

ZONING BOARD OF APPEALS  
February 11th, 2010

MEMBERS PRESENT: John Moorehead  
Robert Decker  
Bruce Foote  
ZBA Attorney Scott Chatfield

Lorraine Morris  
Dan Leary  
ZBA Secretary/Alternate Paige Boratko

ALSO PRESENT: Richard Hartwell and son Chris Hartwell, Ruth Kinch for William May and Attorney Norman Chirco, Rita Dygert

CORRESPONDENCE:

- ZBA Minutes of January 14<sup>th</sup>, 2010
- Codes Report from CEO R. Herrmann – January, 2010
- Application for use variance from Mr. William May- 189 State Rte 5 West, Elbridge  
(#040.-06-04.0) B.T. Zone
- Application for a Use Variance from Mr. Steven Morgan - 5210 Campbell Rd, Elbridge  
(#043.-02-12.0) Non Conforming Use
- Application for Use Variance from Mr. Richard Hartwell -1182 Powerhouse Rd.  
(028.-01-02.2) Accessory Bldg.

Chairman John Moorehead called the meeting to order at 7:00 p.m. and asked if there was anyone present for the previously adjourned hearing for a use variance from Mr. Steve Morgan. No one was at present. A motion was made by Robert Decker and seconded by Lorraine Morris to postpone the hearing for Steve Morgan. The hearing was rescheduled for the ZBA meeting of March 11<sup>th</sup>, 2010 at 7:00p.m.

Chairman John Moorehead continued with the regular meeting. A motion was made by Robert Decker and seconded by Lorraine Morris to re-open the hearing for Richard and Susan Hartwell. It passed with all in favor at 7:08 p.m.

**HEARING#2 – Richard and Susan Hartwell**

**REFERENCE: ZBA FILE TM (#043.-02-12.0)**

**REFERENCE: Minutes from 1/14/10**

*(Recap) Application from Richard and Susan Hartwell for a Use Variance from the provisions of the Town of Elbridge Zoning Laws Chapter 30.31- B paragraph 1 ; to be located at 1182 Powerhouse Road, Jordan N.Y. to allow use of an unauthorized accessory building. Mr. Richard Hartwell, Chris Hartwell (son) and Attorney Ellen Priest came before the board to present their case. Attorney Ellen Priest began with the criteria of the use variance by stating the proposed site will not be creating capital, hinder or depreciate the value of area properties, that the use will not be detrimental to the neighborhood; the use would not alter the essential character of the neighborhood. The structure would not interfere with vehicular movement as they plan to have a single driveway. Mr. Hartwell explained that the proposed structure will be used as storage for several boats, trailers and motors as his garage is full and the neighbors are complaining. The Hartwell's have been cited by the Code Enforcement Officer R. Herrmann. Attorney Ellen Priest stated the Hartwell's and current owner Catherine Deyett have a contract for sale of the property and Catherine Deyett was present at tonight's meeting. The Deyett's have provided the Hartwell's Attorney with a letter which states that they intended to build a barn to house their horses and the town zoning prevented them from doing so. The letter also states that the Deyett's listed their property for sale in August, 2008 and 2009 which there were no buyers during the entire time and that they are desperate to recoup their investment as the recession has made it difficult for them to pay the taxes. A letter from Keller Williams Realty showing the dates that the property was listed was also provided to substantiate their hardship. The Hartwell's also provided the board with a petition signed by area neighbors. The Hartwell's included pictures of other properties in the area that have a structure without a primary residence. Chairman John Moorehead explained that one of the criteria of the use variance is to prove an alleged hardship which has not been self created. At this point the Hartwell's do not own the property and the hardship has to apply to the owner and applicant. Dan Leary asked if the Hartwell's plan to build a primary residence at the proposed site in the future and the Hartwell's said "no". With no further questions from the board, a motion was made by Dan Leary and seconded by Robert Decker to close the hearing for*

*Richard and Susan Hartwell. It passed with all in favor at 7:25pm. The board decided to defer the decision on the Hartwell hearing until further council from the ZBA attorney Scott Chatfield. The hearing will be held again on February 11<sup>th</sup>, 2010 at 7:00p.m.*

Mr. Richard Hartwell and his son Chris Hartwell were present before the board for a second time and stated that nothing had changed from the previous month's meeting. The Hartwell's Attorney, Ellen Priest had submitted to the ZBA Attorney Scott Chatfield a set of documents from the previous month's meeting substantiating the Deyett's attempt to sell the property which he had reviewed. Attorney Chatfield stated that this was an attempt to show proof of the hardship of the owner and lack of reasonable return on the seller's investment. Attorney Chatfield counseled the board and explained that the one exception to the hardship of the used variance criteria is that the Hartwell's have entered into a contract with the Deyett's for the sale of the property. This makes the Hartwell's the contract vendee and they are able to step into the shoes of the owners or take on the hardship can of the owners. This area of the criteria is not an issue. Dan Leary questioned if there was still a requirement for the building to comply with permitted structures and uses. Attorney Scott Chatfield replied "Yes, as far as setbacks and building code requirements are concerned, but not for the process of the use variance; however the board has the right to impose any reasonable conditions upon any concerns that the board may have". With no further questions from the board and no one present in opposition, a motion was made by Robert Decker and seconded by Dan Leary to close the hearing for Richard and Susan Hartwell. It passed with all in favor at 7:50 p.m.

Chairman John Moorehead continued with the regular meeting. A motion was made by Robert Decker and seconded by Lorraine Morris to postpone the hearing for William May to allow time for his attorney to be present. It passed with all in favor at 7:55 p.m. The regular meeting continued with a S.E.Q.R. review for the Hartwell hearing. A motion was made by Robert Decker and seconded by Lorraine Morris to issue a negative declaration based on the short form E.A.F. It passed with all in favor at 8:05p.m.

Chairman John Moorehead continued with the regular meeting. After a brief discussion Robert Decker made a motion seconded by Dan Leary that the use variance for Richard and Susan Hartwell be approved due to the unique hardship of the case with the following conditions;

- 1) That the use be for personal storage only and not to be extended for commercial use.
- 2) That the storage be contained as inside only, there is to be no external storage.
- 3) That the variance shall take effect upon the applicant's closure of the conditional contract.
- 4) That the structure be located as per site plan #1, whereas the setback being 500ft. from Powerhouse Rd

ADOPTED: 4 – AYES  
1 – NAYS

Robert Decker – Aye, Lorraine Morris – Aye, Bruce Foote – Aye, Dan Leary – Aye, John Moorehead – Nay

The motion was adopted at 8:10p.m.

**APPROVAL OF MINUTES:** The board reviewed the previous month draft minutes of January 14<sup>th</sup>, 2010. A motion was made by Dan Leary and seconded by Robert Decker to adopt the as unchanged. It passed with all in favor at 8:20p.m

Chairman John Moorehead continued with the regular ZBA meeting and a motion was made by Dan Leary and second by Robert Decker to open the previously postponed hearing for a use variance from Mr. William May as their Attorney Norman Chirco had arrived. It passed with all in favor at 8:15 p.m.

**HEARING#1 - Mr. William May – 189 State Rte 5 West, Weedsport, N.Y.**

**REFERENCE: ZBA FILE TM #040.-06-04.0**

**REFERENCE: Minutes from 09/10/09, 10/8/09, and 11/12/09**

**Reference Minutes of September 10<sup>th</sup>, 2009, October 8<sup>th</sup>, 2009, November 12<sup>th</sup> 2009-RECAP**

*Application from Mr. William May for Use Variance from the provision of the Town of Elbridge Zoning Law Chapter 30.2, Article III Sections 30.35, paragraph "B" for a residential expansion/garage construction in a Business Transitional Zone to be located at 189 State Rte 5 West, Weedsport NY. Ruth Kinch was present before the board on behalf of William May. Mr. May was cited for having six unregistered cars on both of his properties, house and business. After being non-compliant, he went before the Judge and was ordered to clean up the property by spring. Mr. May wishes to keep the cars even though they are inoperable. To rectify the situation, Mr. May would like to build a 24X40ft. structure as residential storage to place the cars in. The house was built in 1954. The board reviewed Town Law 30.35 (B) (1) (2) permitted Structures and Usage and "C" Specific District Regulations. Rick Stevens questioned if a use variance is needed or if this is a questioning of the interpretation of the Town Law. After a discussion with the ZBA Attorney Scott Chatfield, Robert Decker made a motion seconded by Dan Leary to adjourn the hearing to allow the applicant to gather more information such as a site plan and pending a formal written interpretation of the Town of Elbridge Zoning Laws from C.E.O Robert Herrmann. It passed with all in favor at 8:02pm.*

**October 8<sup>th</sup>, 2009**

*Ruth Kinch was present before the board on behalf of Mr. William May for a second time. The board reviewed the formal letter of interpretation from C.E.O. Robert Herrmann. The ZBA determined that the original application was still before the board as there was not a new application or modification to the existing application. Mr. May did not appeal the decision of Mr. Herrmann's*

determination. The Board and ZBA Attorney Scott Chatfield reviewed Mr. May's options, which would be to satisfy the use variance criteria with the required submitted proof or to appeal C.E.O. R. Herrmann's interpretation of the code. The ZBA Attorney Scott Chatfield suggested that Mr. May obtain a Lawyer. After this discussion Ruth Kinch requested to have the meeting adjourned so that she would have the time to discuss with Mr. May his options and/or retain a lawyer as she did not fully understand the entire process from the previous meeting. On a motion made by Robert Decker and seconded by Rick Stevens the meeting was adjourned with all in favor at 7:30 p.m.

**November 12<sup>th</sup> 2009**

Ruth Kinch was present before the board on behalf of Mr. William May for a third time. Ms. Kinch requested to have a continuance on the hearing, as her Attorney was unable to be present at tonight's meeting.

**December 10<sup>th</sup> 2009**

Ruth Kinch was present before the board on behalf of Mr. William May for a fourth time. Attorney Norman Chirco was present representing Ruth Kinch and William May. After a summarization of the hearings which have taken place in the past few months and a discussion of the Town of Elbridge laws, Attorney Chirco requested to have a copy of the Town of Elbridge Laws which were referenced in C.E.O. Robert Herrmann's letter of interpretation and then requested that the hearing be adjourned. No one spoke in favor or in opposition. On a motion made by Robert Decker and seconded by Lorraine Morris the meeting was adjourned until January 14<sup>th</sup>, 2010. It passed with all in favor at 7:24 p.m.

**January 14<sup>th</sup>, 2010**

Ruth Kinch had called the Town of Elbridge earlier today and informed us that they would not be present for tonight's meeting. Chairman John Moorehead adjourned the meeting until next month's meeting of February 11<sup>th</sup>, 2010 at 7:00 p.m.

Ruth kinch and Attorney Norman Chirco were present before the board for Mr. William May. After reviewing the Town Ordinance, Section 30, 35 – B2, sections 30.35- C1, 30.33- B1, and 30.42 ZBA Attorney Scott Chatfield stated that if the board determines the language of the ordinance of the BT zone to be ambiguous and it raises the question as to whether or not in the BT zone, one and two family residences which are otherwise allowed in the R2 zone would also be allowed in the BT zone notwithstanding the fact that they are not listed in paragraphs B1 and B2 but are reference in subparagraph "C" of section 30.35. The Law is clear that where a zoning ordinance is ambiguous, any ambiguity must be resolved against the municipality and in favor of the applicant. A motion was made by Robert Decker to close the hearing for Mr. William May. It passed with all in favor at 8:35 p.m.

Chairman John Moorehead continued with the regular meeting. The board discussed the hearing for William May. After reviewing C.E.O. R. Herrmann's decision of September 16<sup>th</sup> 2009, a motion was made by Robert Decker and seconded by Lorraine Morris to overrule the Town of Elbridge C.E.O R. Herrmann's determination of September 16<sup>th</sup>, 2009 because the technical requirements in section 30.35 – B do not appear to permit residential structures and uses whereas the provisions of section 30.35 – C1 suggests that residential structures and uses are permissible. This conflict creates ambiguity in the intent of the code. Any ambiguity must be resolved against the municipality and in favor of the applicant.

ADOPTED:           4 – AYES  
                          1 – NAYS

Robert Decker – Aye, Lorraine Morris – Aye, Bruce Foote – Aye, John Moorehead – Aye, Dan Leary – Nay

The motion was adopted at 8:50p.m.

**NEW BUSINESS:** Syracuse Onondaga County Planning Federation training classes scheduled for March 4<sup>th</sup>, 2010

**ADJOURNMENT:** With no further business, on a motion made by Robert Decker and seconded by Bruce Foote, the meeting was adjourned with all in favor at 8:55 p.m.

Respectfully Submitted  
Paige Boratko, Secretary

