

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
JUNE 21, 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, Karen Stanislaus, George Koury, and Fred Kiehm. Also in attendance was Town Supervisor Patrick Tyksinski, Asst. Town Supervisor Matthew Bohn, Town Attorney Herbert Cully, Councilman David Reynolds, Codes Enforcement Officer Joseph Booth, 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.

The application of **Mr. Frederick Sadallah, 207 Winchester Drive, New Hartford, New York**, who is proposing to take down an existing greenhouse on the front of his home and replace it with an 8' x 10' addition to be used for living space. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback and a 30' front-yard setback. Mr. Sadallah is requesting a 1' front-yard setback Area Variance and a 3' side-yard setback Area Variance. Tax Map #317.015-2-12; Lot Size: 80' x 160'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on June 15, 2010 and residents within 500' were notified. Mr. Sadallah appeared before the Board.

Mr. Sadallah explained that he has a small greenhouse on the front of his home built on a foundation. It has been deteriorating, the windows cannot be replaced, and water leaks through it. He wants to demolish the greenhouse and construct an addition as living space in its place; he plans on using the same stone that matches the front of the existing home. There are no changes to the footprint of the home.

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

-Mr. & Mrs. Walter Miga, 208 Winchester Drive. No opposition to this request. The Sadallah's keep their house and property in beautiful condition.

-Mr. Walter Miga, 208 Winchester Drive. He also supports the application.

There were no calls or letters received on this application. Therefore, there being no further input, the Public Hearing closed at 6:10 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;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no;
- The requested variance is substantial – no;
- 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 – no.

Motion was made by Board Member Fred Kiehm to approve the application as presented as Mr. Sadallah had shown a need to replace the existing structure; that the materials match the existing home; 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 Bob Schulman - yes
Board Member Karen Stanislaus - yes

Board Member Tim Tallman – yes
Board Member John Montrose - yes
Board Member George Koury - yes

Motion was **approved** by a vote of 7 – 0.

The application of **Ms. Jill Prichard, 9296 Mallory Road, New Hartford, New York 13413**, who is proposing a two-lot subdivision. Zoning in this area is Residential Agricultural 1 which requires 30,000 square feet of lot size. Applicant is requesting an Area Variance to reduce the required area of the already substandard lot by approximately 8800 square feet. Therefore, she is seeking an Area Variance of approximately 8800 square feet on the parent parcel while the remaining parcel is proposed to be joined with the already existing parcel at 9302 Mallory Road. Legal Notice was published in the Observer Dispatch on June 11, 2010 and residents within 500' were notified. Mrs. Prichard appeared before the Board.

Mrs. Prichard described the layout of her property and the size of her backyard. The change in the lot would provide more privacy for her and the neighbor. Her neighbor wants some additional square footage and the Prichard's are willing to provide it to them. There is no intent to build anything on their property – it would be a land transfer only.

Codes Officer would like the Board to consider placing a condition to have the property transferred (subdivided) within a year so as not to have a landlocked parcel. (This requires a minor subdivision before the Planning Board or a lot line adjustment).

Chairman Bogar asked if there was anyone present to address this application – there was no response. Mr. Phil Brockway, 3844 Oneida Street, Washington Mills, NY had contacted the Codes Office and stated he was not in opposition.

There being no further input, the Public Hearing closed at 6:15 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;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no;
- The requested variance is substantial – no;
- 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 – no.

Motion was made by Board Member Bob Schulman to approve the application as presented with the condition that the property is transferred legally within one (1) year of approval date and to contact the Codes Officer regarding this; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Bob Schulman - yes
Board Member Karen Stanislaus - yes

Board Member Tim Tallman – yes
Board Member John Montrose - yes
Board Member George Koury - yes

Motion was **approved** by a vote of 7 – 0..

The application of **Victory Signs for Mr. Richard Tehan/Tehan's Plaza, 4605 Commercial Drive, New Hartford, New York 13413**, who is requesting an Area Variance for signs for a new store - Hobby Lobby (previously occupied by Old Navy). Zoning on this property is Retail Business 1 which limits building signs to 80 square feet in size and a maximum quantity of 2 signs. Applicant is seeking an Area Variance of 206 square feet and a quantity Area Variance for 4 additional signs – all on the front of the façade. Legal Notice was published in the Observer Dispatch on June 11, 2010 and residents within 500' were notified. Mr. Anthony DePerno from Victory Signs appeared before the Board.

Mr. DePerno stated they tried to make the signs similar to what Old Navy had at the site. Hobby Lobby is not known in the northeast, and they need recognition. He referred to other signs in the area such as J.C. Penney, Gander Mountain and Toys 'R Us. They are more than willing to work with this Board and the Town, and he feels this is a very positive venture. He feels the signage package is conforming to the building.. The signs are located in the middle of a shopping center. The main sign is 66"; the Hobby Lobby accent signs are illuminated with raised letters – they are low voltage – no light pollution. The illuminated signs would stay on about an hour after closing. Also, the pylon sign has the same footprint.

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

-Mr. Jerome Donovan. He stated that he served on the Zoning Advisory Committee which redid the Town Code for signage. One of the issues was signs on buildings. He would not like to see a precedent set and how it affects other retailers.

Chairman Bogar appreciated his comments and stated that this Board reviews each application independently.

There were no calls or letters received. There being no further input, the Public Hearing closed at 6:27 P.M.

Oneida County Planning 239 and NYSDOT were received with no comments.

Board Member Schulman discussed the possibility of placing signs in the windows. Mr. DePerno said they wouldn't do this unless they may have a "sale" sign during a special promotion. Some Board Members felt the window signs would not be an issue. Also, none of the proposed building signs face traffic. Chairman Bogar recognized that issues have come up regarding sign pollution.

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;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no;
- The requested variance is substantial – no;
- 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 – no.

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 Tim Tallman. Vote taken:

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Bob Schulman - yes
Board Member Karen Stanislaus - yes

Board Member Tim Tallman – yes
Board Member John Montrose - yes
Board Member George Koury - yes

Motion was **approved** by a vote of 7 – 0.

The application of **Father Arthur Krawczenko, Administrator of St. Patrick's/St. Anthony's Parish/Mr. Benjamin DeGeorge of St. Pauly Textile, Inc.** are seeking an Interpretation to

allow for an 8' x 16' wooden shed to be used for clothing drop off at **St. Patrick's/St. Anthony's Church, 3368 Oneida Street, Chadwicks, New York**. The applicant is located in an RB4 (Neighborhood Business) zone which does not allow for a clothing drop off structure. Therefore, the applicant is seeking an Interpretation of Use to allow this as an accessory structure. Legal Notice was published in the Observer Dispatch on June 11, 2010 and residents within 500' were notified. Mr. DeGeorge appeared before the Board.

He presented a list of where these drop off sheds are located in nearby areas. They take the usable clothing and send it out nationally to the Red Cross and United Nations to name a few. They collect about 80,000 lbs. a day. They have dealt with over 325 churches and schools and never have been asked to remove a shed. The Church group that sponsors this shed is the Youth Group. They have a volunteer go to the shed every day or every other day and remove the clothing. The Youth Group receives an amount of money per pound. St. Pauley maintains the shed, i.e., paint, maintenance, etc. There is no electricity or water connected to the shed.

A question was raised about people dropping off trash and how do they plan to prevent it. Mr. DeGeorge said people respect a Church. There are signs on the shed stating what can go into it. If there is an unwanted item, the Youth Group monitors it and they throw it away or use it for something else.

Chairman Bogar asked if the applicant is an independent contractor – Mr. DeGeorge said yes, they have some type of contract with the Church.

Mr. Michael Kuhn appeared as a representative of the Church. He stated they started a Youth Group to get kids involved and earn some money. This would work for them as they don't maintain the building and if at any time this doesn't work for them, the shed can be moved off the premises immediately. Mr. DeGeorge stated he will put something in write if the Board wished that if this didn't work out, he would remove the shed. Mr. Kuhn was asked if he talked to any of the neighbors about this proposal. Mr. Kuhn said there is a garage/parking lot behind them.

Chairman Bogar noted other drop off sites that became a concern with trash, etc. He does not want to see something unsightly and have to call the Codes Office to monitor it. Mr. DeGeorge explained further that their setup and procedures are different. Also, they carry \$6 million dollars in liability coverage. The shed is open at all times; it was stated there is a light in the parking lot that would shine on it. Mr. Kuhn reiterated that he feels this is a good idea for the Youth Group.

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

-Andrea & Paul Toomey, 9286 Grange Hill Road. They support this application – this is a good idea for the Youth Group. Also, they feel the Church would keep a close eye on it.

There were no calls or letters received. There being no further input, the Public Hearing closed at 6:50 P.M.

Chairman Bogar stated the Board needs to determine if this is an accessory use to the Church. Discussion ensued regarding maintenance of the site. It was stated the Codes Officer could send

a letter to the Church if the property is not maintained properly.

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

Motion was made by Board Member Karen Stanislaus to approve the application as presented as an Interpretation of Use for an accessory use conditioned on the representation to removed at will by the Church, and no outside storage; anything dropped off would have to be contained in the building; and this would give the Codes Department the ability to cite it; 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 – no
Board Member Fred Kiehm – yes
Board Member Bob Schulman - yes
Board Member Karen Stanislaus - yes

Board Member Tim Tallman – yes
Board Member John Montrose - yes
Board Member George Koury - yes

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

The application of **Ms. Dawn Cittadino-Santiago, 45 Merritt Place, New Hartford, New York 13413**, who is requesting a one-story addition for two (2) bedrooms and one (1) full bath to the back of the existing home. The applicant is located in a Medium Density Residential zone which requires a 10' side-yard setback. She is seeking an 8.25' right side-yard Area Variance and an exception to Town Code Section 118-69A which prohibits expansion of a non-conforming building. Legal Notice was published in the Observer Dispatch on June 11, 2010 and residents within 500' were notified. Mrs. Santiago and Mr. Frank Cittadino appeared before the Board.

Mr. Cittadino stated that his daughter lives at this house with her mother, husband and three (3) children. They need the additional living space with new bedrooms and bathroom. There will be a poured or block foundation with a crawl space. The house is already non-conforming. They are trying to stay in conformity with the existing home, which they know is close to the property line. The existing room in the back will be coming down. He stated that a survey has been done on the property recently by a licensed surveyor.

Discussion ensued regarding water runoff, roof lines, and snow removal. Mr. Cittadino explained that he hasn't had major problems with drainage, most of the water runoff actually comes from the neighbor's home onto his property. He has dealt with it as it isn't a major concern. The roof will be peaked to run water on both sides of the property – a normal pitch. Mr. Cittadino said water runs onto the property, but feels it is controlled.

Concern was expressed by some of the Board Members regarding the distance between the neighbor's garage and their home and the proposed addition. Mrs. Santiago said she talked with her neighbors and they are very supportive – everyone gets along. Board Member Stanislaus understands everyone getting along now, but if either party sells, it may be an issue. Mr. Cittadino also stated that there is walking distance between the two (2) structures. He said materials will match the existing home. Also, he will install a fire rated wall as safety is a major concern for him.

Board Member Tallman asked if this addition could be reduced so they could be further away from the garage. Mr. Cittadino said it would be too small – it wouldn't work.

Chairman Bogar asked if there was anyone present to address this application – there was no response. There were no calls or letters received. There being no further input, the Public Hearing closed at 7:10 P.M.

The Board Members discussed the closeness to the property line, the house being non-conforming, alternatives to the application, water runoff, roof lines, snow plowing, etc.

The Public Hearing was opened again at 7:15 P.M. Board Member Tallman asked if they knew the size of the small mud room. It was stated about 10' x 11'. The garage goes a little past their house. The addition will not go past the garage. The Public Hearing closed again at 7:16 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;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no;
- The requested variance is substantial – no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – difference of opinion;
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – no.

Motion was made by Board Member Fred Kiehm to approve the application as presented; that a need was demonstrated; that materials match the existing house; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member George Koury.
Vote taken:

Chairman Randy Bogar – yes
Board Member Fred Kiehm – yes
Board Member Bob Schulman - yes
Board Member Karen Stanislaus - yes

Board Member Tim Tallman – yes
Board Member John Montrose - yes
Board Member George Koury - yes

Motion was **approved** by a vote of 7 – 0.

Mr. John Rich, applicant for Mr. Anthony Giovinazzo, who is proposing a three lot subdivision for property that fronts on Higby Road and Ironwood Road. The lot that fronts on Higby Road has sufficient frontage and size; however, the two lots proposed off of Ironwood Road have 30' of frontage. Zoning in this area is Low Density Residential which requires 120' of frontage per lot. The applicant is seeking a 90' Area Variance for frontage on the two lots fronting on Ironwood Road. Legal Notice was published in the Observer Dispatch on June 11, 2010 and residents within 500' were notified. Mr. John Rich appeared before the Board.

Mr. Rich gave a brief history of the previous subdivision (32-lot Major Subdivision). One of the owners had health problems and the project did not go forward, not because of non-approval, but because of the health issues. The developer is trying to recoup some of his investment by proposing this three-lot subdivision. He understands there was some opposition to the previous plan with multi-family homes and thought this was a good alternative. All this land is on one deed. A gentleman wants to locate his house on #2, and another person's house on Lot #3. Lot #1 is on Higby Road. There is also a paper road (separate piece of property) which will be used as a shared driveway about 12' to 14' wide. There are no plans for a gate at this driveway. A turnaround will be provided for emergency vehicles use. There will be a 100' setback from the rear property lines to the adjacent properties. Potential location of the buildings has been formally planned. The homes proposed are 3200-3400 square feet Colonial. Two of the lots are approximately 10 acres; the lot on Higby Road is 3.4 acres. Lot #1 will have access to Higby Road only and Lots #2 and #3 will have access to Ironwood Road only.

Board Member Montrose asked if the trees would remain. Mr. Rich said a very small percentage of trees that would be removed. The prospective buyers want privacy also.

Discussion ensued regarding front yard setbacks and Mr. Rich said he would follow the zoning requirements. Chairman Bogar asked if this would require a Minor Subdivision application to the Planning Board – Codes Officer Booth said yes. Mr. Booth stated there is a 30' minimum front setback but you can set back as far as you would like. Attorney Cully asked if the average setback was computed – Mr. Booth said yes to determine minimum setback but you can set back farther in excess of that minimum setback.

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

-Mr. Scatko, 356 Higby Road. Are these two (2) deeds going to separate #2 and #3 and have one (1) access to Ironwood Road. Will the deeds state to keep that land vacant; will the new owners have access to Sylvan Way or any future development. Is there plans to further subdivide the property – Mr. Rich said no further subdivision – just lots #2 and #3.

Board Member Tallman referred to the back part of Sylvan Way as it is not owned by this applicant. The proposed locations don't lead into any development back there. It was stated that the paper road is owned by Mr. Eberley and it is undeveloped. They would have to get approval for a Major Subdivision in order to do anything there.

Board Member Koury stated once Lots #2 and #3 are subdivided, they can only remain that way forever because there aren't enough frontages.

Mr. Jerome Donovan, 14 Silver Birch Court. Mr. Donovan doesn't agree with Board Member Koury's statement and in order to address this about further subdivision of Lots #2 and #3, given the adjacent paper road and the possibility the owner of Lot #2 could subdivide providing someone bought access off Deerpath. If that happened, it would have to come before the Zoning Board and Planning Board for review. He feels there is nothing to preclude further subdivision of Lots #2 and #3. If you were to grant the Area Variance, he requests there be a deed restriction that these two (2) parcels cannot be further subdivided.

Chairman Bogar said this Board could restrict it. Mr. Rich said the applicant would not be opposed to this.

Gustave DeTraglia, Esq., 12 Silver Birch Court. He had several issues:

- Whether this is a self-created hardship
- What happened to the original subdivision; how did you end up with this configuration
- You would have to come through the existing subdivisions for sewer and water
- How did the paper street get into an individual name; did the Town abandon the paper street? How was it handled? A paper street now becomes a 14' driveway.
- Is the driveway substantial enough for emergency vehicles; has it been engineered?
- Are they going to tie into a lighting district?
- How will these two (2) prospective owners get taxed;
- How did you arrive with just 30' frontages?

Mr. DeTraglia feels there isn't enough planning that went into this proposal.

Mr. Rich again explained what transpired with the previous subdivision for 32 lots. Also, these lots will have septic, not sewer, but Water Board has said there is water available.

-Mr. Mark Cioni, 28 Ironwood Road. He is the property owner most affected. At the time of the previous subdivision, none of his questions were answered, i.e., water, water pressure, drainage, etc. He bought his lot with the understanding that the paper street wasn't going to be developed. He has safety concerns regarding his children with construction taking place; he has concerns with adequate buffering and would hope he would be accommodated. How does he submit his concerns formally. (Mr. Cioni was advised to email the Town Zoning Board).

Chairman Bogar explained the process for this application this evening either voting on the application or not, or the Board may decide additional information is needed. If this Board did approve it, then the application goes before the Planning Board for them to review. If we deny it, then it goes back to the property owner to decide what to do.

-Resident, 352 Higby Road. He has concerns with Lot #1. Is there any restriction on Lot #1 for drainage. Mr. Rich said there is a restriction on this lot that no construction occurs on the back of the lot. The drainage field is located off of that property.

-Mr. Jerome Donovan, 14 Silver Birch Court. He talked to the Town Engineer about the paper road off Ironwood/Thistle court. Who owns it and how it got transferred. Mr. Rich said he provided a copy of the deed. Mr. Donovan said he was a part of the Site Plan Review for Dr. DeLaus for the 32 proposed lots. However, he feels this project is a winning proposition for the developer to recoup some of his investment, deed restrictions provided; no further subdivision provided; privacy with a buffer as proposed and preserve the habitat; no major storm water issues that would have been created by a 32 lot subdivision. There would be no highway infrastructure costs that would fall to the taxpayer. From his perspective, this is a good proposal. This Board could condition the application with barrier screening from the paper road to Lots #2 and #3 and other conditions or make recommendations that the Planning Board consider such recommendations at the time they look at specific locations of the homes and related items. The 32-lot subdivision idea could always be picked up again.

-Mr. Gus DeTraglia, 12 Silver Birch Court still questioned issues referred to previously, and snow removal. Also, just because there is a deed for the paper street, he questions the legality of it, and ownership of it. Mr. Rich noted that the Town never owned the paper street.

-Mr. Frank McHugh, 6 Silver Birch Court. He also feels this is a winning situation. He referred to a possible cul-de-sac as they add to the neighborhood.

-Mr. Donovan also addressed street lighting and the possibility of extending the lighting district – the South Woods residents pay for this and the new residents would enjoy those benefits. These homes would be part of the South Woods development and perhaps this could be taken into consideration by the Zoning Board or Planning Board and also have the Town Attorney look into it. Mr. Donovan also wanted noted for the record:

- 1) this property is zoned Low Density Residential; two (2) parcels have approximately ten (10) acres. In the Town, in an Agricultural District, you could have a horse barn. Could horses be in a LDR area – Mr. Booth said no. Horses are not allowed in an LDR zone.
- 2) Lighting: people in South Woods about 10-15 years ago petitioned the Town about the number of street lights. This is a major issue. South Woods is named so for a reason. People don't want to look at street lights. Most residents have a lamp post in their front yards. There is nothing precluding any of these properties to put in a tennis court with lighting – he feels this is an issue.
- 3) With properties this large, he is concerned about the invasion of trail bikes and tracks

in a wooded area. Noise pollution is an issue. He knows this is private property but how can it be addressed.

Mr. Donovan feels it would lend itself to this type of problem. Board Member Schulman feels once a house is there and established, it would eliminate a situation like that.

-Mr. DeTraglia stated there are at least 12-18 deed restrictions in South Woods and can be checked regarding motorized vehicles.

-Mr. Dana Jerrard, 32 Ironwood Road. He would like this Board to take into consideration the aesthetics of this area. He agrees about placing these properties on the tax rolls.

-Mr. Bill Owens, 39 Ironwood Road. He is a taxpayer and in the construction business. Would the driveway look like other surrounding driveways. There is a potential with 60' to have something different. With the aesthetics of the driveway taken into consideration, he wouldn't have any objection and hopes there would be some type of buffer or privacy at the driveway.

At this time, Town Attorney Cully addressed the Board. He referred to Mr. DeTraglia's comments about a self-created hardship because this is one residential piece of land that could be used for one house. What they are asking for is to set aside the Zoning Ordinance to allow for a subdivision, two (2) lots which are substandard.

Further, this is a filed subdivision which was approved and stamped and signed by the Planning Board and filed in Oneida County Clerk's Office that created this subdivision which Ironwood Road exists. On that map there is a parcel shown as a future road designated as a street. When this was approved, it was not approved as a paper road but a street and bound by the filed map. If you want to change it, you would have to go back to the Planning Board and modify it. He doesn't know if that process was followed. All he has is one page of a deed where this piece of land was conveyed to 360 Higby Road LLC. He doesn't have enough information that anyone went back to the Planning Board and got permission to modify this subdivision to sell this off as a driveway. He feels there should have been some requirement before it was sold to go back and get approval from the Planning Board. There may be a difference between driveway and road. Mr. Donovan stated that as a member of the Planning Board that issue never came up. It was designated on the approval of South Woods as a road. Mr. Donovan asked the Town Engineer today that it be addressed.

Attorney Cully stated that at some point in time the road would be deeded to the Town then it would no longer be a paper street – but he doesn't feel it was ever done. Chairman Bogar felt a driveway can't be deeded. Attorney Cully felt that before it was a road, and he doesn't feel it is consistent with the plan. He feels they have to go back before the Planning Board and modify it and show it as a driveway on the plat. Once that is filed, that is it. Attorney Cully referred to the original developers of South Woods. Stoneledge was the developer and they conveyed title to it. Attorney Cully feels the applicant has to show that deed was properly prepared and shown as a driveway. Someone changed that road and sold it, but to use it as a driveway – how was it done? If they wanted to construct a road they would have to supply sufficient frontage. Mr. Rich said one of the initial plans was to have several lots, perhaps five (5) or six (6).

Mr. Donovan asked if the Zoning Board could consider this variance on a condition that the applicant deliver to the Town Attorney evidence of a refiled map that shows the Planning Board changed the road to a driveway. Mr. Rich said they have to go to the Planning Board anyway because of the proposed subdivision.

Mr. DeTraglia said he wants this done right. The idea of putting in a road with a cul-de-sac with 5 or 6 lots might be a good idea.

Mr. Donovan referred to a map – he feels it is important that the parcel of property under consideration was never subdivided. Everything in Deerpath and Sylvan Way is proposed so the whole notion of a paper street is futuristic – this is his interpretation.

Board Member Schulman doesn't feel comfortable acting on this until we know if they have ingress into this property. He doesn't feel it is easy to get the original developer together to get to the Planning Board to change the use of that paper street. Attorney Cully advised to table the application for a continuation of this hearing until the applicant comes forward with sufficient proof that they have approval to modify the paper street as a driveway (go back to the Planning Board and get it done, or have their attorney do it; refer to Planning Board minutes when that project was approved as there may be comments that this was going to be a future road or driveway; or show that it was never a paper street; or maybe their attorney has some opinion if the road hasn't been built in a certain number of years it could be abandoned). This is Attorney Cully's suggestion to the applicant.

It was the consensus of the Board Members based on the advice of Town Counsel to table this application to get more information as described by the Town Attorney above - the next meeting has been changed to July 26, 2010.

All residents in attendance were advised of the next meeting.

There being no further business, the meeting adjourned at 8:50 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

dbb