

MINUTES OF THE REGULAR MEETING
DECEMBER 11, 2006

The Regular Meeting was called to order by Chairman Joseph Yagey at 4:30 P.M. at which time the Pledge of Allegiance was recited. Board Members present were Hans Arnold, Peggy Rotton, Rodger Reynolds, Bob Wood, Jerome Donovan and Bob Imobersteg. Also in attendance were Councilman David Reynolds, Town Planner Kurt L. Schwenzfeier, AICP, Codes Enforcement Officer Jerry Back, Highway Superintendent Roger Cleveland, Police Chief Raymond Philo, Town Attorney Jerry Green, and Dolores Shaw, Secretary.

Draft minutes of the November 13, 2006 Planning Board meeting were sent to each Board Member for review. Motion was made by Board Member Peggy Rotton to approve these minutes as written; seconded by Board Member Rodger Reynolds. All in favor, except Board Members Bob Wood and Jerome Donovan abstained as they were not in attendance at this meeting.

Draft minutes of the November 15, 2006 Joint Planning Board/Town Board meeting regarding the Comprehensive Plan were sent to each Board Member for review. Motion was made by Board Member Bob Imobersteg to approve these minutes as written; seconded by Board Member Rodger Reynolds. All in favor, except Bob Wood and Jerome Donovan abstained as they were not in attendance at this meeting.

Recommendation to Town Board: **Local Law “D” 2006 Cell Tower Height.** Chairman Yagey explained that the Town Board, in particular, J.C. Waszkiewicz, discussed the limitation of cell towers in the Town. Codes Enforcement Officer Back stated he drafted a proposed law restricting the height to 100’ other than a radio tower and structure for public safety. Mr. Back said rather than singling out one particular user, this height limit of 100’ was chosen. Any cell tower company who wants to go higher would need to appear before the Zoning Board of Appeals. There is one tower located on Woods Highway that is 105’, which was granted an Area Variance of 10’.

Board Member Donovan addressed the difference between communication towers and transmission towers, and how the 100’ height limitation was chosen. He has not seen any documentation from Oneida County Planning or the Town Attorney regarding this issue. He feels that these kinds of limitations are subject to judicial review and challenge.

Further, the Town Board was going to have a Public Hearing on this and perhaps a joint meeting would be in order for the benefit of additional information. Board Member Donovan mentioned that the Town can regulate cell towers, but not prohibit them. He referred to an article in the newspaper regarding the proposed power lines and discussion ensued on that topic. Mr. Back said the intent of the local law was not to single out any one user.

Board Member Arnold agrees that before changing a Local Law, it has to have a review by the Town Attorney, and Mr. Back had said that Town Attorney Green reviewed this. He asked the Town Planner if an analysis was done regarding Board Member Donovan's concerns? Town Planner Schwenzfeier stated he was not a part of this project.

Motion was made by Board Member Donovan to table this for additional information before the Planning Board can act on it, i.e., information from Oneida County Planning, correspondence from the Town Attorney, and any other information available and how the Local Law is defined, transmission vs. communication; seconded by Board Member Bob Imobersteg. Vote taken:

Chairman Joseph Yagey – yes	Board Member Hans Arnold – yes
Board Member Bob Imobersteg – yes	Board Member Bob Wood – yes
Board Member Jerome Donovan – yes	Board Member Peggy Rotton – yes
Board Member Rodger Reynolds – yes	

Motion to **table** this pending additional information was approved by a vote of 7 – 0.

Benderson Development, Commercial Drive & Henderson Street. Amendment to Final Approval. Tax Map #317.013-3-18.4; Lot Size: 2.3 Acres: Zoning: Retail Business 1. Terresa Bakner, Esq., of Whiteman, Osterman & Hanna and Mr. Eric Recoon of Benderson Development appeared before the Board.

Chairman Yagey stated what has transpired with this application. The application before us is to increase parking in hopes that the Zoning Board of Appeals would grant them an Area Variance for a restaurant use at their site behind the Eckerd's Pharmacy. At this point, the Zoning Board of Appeals did not grant them the Area Variance. They are here this evening for this Board to look at the plan and the intent is to only revise it to get additional parking – this has nothing to do with any restaurant. Benderson already has approval for this project, but they are amending the plan to increase parking by four (4) spaces to bring them to 90 parking spaces.

Attorney Bakner presented their plan for the Board's review, which outlined the parking

changes – and which does not show Moe’s Grill. She explained the change in parking alignment and the change in sidewalk reduction.

Mr. Recoon said they are not seeking any approvals for additional parking for Moe’s Grill – that proposal is done – they did not get the Area Variance.

Board Member Wood asked what is different on the plan – Mr. Recoon said the plans are identical except Moe’s has been taken out. Mr. Recoon addressed green space, which exceeds the minimum.

Board Member Reynolds asked if this plan for the existing buildings conforms – Mr. Recoon said yes.

Chairman Yagey stated that the plan changed when they proposed a restaurant at this site, but that is not being addressed this evening. He addressed the issue of an override; however, does not contemplate it. Attorney Bakner stated for the record that they are not asking for that.

Board Member Arnold referred to the net increase of four (4) parking spaces, which does not give them adequate spaces to meet the requirements of a restaurant. He asked it was their intent to reduce the square footage of the restaurant proposal so the revised parking submitted would be adequate where the applicant could put in a restaurant with no further review. Attorney Bakner said this could be done, but wanted it known that they are not intending to do this – she said the Code as it is drafted now provides that certain uses are allowed. Board Member Arnold wanted to be clear because this project went through extensive review and he does not think the community and neighborhood contemplated a restaurant use at this location. He also feels it would be a breach of confidence if Benderson came in with a restaurant.

Mr. Recoon addressed the Board for the record stating that this request is not about Moe’s Grill – they did not receive an Area Variance and they are not appealing that decision – they are moving on. They have a shopping center and they are looking forward to this center, and their architect came in with a plan to add more parking spaces.

Chairman Yagey referred to a statement that was overheard at the Zoning Board meeting regarding Moe’s Grill – Mr. Recoon stated that he was not aware of any statement, but this application is not for Moe’s Grill. Mr. Recoon also stated that Moe’s Grill works with a certain amount of square footage, and they could not reduce the size of this building to accommodate Moe’s because it wouldn’t work.

Board Member Donovan referred to any other type of restaurant use, i.e., a bakery, which

Town of New Hartford
Planning Board Meeting
December 11, 2006
Page 4

would be a permitted use. Mr. Recoon said they are simply here this evening to finalize the retail plaza and are requesting the additional parking.

There being no further input, motion was made by Board Member Jerome Donovan to approve the Amendment to Final for the additional parking with the plan as submitted this evening; seconded by Board Member Peggy Rotton. Vote taken:

Chairman Joseph Yagey – yes	Board Member Hans Arnold – yes
Board Member Bob Imobersteg – yes	Board Member Bob Wood – yes
Board Member Jerome Donovan – yes	Board Member Peggy Rotton – yes
Board Member Rodger Reynolds – yes	

Motion was **passed** by a vote of 7 – 0 to approve Amendment to Final for Benderson's Retail Plaza for the additional parking.

At this time, Board Member Arnold presented Chairman Yagey with a plaque from the Planning Board Members in commemoration of his 21 years of service to the Town of New Hartford as Planning Board Member and Chairman. In particular, the two (2) GEIS studies, the changes in the Town with Consumer Square, The Orchards, various residential subdivisions, etc. – his service is unprecedented.

Chairman Yagey thanked the Board stating that it was a pleasure to serve the Town and with the different Boards throughout the years.

Town Planner Schwenzfeier reminded the Planning Board Members about the upcoming Oneida County Soil & Water training at the Whitestown Community Center building on Monday, January 29, 2006 from 6:30 to 8:30 P.M.

Next scheduled Planning Board meeting has been changed to Monday, January 22, 2007.

There being no further discussion, the meeting adjourned at 5:15 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Planning Board
dbs

