

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
NH PUBLIC LIBRARY
JUNE 20, 2011**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Tim Tallman, John Montrose, Taras Tesak and Karen Stanislaus. Board Member absent: Fred Kiehm. Chairman Bogar introduced newest Board Member Taras Tesak who had previously been a Chairman and member of the Zoning Board. He appreciates the experience Mr. Tesak will add to this Board. He also congratulated Board Member John Montrose for his reappointment to another five (5) year term. 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 the Board Members and explained the procedures for tonight's meeting. He also mentioned there is a vacancy on this Board, and also one (1) Board Member is absent. It is up to the applicant whether to proceed as they would need a total of four (4) votes for approval.

The application of **Ms. Norma Mahoney, 14 Wilbur Road, New Hartford, New York** who is proposing to construct a 16' x 24' free standing garage to the left side rear of her existing home. Zoning in this area is Medium Density Residential, which requires an accessory structure to be 5' from the side property line. Therefore, the applicant is seeking a 4' left side-yard wetback Area Variance. Tax Map #329.013-2-34; Lot Size: 40' x 97'; Zoning: Medium Density Residential Legal Notice was published in the Observer Dispatch on June 10, 2011 and property owners within 500' were notified.. Ms. Mahoney appeared before the Board.

Ms. Mahoney submitted signatures of adjacent neighbors who are in support of her application. They need a new driveway because of drainage problems. It is a very narrow lot, and there is also an easement nearby.

Ms. Mahoney was asked if this is the only location for the garage and how it would be used – Ms. Mahoney said this is the only location because of the layout of the property, and they need the garage for their car(s) and for storage. Materials will match the existing home.

Chairman Bogar asked if anyone was present to address this application – there was no response. County 239 was received with no recommendations. The Public Hearing ended at 6:10 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 John Montrose to approve the application as presented as he was at the site and saw the need for this, the applicant demonstrated that need; 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 John Montrose - yes
Board Member Taras Tesak - yes

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

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

The application of **Mr. Michael Sheridan, P.E., for #2 Ellinwood LLC**. Applicant is proposing an elevator and expansion of a non-conforming existing building at **2 Ellinwood Drive, New Hartford, New York** per Section 118-69A. Zoning in this area is Retail Business 1 which requires a 50' front yard setback. The proposed elevator requires a 17' front yard Area Variance and the radiation therapy addition requires a 10' front yard setback Area Variance. Tax Map #316.020-1-7/8; Lot Size: 3.06 Acres; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on June 10, 2011 and property owners within 500' were notified. Attorney Richard Compson and Mr. Michael Sheridan appeared before the Board.

Attorney Compson stated when the Zoning Board previously approved the last variance, the entrance to this area needed a down ramp to get to the ground level. They thought the Department of Health wouldn't approve it so they refiled to have it at a level spot at the opposite side of the building. The radiation will now be off the same floor level rather than a down stairway or ramp. Mr. Sheridan said it will be perceived as being above grade. The equipment has changed and a physicist said we needed greater thickness at the radiation site. He addressed complying with ADA accessibility. Also, patient comfort is an issue they wanted to address.

Chairman Bogar asked if anyone was present to address this application – there was no response. He referred to County 239 who had no recommendations; OCDPW – no significant impacts; NYSDOT would like a storm water management plan (all letters have been made a part of the file). The Public Hearing closed at 6:20 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.

Codes Officer Booth recommended nullifying the previous Area Variance granted to #2 Ellinwood LLC on February 28, 2011.

Motion was made by Board Member Karen Stanislaus to approve the application as presented; that the previous Area Variance granted on February 28, 2011 be nullified; that the drainage request from NYSDOT be addressed; 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 John Montrose - yes
Board Member Taras Tesak - abstained

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

Motion was **approved** by a vote of 4 – 0 (with one (1) abstention).

The application of **Mr. Andrew Morgan, AIA for Mr. Michael Martyniuk, 24 Benton Circle, New Hartford, New York** who is proposing a 19' x 24' two-car attached garage onto their existing home. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback. Applicant is seeking a 12' left side-yard setback Area Variance. Tax Map #329.018-4-21; Lot Size: 90' x 132'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on June 10, 2011 and property owners within 500' were notified. Mr. Morgan and Mr. Martyniuk appeared before the Board..

Mr. Martyniuk presented signatures from adjacent neighbors in support of his application. He also presented pictures of homes in the neighborhood with two-stall garages. They are proposing a mud room to be incorporated with the garage. The neighbor most affected does not have a problem with this request. The reason they need the garage is for their cars and storage. Board Member Tesak asked if they feel the garage would change the aesthetics of the neighborhood – Mr. Martyniuk said no, he feels it would improve it.

Mr. Morgan said he talked with Codes Officer Booth as there is a concrete slab supported by a wood structure. They would lose basement space – the idea is to put the garage on the end of it.

Chairman Bogar asked if there was anyone present to address this application – there was 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: 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 as a hardship was demonstrated; it wouldn't change the aesthetics of the neighborhood; 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 John Montrose - yes
Board Member Taras Tesak - yes

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

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

The application of **Mr. William Brown, 67 Oakdale Avenue South, New Hartford, New York**, who is proposing to replace an existing carport. Zoning in this area is Medium Density Residential, which requires a 10' side-yard setback. The applicant is seeking an 8' right side-yard setback Area Variance. Tax Map #328.015-2-7; Lot Size: 50' x 160'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on June 10, 2011 and property owners within 500' were notified. Mr. Brown appeared before the Board.

Mr. Brown stated that neighbors at 65 and 69 Oakdale Avenue South have submitted letters of support. He explained his existing carport is dilapidated and needs to be taken down and replaced at the same location. The existing carport has a leaky roof; it slopes in every different direction. He explained the new carport will have a 2" slope with gutters and graded out to the backyard. His neighbor most affected supports his application. Nothing will be on the sides, just a roof.

Board Member Tesak asked Codes Officer Booth about a grandfathered in structure – Mr. Booth explained.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing ended at 6:35 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 a need was demonstrated; and that 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 Taras Tesak - yes

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

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

The application of **Bushinger Realty LLC c/o Mark Levitt, Esq., regarding property at 1701 Burrstone Road, New Hartford, New York**. This property at Burrstone and French Roads is zoned Planned Highway Business, which does not permit convenience stores. The applicant is seeking a Use Variance to construct a convenience store at this location. Tax Map #317.000-2-22; Lot Size: 100' x 200'; Zoning: Planned Highway Business. Legal Notice was published in the Observer Dispatch on June 10, 2011 and property owners within 500' were notified. Attorney Mark Levitt, Keith and Greg Bushinger, Jim Hagan, Engineer, and James Clifford appeared before the Board.

Attorney Levitt gave a brief history of what has transpired on this property referring also to the gas station that was there since 1953. Board Member Tesak asked if the reason why they were here was for the canopy – Attorney Levitt said yes. The convenience store was there for at least 30 years. He further explained the situation with NYSDEC and the spill issue. He went to this Board last month to start the process for whatever they needed to replace the canopy. They never intended the canopy to be removed. Everything has been dug up and replaced except for dirt under a slab.

Attorney Levitt further explained there is a site problem with ingress and egress. They are removing one (1) driveway. They thought it was the ideal time to replace the building and put it in the right place on the property to correct problems. The existing structure is not safe. By tearing it down they can check the remaining soil so no environmental issues recur. Their current zoning is Planned Highway Business which doesn't allow for a convenience store.

The site has been completely remediated. They aren't changing the use, not changing the character of the neighborhood – replacing an inadequate building and putting it in a better place on the property. It is an improvement. They will enclose the dumpster and place greenery on the site.

Chairman Bogar referred to some comments from Lis DeGironimo, contract engineer for the Town, who stated circulation on this has improved; she would like to see one (1) parking space (not handicap) removed by the dumpster if possible; will grass or pavement be added as the existing sidewalk is going to stay; and storm water seems adequate.

Mr. Hagan addressed these comments. They are trying to comply with the Ordinance as closely as possible. Parking now meets requirements. The number of pick ups at the dumpster are limited. Perhaps an employee could park at this space. He referred to the island. It is more green area along Burrstone & French Roads. The NYSDOT wants the sidewalk extended and some green space will have to be removed at that time; they have retained an engineer regarding storm water. They will incorporate on site storm water to capture runoff. This will go into a storm water structure from there to two (2) underground chambers. Whatever is excess will flow into the State system. He presented a preliminary drawing for the file.

Attorney Levitt has received copies of correspondence from agencies and he concurs with their comments.

Codes Officer Booth feels the Town needs some type of agreement for the maintenance of this underground structure for drainage; and that the Building Permit be conditioned regarding a work permit from NYSDOT. Attorney Levitt has no problem with this request.. Mr. Hagan said the State will have some controls over this also.

Mr. Booth also advised that the Town reserves the right to hire an engineer at the developer's expense to verify the work is being done properly. This is a provision in our Code. This project isn't going to the Planning Board for their review and that is where the provision exists.

Mr. Hagan commented that this site is less than an acre and felt they didn't have to do anything as what they are doing is above and beyond. He feels this is a redevelopment site not mandated to comply with the full regulations. But they don't have a problem with another engineer reviewing their work.

It was mentioned that Barton & Loguidice, PE are contract engineers for the Town. Attorney Levitt said they have no problem with them looking at this and agrees with what we are asking..

The Board Members commented that they feel this will be an improvement to that area.

Chairman Bogar referred to the letters received from NYSDEC, NYSDOT, and County 239. Attorney Levitt said their comments have either been addressed or in the process.

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

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: they felt the applicant couldn't realize a reasonable return under the current conditions;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – response: property is unique;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: this new application will improve the property;
- The alleged hardship has not been self-created – response: it has not been self-created.

Motion was made by Board Member Karen Stanislaus to approve the application as presented with the following conditions:

- 1) A Highway Work permit be obtained from NYSDOT before obtaining a Building Permit;
- 2) Maintenance Agreement to have the underground storage tank maintained on a regular basis;
- 3) Hire Barton & Loguidice, PE, as an independent inspector to examine site design and verify site conditions at the applicant's expense;
- 4) Building Permit 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 John Montrose – yes	Board Member Taras Tesak – abstained
Board Member Karen Stanislaus - yes	

Motion was **approved** by a vote of 4 – 1 (the one being an abstention by Board Member Tesak).

Every Board Member received a copy of the draft minutes of the May 16, 2011 Zoning Board of Appeals. Motion was made by Board Member Karen Stanislaus to approve these minutes as written; seconded by Board Member John Montrose. All in favor.

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The Board Members discussed the next Zoning Board meeting. It was determined to hold the next meeting on Tuesday, July 26, 2011 at the Rodger Reynolds Meeting Room (downstairs-back entrance), Butler Memorial Hall, 48 Genesee Street, New Hartford, New York.

There being no further business, the meeting adjourned at 7:20 P.M.

Respectfully submitted,

Dolores Shaw
Recording Secretary

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