

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
JANUARY 25, 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, Fred Kiehm and Karen Stanislaus. Board Member absent: George Koury. Also in attendance was Town Supervisor Patrick Tyksinski, Deputy Town Supervisor Matthew Bohn, Town Attorney Herbert Cully, Councilman David Reynolds, and Dory Shaw, Secretary. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting. He also stated that one (1) Board Member is not present this evening and it was the decision of the applicant whether to proceed.

At that time, Town Attorney Cully advised the applicant that a majority vote of the entire Board Members is needed for an approval, i.e., four (4) votes.

The application of **Mr. Darren Scarafile, 8224 Woods Highway, Clinton, New York (Town of New Hartford)**, who is requesting to construct a 1,243 square foot addition to his existing home on a non-conforming structure, and who is also proposing to provide a 1' right side-yard setback to his property. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback. The Town of New Hartford Code, Section 118-69A, prohibits the expansion of a non-conforming building. Therefore, the applicant is seeking a 14' right side-yard setback Area Variance. Tax Map #316.000-2-25; Lot Size: Lot Size: 71' x 250'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on January 15, 2010 and residents within 500' were notified. Mr. Darren Scarafile and Mr. Al Forte of Octagon Engineering appeared before the Board. Mr. Scarafile would like to proceed with his application.

Mr. Forte referred to the plans submitted to each Board Member and reviewed them as presented, i.e., existing home plan, new foundation, footings, elevation, proposed construction, etc. and which illustrates what Mr. Scarafile plans to do regarding the addition (these plans have been made a part of the file). He further explained that the house has been on this site since the 1940's and it wasn't until a recent survey was done by Mr. Scarafile that he found out the home sets approximately 1.62' on the adjacent property. His neighbor recently purchased the adjacent property and was not aware of this encroachment either until Mr. Scarafile's survey. The survey was done by Christopher Nash, , #049163, dated January 27, 2009.

Mr. Forte explained that the existing 877 sf house has been in the Scarafile family for many years, and he lives there now with his three (3) children. One child has Muscular Dystrophy and they would like to improve the home to make life easier and make it more aesthetically pleasing.

Board Member Kiehm asked if Mr. Scarafile tried to purchase additional property from his neighbor – Mr. Forte said they tried on several occasions but the neighbor does not want to sell. It was at that time that Mr. Forte contacted Codes Officer Booth to work with him regarding the proposed construction, setbacks, etc. This application takes into consideration removing the

section of the house from his neighbor's property onto his own (Mr. Scarafile's) property – any improvement of the construction would be on Mr. Scarafile's property, however, he needs the requested variances to accomplish this. He can't get a mortgage with part of the existing home being on someone else's property. Mr. Forte said the furthest setback the addition would be from the side property line would be 8.8' and the closest setback would be 1.1'.

Chairman Bogar asked if this project could be accomplished by any other way – Mr. Forte said he felt it wouldn't be practical and it would be cost prohibitive. Chairman Bogar asked if Mr. Borza had a survey when he purchased his property – it was not known – only that Mr. Scarafile had obtained a survey for his property. The Board Members reviewed the plans further regarding any possible reduction of construction to increase the setback. The total size of the home with the addition would be approximately 2,065 sf.

Codes Officer Booth said he is aware of the survey, and is also aware of Mr. Scarafile's attempts to purchase additional property from his neighbor.

Chairman Bogar asked if there was anyone present to address this application. At this time, Secretary Dory Shaw read into the record a letter she received from the adjacent neighbor, Mr. Timothy F. Borza, who had concerns with this application (this letter has been made a part of the file).

There being no further input, the Public Hearing ended at 6:35 P.M.

The Board Members discussed:

- Submitted correspondence from the applicant
- Need demonstrated for the variance requests
- Survey presented by Licensed Engineer
- Attempted purchase of additional property by Mr. Scarafile
- Details of proposed construction as presented by plans submitted dated 6/12/09 and revised 12/8 and 12/10/09
- Adjacent neighbor's letter of January 25, 2010

At this time, the Board Members 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 and it will be an improvement;
- The requested variance is substantial – yes;
- 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 – difference of opinion.

Motion was made by Board Member Fred Kiehm to approve the Area Variance to the non-conforming structure, and for the 14' side-yard setback Area Variance; and that all appurtenant lines, known or unknown, for septic, water, power, etc. be moved to Mr. Scarafile's property if, in fact, they are not on his property; 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 Tim Tallman – yes
Board Member Fred Kiehm – yes	Board Member Karen Stanislaus - yes
Board Member Bob Schulman – yes	Board Member John Montrose - yes

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

Mr. Forte said they have to look at the .locations for the appurtenant lines.

Messrs. Forte and Scarafile thanked the Board Members for their consideration. Town Attorney Cully advised the applicant of an Article 78 proceeding and the process for filing these minutes.

There being no further business, the meeting adjourned at 6:50 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Zoning Board of Appeals

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