

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
JULY 26, 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 Attorney Herbert Cully, 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. Minutes of June 21, 2010 approved by Chairman Bogar, seconded by Board Member Tim Tallman. All in favor. He also mentioned that one (1) Board Member has resigned and there are six (6) Board Members in attendance this evening. It is up to the applicants whether they want to proceed at this time.

THIS APPLICATION WAS TABLED AT THE JUNE 21, 2010 MEETING TO BE ADDRESSED FURTHER. 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. Tax Map #340.000-2-1.2; Lot Size: approximately 26.75 Acres; Zoning: Low Density Residential. Mr. John Rich appeared before the Board.

Chairman Bogar deferred to Town Attorney Cully for an update. Attorney Cully referred to the packet forwarded by resident Gustave DeTraglia and his question as to prior subdivision approval (this packet has been made a part of the file). He referred to Attorney C. Louis Ablove's letter of June 24, 2010 that addressed this issue indicating there are no deed restrictions or limitations to prevent the former paper street from being used as a driveway for ingress and egress to the two (2) building lots now proposed. Attorney Cully also referred to the Town Engineer for his input for this subdivision which is referred to as and approved as a future street right-of-way (he referred to Codes 104/7 explaining a future street. Also, Attorney Cully referred to Mr. DeTraglia's concerns which would be addressed by the Planning Board under Site Plan Review and his question regarding the transfer of title.. He referred to Attorney Ablove's letter of July 22, 2010 addressing law that says a dissolved corporation may continue to function to wind up the affairs of the corporation. He also addressed the issue of the title of the parcel to 360 Higby Road LLC. Further, Attorney Cully checked with Planning Board Secretary Dory Shaw who received an authorization signed by Mr. Giovinazzo of 360 Higby Road LLC to have Mr. John Rich proceed on his behalf. Attorney Cully does not believe there is an issue with the paper street – it is defined as a private drive as well.

Chairman Bogar also referred to a letter submitted by Mr. Jerome Donovan, 14 Silver Birch Court, dated July 19, 2010 addressing his support of this proposed minor subdivision conditioned on some items (this letter has been made a part of the file). Chairman Bogar felt the items

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addressed in his letter are more relevant to the Planning Board review than this Board – Attorney Cully agreed.

Chairman Bogar opened the meeting to anyone who wanted to comment – there was no response. This application was tabled at the June 21, 2010 meeting to be discussed further this evening. Therefore, the Public Hearing has now been closed at 6:10 P.M.

Board Member Montrose had a question for the applicant: will the road be constructed like a road or driveway. The Public Hearing was opened again at approximately 6:14 P.M. Mr. John Rich said they are flexible in this regard. When he puts together the Site Plan Review for the Planning Board, it will be addressed further. The Public Hearing closed at approximately 6:16 P.M.

The Board Members discussed the previous subdivision on this property, which was for 32 lots vs. the application before the Board at this time.

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

Motion was made by Board Member Karen Stanislaus to approve this application as presented as the Board reviewed the comments of the Town Attorney; also, she would like the concern #3 as shown in Mr. Donovan's letter regarding deed restriction to prohibit further subdivision part of this approval to be sent to the Planning Board for their Site Plan Review; seconded by Board Member Fred Kiehm. Vote taken:

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

Board Member Tim Tallman – yes
Board Member John Montrose - yes
Board Member Karen Stanislaus – yes

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

The application of **Sherman Drive Trust, 1714 Sherman Drive, Utica, New York 13501 (Town of New Hartford)**. Attorney Michael Cancilla is representing this applicant who is requesting an Area Variance for 70.5' of frontage on the proposed lot off Carmen Lane. Zoning in this area is Low Density Residential which requires 120' of road frontage, thus, necessitating the Area Variance request. Tax Map #339.001-1-25; Lot Size: 150' x 150'; Zoning: Low Density Residential. Attorney Michael Cancilla appeared before the Board. Legal Notice was published in the Observer Dispatch on July 16, 2010 and residents within 500' were notified. Board Member Karen Stanislaus recused herself from this application.

Attorney Cancilla appeared before the Board and gave a brief history of this parcel. At one time this used to be a lot by itself. He is asking to put it back together the way it was before. He referred to a petition submitted by Mr. Inserra of neighboring property owners who are not opposed:

-Mr. & Mrs. Joseph Rocco, 4 Carmen Lane	-Mr. Gene Corsanti, 9 Carmen Lane
-Mr. & Mrs. Rufus Ventura, 5 Carmen Lane	-Mr. & Mrs. Ken Gigliotti, 1 Carmen Lane
-Mr. John Fanelli, 1751 Tilden Avenue	-Ms. Mary Malowicki, 14 Taber Road
-Mr. & Mrs. Paul DePietro, 1708 Sherman Dr.	-Ms. Phyllis Palumbo, 1707 Sherman Drive
-Mr. William Locke, 1709 Sherman Drive	-Mr. Richard Widdicombe, 1711 Sherman Drive
-Mr. Robert Sfeir, 1713 Sherman Drive	-Keesook Han, 1711 ½ Sherman Drive

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

-Mr. George Shaffer, 1710 Sherman Drive. He has concerns with water runoff towards his property with the construction and layout of a new home towards the rear of his property. He asked how close a proposed home could be placed on the lot.

-Mr. Tom Hyatt, 2 Carmen Lane. He was also interested on the location of a new home.

Discussion ensued regarding the proximity of a new home to the Shaffer property. One suggestion is no building to be any closer than 100' from Mr. Shafer's property line. Attorney Cancilla does not have a problem with this. At this time, Codes Enforcement Officer Booth indicated what the required setbacks are from the property lines. He also insisted that the ZBA determine the required setbacks for the rest of the property.

It was determined that the t setbacks would be as follows and as shown on the map which has been made a part of the file: 100' off the easterly property line; 15' off the westerly property line; 15' off the southerly property line; and 30' off the northerly property line as shown on the map. There being no further comments, the Public Hearing closed at 6:35 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, 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 – no; all in agreement;
- The requested variance is substantial – 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 – 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 – no; all in agreement.

Motion was made by Board Member Bob Schulman to approve the application as presented with the following conditions that there would be 100' off the easterly property line; 15' off the westerly property line; 15' off the southerly property line; and 30' off the northerly property line as shown on the map; only one (1) residence would be built on that property; and that no accessory structure, i.e., shed, can go within 100' of the property line; 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 John Montrose. Vote taken:

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

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Karen Stanislaus - abstained

Motion was **approved** by a vote of 5 – 0.

The application of **Mr. Christopher Giambrone of Coughlin Giambrone, LLC, 610 French Road, New Hartford, New York 13413**. Applicant is seeking an Area Variance to place a sign on a side of the building in which he doesn't occupy. Therefore, he is seeking an 18 square foot Area Variance for signage on the front of the building at 610 French Road. Tax Map #317.000-2-7.1; Lot Size: 1.63 Acres; Zoning: RB3 Office Business. Mr. Dennis Coughlin appeared before the Board. Legal Notice was published in the Observer Dispatch on July 16, 2010 and residents within 500' were notified.

Mr. Coughlin is the other principal of this business. They have a sign already located on the building and they want to place a tag line underneath it for better clarification.

Codes Officer Booth said this is an unusual circumstance that our Code stipulates that the occupancy face the road and also the sign. At this particular building, it can't happen. It is their only exposure but the Code is clear, thus the variance request. Mr. Coughlin and Mr. Giambrone occupy a space to the rear of the building.

Chairman Bogar asked if there was anyone present to address this application – there was no response. NYSDOT and County Planning 239 were received with no adverse comments

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, 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 – no, all in agreement;
- The requested variance is substantial – 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 – 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 – no, all in agreement.

Motion was made by Board Member John Montrose 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 Tim Tallman – yes
Board Member John Montrose – yes
Board Member Karen Stanislaus - yes

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

The application of **Mr. Russell Cahill, 202 Gilbert Road, New Hartford, New York 13413** who is requesting to construct a new covered front porch onto his existing home. Zoning in this area is Low Density Residential which requires a 30' front yard setback., The applicant is seeking a 6' front yard setback Area Variance. Tax Map #339.001-1-25; Lot Size: 150' x 150'; Zoning: Low Density Residential. Mr. Cahill appeared before the Board. Legal Notice was published in the Observer Dispatch on July 16, 2010 and residents within 500' were notified.

Mr. Cahill explained that when it rains, it affects his home. He wants to construct a covered 42' x 6' front porch (length of the front of the home) to protect his home and he also feels it would enhance his property. If it wasn't a covered porch, he wouldn't need to be in front of the Board. The new roof will be the same pitch as the existing one.

Chairman Bogar asked if there was anyone present to address this application – there was no response.

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, 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 – no; all in agreement;

- The requested variance is substantial – 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 – 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 – no, all in agreement.

Motion was made by Board Member Fred Kiehm to approve the application as presented with the new roof matching the existing home; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Bob Schulman . Vote taken:

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

Board Member Tim Tallman – yes
Board Member John Montrose – yes
Board Member Karen Stanislaus - yes

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

The application of **Mr. Ned Walker of Walker Planning & Design for Jay-K Lumber, 8448 Seneca Turnpike, New Hartford, New York**. The applicant's property is zoned Manufacturing which does not permit a mercantile occupancy. Therefore, the applicant is seeking a Use Variance to construct a 15,400 square foot mercantile occupancy. Tax Map #328.011-1-20.1; Lot Size: 13.97 Acres; Zoning: Manufacturing. Legal Notice was published in the Observer Dispatch on July 16, 2010 and residents within 500' were notified. Messrs. Ned Walker, Byron Elias (Foresite Realty Advisors, Inc.), Dean Kelly (representing Jay-K – Kelly family) appeared before the Board.

Mr. Walker explained that Jay-K has been a family business for over 70 years, and he gave a presentation of what the property was zoned years ago. He stated that they have an interested party to lease 1.55 acres (pad site). The whole site is approximately 20 acres. The new structure/pad site would be adjacent to Zebb's. No new driveway would be constructed onto Route 5. They have been advised to do a traffic study at some point. However, they wanted to present the plan and answer any questions. They are currently a non-conforming use with the zoning, but legal. He referred to the 1953 Zoning Ordinance which allowed for industrial, and other uses, which he feels is pertinent to their application. He looked at all of the permitted uses under Manufacturing and demonstrated that they are lacking a reasonable return on those uses.

Mr. Walker referred to the criteria for a Use Variance and commented on each and why he feels they have met them. He also referred to the permitted uses in a manufacturing zone and why they feel cannot be met at this site. All documentation for the Use Variance request submitted by Mr. Walker has been made a part of the file. He feels that Jay-K Lumber has been a good neighbor and doesn't feel the request would change the character of the neighborhood as there are retail uses around them, and he feels is in compliance with the Comprehensive Plan.

Mr. Walker knows they are in non-compliance with parking, 200 parking spaces are needed – they are proposing 240 spaces. He presented a sketch of the site (the plan presented tonight does not include new parking) but they are working on accomplishing this at the Planning Board. This

plan is in addition to what is in the document submitted. The plan shows a landscaping retail activity on the frontage which takes the parking on Area #1 as shown – the landscaping business will stay. This is leased by the landscaping business. He indicated how they plan to accommodate parking.

Chairman Bogar asked what the hardship was, and the Otto case that was mentioned in the law. He stated that a Use Variance is difficult to approve. Mr. Walker mentioned that what drove this particular plan is the reduction of employees at this facility, and what they are limited to do in this zone. The Sloan buildings are not owned by Jay-K. They have a right of way back to their property and are allowed so many parking spaces at this site. They have to depend on their arguments in their application which derives from the fact that they want retail, but the Ordinance changed. Mr. Walker feels this isn't a self-created hardship, he feels the Town created it. Chairman Bogar referred to the Town Attorney regarding the Otto case and another case. In each one of these cases they talk about one building used for one purpose but here we still have Jay-K on that same piece of property. The Town Attorney said you have to look at the whole parcel.

Mr. Walker was asked if they plan an entrance/exit off of Middle Settlement Road – Mr. Dean Kelly said no. They have frontage on Oakdale on the back parcel, but they don't use it for anything else. No plans to do anything on Middle Settlement Road or Oakdale Avenue

Board Member Kiehm asked what kind of traffic Aldi's anticipates. Mr. Walker doesn't have an answer for that yet. He knows they are committed to do a traffic study. He mentioned Oneida County Planning amended their recommendation where they agreed those special studies go with the Planning Board review – they won't entertain a letter until a traffic study is done. Mr. Walker talked informally with NYSDOT also about a traffic study.

Codes Officer Booth asked Mr. Walker if the future parking was located on the same parcel as Jay-K – Mr. Walker said yes. Mr. Booth also referred to green space being maintained once the actual parking is accounted for – Mr. Walker said he is aware of this.

Discussion ensued regarding the granting of a Use Variance and that approval runs with the land – if approved, it has to be a retail use. It was stated that it could be restricted. Mr. Walker said whether it's this application or another, they want to pursue something on this property.

Issues such as green space, snow removal, signage, traffic, storm water, etc. can be addressed at the Planning Board level.

Chairman Bogar asked if there was anyone present this application:

-Mr. John Leach, Middle Settlement Road. The Kelly's have always been good neighbors. He feels they have an opportunity to increase the sales tax, etc. He knows there will be additional traffic, but there is traffic from other businesses as well; but with some adjustments maybe NYSDOT can work them out.

There being no further input, the Public Hearing closed at 7:25 P.M.

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Discussion ensued regarding this site and this Board's review criteria. Chairman Bogar is speaking strictly in the sense of the law in what a Use Variance requires. We have an obligation to look at the law. He does not feel they met the criteria in the legal sense. He referred to the comments that came in from the interested agencies, i.e., traffic study, storm water management plan, high accident area, parking, green space, and actual hardship.

It was mentioned that the economy has changed, but feels this is a big issue of what they are asking to do at this location. Board Member Schulman agrees but can understand the Kelly's point of view. Board Member Tallman and other Board Members wish to see the traffic study.

Discussion ensued regarding conditional approval; also discussed was traffic issues in this area.

It was suggested to table this pending receipt of a traffic study, then it would give this Board the opportunity to review this application with a full Board since we are down one (1) member. Any traffic study can be used by the Planning Board also. The traffic study is paid for by the developer. Town Attorney Cully referred to the County 239 review and NYSDOT in that they request a traffic study, etc. Board Members Stanislaus and Montrose also feel in light of concerns, to table this, wait for the traffic study and any information that may come up.

There being no further input, the Public Hearing closed at approximately 7:40 P.M.

The Public Hearing was opened again at 7:41 PM. Mr. Byron Elias stated when the traffic study gets done, the Planning Board will be in a position to require the developer to make changes to make it work. But Route 5 is a State roadway and they have the final decision. Mr. Elias feels this Board has to look to see if everything is done. If traffic and parking was good, we would allow this. If that is the recommendation of this Board, then we can go forward to get the traffic study completed, let NYSDOT look at it, etc.

Mr. Walker felt issues could be handled under SEQR and maybe modifications may be in order. He felt Oneida County Planning thought there was merit for this Board and modified their letter. He also feels NYSDEC would have comments under SEQR also. Mr. Walker also referred to mitigation; also, he doesn't want to do a storm water drainage plan before they know if they get the site approved.

The Public Hearing closed again at 7:45 P.M.

It was the consensus of the Board Members to table this and get more information on a traffic study and to also have the parking issue addressed.

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

Respectfully submitted,

Dolores Shaw, Secretary/Zoning Board of Appeals
dbs

