Oneida Street. Her concern is construction vehicles coming down the narrow driveway. She has had her property damaged before.

-A resident addressed the Board offering Mr. Tariq to use his driveway if he needs to get equipment in to do the work.

There being no further input, the Public Hearing ended at 7:20 P.M.

Chairman Bogar asked the Board Members if they are comfortable to address this further. The Board Members discussed exactly what Mr. Tariq is requesting to do. Codes Officer Booth said this is no different than any other project. His suggestion is that the materials used to construct this should match or blend in with the existing home if the Board would like to condition it for approval.

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 based on what we have heard from the representative speaking for Mr. Tariq. It would be for the 6' x 15' submittal as long as it doesn't infringe anything besides this; that the materials used will match or blend with the existing 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 Lenora Murad - yes
Board Member Fred Kiehm – no

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

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

Codes Officer Booth will check the construction to make sure he adheres to the Zoning Law.

The application of **Mr. & Mrs. James Monahan, 17 Bolton Road, New Hartford**, who are requesting to rebuild a single family home on their property. The applicant is located in a Low Density Residential zone which requires a 15' right side-yard setback. They are seeking a 5' right side-yard setback Area Variance. Tax Map #339.006-2-63; Lot Size: 75' x 140'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on September 14, 2011 and property owners within 500' were notified. Mr. & Mrs. Monahan appeared before the Board.

Mr. Monahan explained that he had a fire at his home, which totally destroyed it. The house was built in the 1950's. They have the chance to rebuild it and make it a little bigger. They are looking to expand the house to the right to make the garage bigger and to make enough room for his boys to have their own room. They will stay with 2 ½ stories. He has spoken to the neighbor most affected and they have no objection.

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

-Ms. Nancy Roberts, 11 Bolton Road. Her home also had some damage. They do not have a problem with this variance, but she wants to make sure when they rebuild it doesn't cause her any drainage problems.

Mr. Monahan agreed, and he has talked to his contractor to address this to make sure it doesn't happen. They will make water drain away from the house.

There being no further input, the Public Hearing closed at 7:30 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 Lenora Murad to approve the application as presented in that they met the criteria; and 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 Lenora Murad - 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.

Minutes of the August 15, 2011 Zoning Board of Appeals were approved by motion of Board Member Fred Kiehm; seconded by Board Member Tim Tallman. All in favor.

The Board Members were reminded that the next meeting is October 24, 2011 – a week later than usual due to the holiday in October.

There being no further business, the meeting adjourned at 7:50 P.M.

Respectfully submitted,

Dolores Shaw
Recording Secretary

dbS