

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NEW HARTFORD PUBLIC LIBRARY
JUNE 18, 2012**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Karen Stanislaus, Fred Kiehm, Tim Tallman, Lenora Murad, and John Montrose. Absent: Board Member Taras Tesak. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, Highway Superintendent Richard Sherman, and Recording 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.

Chairman Bogar stated that this meeting is being videotaped by an independent group who is not associated with the Town of New Hartford.

In addition, Chairman Bogar stated that one (1) Board Member is absent and it is the decision of the applicant whether to proceed or wait for a full Board attendance. He also said that the J.K. Hage application on Higby and Chapman Roads was withdrawn by the applicant.

The application of **#2 Ellinwood LLC, 2 Ellinwood Drive, New Hartford, New York**. The applicant is located in a Retail Business 1 zone, which requires 200' for frontage that provides physical access, and this frontage does not provide physical access. Additionally, the awning structure is required to be set back 20'. Therefore, the applicant is seeking a 20' left side yard Area Variance. Tax Map #316.020-1-6/7/8; Lot Size: 6.32 Acres; Zoning: Retail Business 1. Attorney Richard Compson and Mr. Michael Sheridan of Sheridan Engineering appeared before the Board.

Attorney Compson referred to the drawing and stated they need physical access to this site. The area not shown is the Route 840 interchange, which prevents them from access to Commercial Drive. In addition, there is a small functioning cooling tower and that is where they are seeking the variance. The awning is over the cooling tower, and there is an easement for this cooling tower.

Chairman Bogar asked if there was anyone present to address this application – there was no response. OC 239 Planning was received with no recommendation; comments received from OCDPW, and NYSDOT's comments were that access to the accessory building will be via Ellinwood Drive and not Rt. 5A/840 – which the applicant is aware. All responses are part of the file.

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 Fred Kiehm to approve the application as presented as it met the criteria necessary for the granting of an Area Variance; 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 John Montrose – yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus - yes
Board Member Lenora Murad - yes

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

The application of **Mr. Eric Wiars, 2 Allen Road, Utica, New York** (Town of New Hartford). Mr. Wiars is seeking a 22’ front yard Area Variance to place a fence in the front yard of his home. Fence in front yards are not allowed according to Section 118-59D of Town Code. Tax Map #329.020-7-32; Lot Size: 130’ x 151’; Zoning: Low Density Residential. Mr. Wiars appeared before the Board.

Mr. Wiars explained that when the house was first built it was placed on a double lot. They are looking to have more privacy as they don’t have much of a back yard (their back yard is actually the side yard). The fence will be on the side but in front of the house line. This gives their dogs a place to run also. They will eventually put in a swimming pool and this fence will provide what they need for that also. This fence will be the same type as his neighbors – white pvc.

Chairman Bogar stated the types of issues the Town has had with fences. However, this fence is being located behind bushes.

Board Member Tallman asked if he was willing to plant some bushes in front of the fence line – Mr. Wiars said yes. He explained the type of bushes as the tree line is quite tall. Mr. Wiars wants to make the property look more aesthetically pleasing. Mr. Wiars checked with his neighbors and they weren’t in opposition. The fence on the right will stay there. The fence will be between the properties and along the roadside. They are adjoining their fence but he will have his own post (the fence is definitely on his own property). A 16’ section will be removable to get his equipment in and also in the front and they would use it for pool access also.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing closed 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: difference of opinion;
- 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: difference of opinion;
- 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 as it met the criteria necessary for the granting of an Area Variance; and 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 John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes

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

The application of **Uptown Interests LLC for property located at 8374 Seneca Turnpike, New Hartford, New York**. The applicant is seeking Area Variances to place a parking lot 2’ from the east sideline and 3’ from the north front property line. Parking on west side of building appears to extend over the property line, but appears to be grandfathered. Therefore, the applicant is seeking a 12’ front yard and an 8’ side yard setback Area Variance for parking spaces. Tax Map #328.01-1-1.1; Lot Size: 190’ x 240’; Zoning: Planned Highway Business. Attorney Dan Cohen and Mr. Dan Sanders of Harris & Sanders Architects appeared before the Board.

Mr. Sanders presented a sketch illustrating the parking plan, and parking circulation. The north side would be facing Seneca Turnpike. They are proposing a landscape buffer along the north side. Parking along the east would be diagonal. Both west and east sides have reciprocal agreements with the neighbors. There will be 71 cars on the site. They will be improving landscaping on the south and courtyard area, and the storefronts. Also, improvements will be made to the front, side and rear design to the building. The main improvement in the front is new windows and change to the roofline.

Chairman Bogar asked with regard to the north side, how much further are you going towards Seneca Turnpike? Mr. Sanders said the existing pavement will be the same line. The parking lot is being brought down into the project side. The flow of traffic will be better – they aren’t infringing any more to what is there now. They will have striped pavement.

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

-Mr. Dominick Luvera, 8310 Seneca Turnpike. He asked about the location of this project – answer is the east side of Daniele’s.

Codes Officer Booth stated the applicant will be correcting some drainage problems with the work they are doing. Mr. Sanders agreed, especially with the people on Middle Settlement Road and around the perimeter.

Board Member Kiehm asked about new tenants – Mr. Sanders said the owner is talking to a few but nothing confirmed.

County 239 Planning was received with no recommendation.

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 as it met the criteria necessary for the granting of an Area Variance, and that this will improve the area; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes	Board Member Tim Tallman - yes
Board Member John Montrose - yes	Board Member Karen Stanislaus - yes
Board Member Fred Kiehm – yes	Board Member Lenora Murad - yes

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

The application of **Mr. Larry Adler of New Hartford Office Group, LLC**, for an Interpretation as to whether or not gasoline pumps are accessory to a retail use. Property location: State Route 5 (Seneca Turnpike) and Woods Highway. Tax Map #328.000-3-7; Total Lot Size: 20.5 Acres; Zoning: Planned Highway Business. Mr. Larry Adler of New Hartford Office Group and Theresa Bakner, Esq. of Whiteman, Osterman & Hanna, appeared before the Board.

Attorney Bakner stated they have furnished correspondence to the Zoning Board Members and would provide additional information if requested. Therefore, if this Board feels more information is necessary, they won't request a vote tonight. She referred to and read the definition and the Code for accessory use, Section 118-64,

Further, Attorney Bakner referred to the Planned Highway Business zone, which was just rezoned by the Town and which lines up with the other properties in the area. The applicant would like to build a wholesale club, be it BJ's, Cosco or Sams Club. They are focusing on the BJ's but it could be any type of those. These are retail uses which sell to club members. They are asking for gas pumps to be used by club members only and operated by these clubs on the same lot. She feels it meets the criteria, it would comply with parking and placed in such a way to meet bulk regulations. According to the uses in the Planned Highway Business, whatever they put in has to go before the Planning Board for Site Plan Review.

Attorney Bakner referred to other areas where BJ's are located with gas pumps as accessory uses, i.e., Oneonta, Utica, Syracuse and Colonie. Gas pumps are accessory to the principle use. They aren't asking to approve a gas station in this zone standing on its own. Their prototype requirement shows that they are requiring to provide these gas pumps to go to a particular location. It has become common for the gas pumps since the 1990's.

Mr. Adler said when they talked to the retailers and if you don't accommodate the, they won't come. There is no additional land. It is covered under one lease but an accessory use to allow the fueling facility. Also, they check this type of use like a propane filling area.

Board Member Kiehm asked if the propane filling area is separate from the gasoline – it was stated yes. Attorney Bakner noted the propane tanks are those such as Blue Rhino containers, which are for grills.

Board Member Montrose wanted to know how far off the road this accessory structure would be – Mr. Adler said just past the substation on Woods Highway. Attorney Bakner said it is the same entrance into the club connected through the parking lot off Woods Highway. Mr. Adler said their plan is the main entrance at Woods Highway with a right in and right out on Route 5.

Board Member Tallman stated he did research on BJ's of those who do and do not have gasoline stations. Also, store hours are approximately 9AM – 9PM, different than gas station hours which are approximately 6:30 AM – 9 PM. He retrieved this off their website, and he said the majority of BJ's in NYS do not have gas stations. Attorney Bakner said she would check into this. Attorney Bakner said 60% of the BJ's have stations, but the issue is the Zoning Code, which she feels is outdated. BJ's started in 1984 and they didn't have gas stations, but things have changed. Mr. Adler stated that he did the project in Oneonta and if they didn't get gas, they weren't going in – it is the same here.

Attorney Bakner again stated if the Board didn't have enough information, she would get it and come back to the Board at another time.

Chairman Bogar to Codes Officer Booth – it is his interpretation that it is not an accessory use (gas pumps)? Mr. Booth said his interpretation is based on the Code, but the Code is an outdated document. This concept may not have been addressed when the Code was written.

Mr. Adler said the Zone Change was in anticipation of this use. It was during the Sketch Plan Conference when the interpretation came up. He presented a sketch of what the area will look like. This will be closer to the road to the Business Park.

Board Member Murad said there could be one of three clubs. She referred to what Attorney Bakner read. Attorney Bakner said this is an interpretation of the Code. She said she could put something together for the Board.

Discussion ensued regarding a wholesale club vs. a convenience store and what would be considered an accessory use or not.

Mr. Adler referred to what type of goods are sold as customary for wholesale clubs. Board Member Kiehm referred to wholesale club vs. retail store – what is open to the public and what is members only.

Board Member Montrose asked, if they don't get the gas pumps as it relates to this interpretation, would they need to come for a Use Variance, Codes Officer Booth said yes. Both Attorney Bakner and Mr. Adler did not think BJ's would come for a Use Variance.

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

-Ms. Kathy Maine, 8283 Seneca Turnpike: she feels this is not beneficial to the area. Her property has been affected by the Business Park, and this will create more traffic on Seneca Turnpike and Woods Highway. She can't get out of her driveway now. She is concerned about traffic and pedestrian safety, noise, and gas spills. There are two or three gas stations nearby. People can get to a gas station somewhere else – they are available. Also, what is the amount of income that BJ's gets from the gas station – is it relevant to BJ's.

Board Member Kiehm stated this Board is looking at the term accessory use, which happens to be a gas station.

-Ms. Deborah Trzepacz, 8304 Seneca Turnpike: she is concerned about additional traffic; anyone can get a BJ's card to get discounted gas, which creates more vehicle traffic.

-Mr. Dominick Luvera, 8310 Seneca Turnpike: there are other gas stations in the area. Traffic to this project is on Woods Road, but cars would be coming in from Seneca Turnpike. Also, he is concerned about gasoline delivery trucks entering the site and problems that could occur to the surrounding properties.

-Mr. Wayne Hughes, 8326 Seneca Turnpike : he could not attend but called with questions regarding the status of a previous application in the area; what is allowed in a Planned Highway Business zone; and BJ card applications.

Discussion ensued whether to vote on this application tonight, but it was decided that the Board Members needed additional information.

Board Member Stanislaus mentioned bringing in information relevant to the issue of accessory use and the interpretation. If there is another question, they should be able to answer that also.

Attorney Bakner reiterated that this project is subject to Site Plan Review through the Planning Board. They aren't asking for a Site Plan, they are here for the interpretation. She will have additional information for the Board Members.

It was stated that some changes may have to be made to Woods Highway.

This application was tabled to be addressed at the July 16, 2012 Zoning Board of Appeals meeting. This discussion ended at approximately 7:25 P.M.

The application of **Mr. Mark Decker, 9568 Roberts Road, Sauquoit, New York**. Mr. Decker is located in a Residential/Agricultural 2 zone, which only permits one (1) home on a lot. Mr. Decker is seeking an Area Variance to place a second home on a single lot. Tax Map #350.000-3-2; Lot Size: total acreage 5.8 Acres; Zoning: Residential/Agricultural 2. Messrs. Mark and Jim Decker appeared before the Board.

Mr. Jim Decker is the son of Mark. He stated his father's house was built in 1860, it is only 800 sf. He would like to add onto this house and purchase it, but he doesn't think the foundation will withstand it. He wants to build a new home in the rear of this property maybe five (5) years from now (possibly sooner). It would meet the setback requirements. The new home will be about 100' from the road. There is a lot of land and all owned by his father. They don't have frontage to subdivide it. There is a driveway on each side of the existing home. There is no one in the house now and it has been for sale a while. They talked to two (2) of the neighbors who did not have any opposition.

Board Member Tallman asked if he would keep the house in the front after building a new home – Mr. Decker said yes unless it became a problem and they may have to tear it down.

Board Member Kiehm asked if the existing home would be occupied – Mr. Decker said he will be renting it from his father.

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

-Ms. Martha Smith, 9552 Roberts Road and Ms. Hilda Pomeroy:
They are not in opposition, and they realize the existing house is small and old.

Board Member Montrose asked what would happen if the house wasn't built and we grant the property a variance (a variance approval stays with the property). Mr. Decker said there is a small creek and you can't build there – it is all going to stay as one (1) property. Mr. Decker would like to rotate the barn and bring it to the setback line.

Codes Officer Booth said this house could become the property of an absentee landlord, but with Mr. Decker living in it, it will be maintained. He will be renting it now and purchasing it later.

OC 239 Planning response was received with no recommendation; OCDPW comments were received and made a part of the file.

The Public Hearing ended at 7:45 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.

Discussion ensued regarding any further subdivision of land. Mr. Booth feels there should be no further subdivision done with this property if it is approved – avoiding any variances in the future.

Town Attorney Cully said this could be done but we would have to ask the applicant and make it a part of the record.

Mr. Decker said he is not opposed to this request. He mentioned, however, that there is someone who may want to purchase some of the woods in the rear but not sure at this point.

Board Member Stanislaus said this Board wants to keep the small house in the front and the larger house to be built in the rear on the same lot, and if they wanted to demolish the house in front, they could as long as it stays as one (1) lot. Mr. Decker agreed.

Motion was made by Board Member Fred Kiehm to grant this application but that the front house has to stay on the same parcel with the new home (to be constructed in the future); no further subdivision of this property – never to become two (2) separate parcels; but if they had to tear down the front house they could; 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 Lenora Murad - yes

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

The application of **Mr. W. Jason Freiberger, 2 Lower Woods Road, New Hartford, New York**. Mr. Freiberger is located in a Low Density Residential area, which requires a 15' side yard setback. Applicant is seeking a 10' right side yard Area Variance to construct a 26' x 24' attached garage to his existing home. Tax Map #339.000-4-38; Lot Size: 120' x 140'; Zoning: Low Density Residential. Mr. Freiberger appeared before the Board.

Mr. Freiberger stated he would like to extend his existing home as he is in need of additional living space – he referred to the drawings submitted. He would change the existing garage into a family room and add the new garage to it. There would be no change in the roofline. He will extend the driveway into the new garage area. His next door neighbor is here this evening and is not opposed as he can't see the addition because of the shrubs. Everything on the new garage will match the existing home.

Mr. Freiberger may want to come in about 2' – 4' back from the existing house with the new garage – he is not sure at this time.

Chairman Bogar asked if there was anyone present to address this application – there was no response. OC 239 Planning was received with no recommendation. The Public Hearing closed at 7:55 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: 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 as it met the criteria necessary for the granting of an Area Variance; and to allow him the 2' – 4' to set the garage back further from the existing home if wants; and 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 John Montrose - yes
Board Member Fred Kiehm – yes

Board Member Tim Tallman - yes
Board Member Karen Stanislaus – yes
Board Member Lenora Murad - yes

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

The application of **J. K. Hage, III, Executor for the Estate of James J. Hage/W. Anthony Mandour, Higby Road, New Hartford, New York**. The applicant is seeking an Area Variance to place a sign in the right-of-way adjacent to the street sign at the southwest corner of Higby and Chapman Roads. Tax Map #340.010-1-24.1; Lot Size: 180' x 116'; Zoning: Low Density Residential.

This application was withdrawn by the applicant.

Town of New Hartford
Zoning Board of Appeals Minutes
June 18, 2012
Page 10

Minutes of the May 21, 2012 Zoning Board meeting were approved by Board Member Tim Tallman; seconded by Board Member Fred Kiehm. All in favor, except Board Member Karen Stanislaus who was absent at this meeting.

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

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

dbb