

MINUTES OF THE REGULAR MEETING
NOVEMBER 20, 2006

The Regular Meeting was called to order by Chairman Randy Bogar at 7:00 P.M. Board Members present were Fred Kiehm, Kristen Shaheen, Steve Welty, Tim Tallman, John Montrose and Bob Schulman. Also in attendance was Codes Enforcement Officer Jerry Back, Planning Board Chairman Joseph Yagey, Town Planner Kurt Schwenzfeier and Tracy Palmer, Acting Zoning Board of Appeals Secretary, for Zoning Board of Appeals Executive 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 **Ms. Bernadette Romano, 6 Sherman Circle, Utica, New York** who is requesting to install an 8' driveway entry gate to be located approximately 35± back from the edge of the road. Zoning in this area is zoned Low Density Residential, which allows a gate/fence height of 4' in the front yard. Therefore, the applicant is seeking a 4' height Area Variance for the proposed gate/fence in the front of her property. Tax Map #341.005-1-29-1; Lot Size: 2.4 Acres; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on November 10, 2006 and residents within 500' were notified.

Ms. Romano appeared before the Board. She is a Supreme Court Judge with concerns about security. She lives on a wooded lot, with a steep hill, where it's very dark and no town lights. She has been threatened in the past which the New Hartford Police can confirm. She is a single parent living alone for past 7 years. Ms. Romano feels an 8' gate/fence would ensure the safety of her and her family. She stated that the gate entrance would be far enough away from the road so that two vehicles can get to the gate without being near the road for safety reasons. Gates on side blend into the woods. Connection to the house from the gate has to be by telephone. The gates will be opened by remote control or electricity for security reasons. Light post to bring light into the yard. materials wrought iron.

Board Member Welty looked at the residence and his opinion is that the gates opening in would be enough so 2 vehicles could sit side by side without causing any problem with the road traffic.

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Board Member Shaheen asked if in the winter travel would the gate also serve as protection for that purpose as well. Ms. Romano said yes as would the extra lights on the gate at top.

Board Member Kiehm asked if there were any problem with neighbors with the lights. Ms. Romano said no. The neighbors are far enough away that they cannot see neighbors from her home on either side or across the street which is the back of that neighbor's house.

Board Member Tallman asked about the lights. How tall were they going to be. Is there a concern they may bother cars traveling that road. Ms. Romano said the lights were lantern lights 18" x 24" which would be installed by Michael Heumann who is the builder. The lights would be 42" high which is the same application that you accept for this type of variance with a 100 watt maximum.

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

-Mrs. McIntyre, 8 Sherman Circle. She as no objection.

There being no further input, the Public Hearing was closed at 7:15 P.M.

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

Motion was made by Board Member Kristen Shaheen to grant the application as presented; that it meets the criteria; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar – yes
Board Member Tim Tallman – yes
Board Member Kristen Shaheen – yes
Board Member Steve Welty – yes

Board Member Fred Kiehm – yes
Board Member John Montrose – yes
Board Member Bob Schulman – yes

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

The application of **Mr. William Locke, 1707 Sherman Drive, Utica, New York** who is proposing to install a 6' wrought iron fence across the front of his property. Zoning in this area is Low Density Residential, which allows a fence height of 4' in the front yard. There the applicant is seeking a 2' height Area Variance for the fence in his front yard. Tax Map #331.017-4-2 & 3; Lot Size: 2.3 Acres; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on November 10, 2006 and residents within 500' were notified.

Mr. Locke appeared before the Board with a map of his property, picture of fence to be used and photographs of his property. Mr. Locke explained that earlier in the spring he petitioned to have a gate installed. He is a gardener with a lot of trees and perennials and expensive landscaping that he wants to protect from the deer. The deer have done substantial damage to his expensive landscaping. He said the fence would be invisible to anyone driving on the street and that he only wants to protect his expensive landscaping.

Board Member Shaheen asked if he discussed this with his neighbors; are they in favor. Mr. Locke said none of them have a problem with it.

Board Member Tallman asked if the new fence was similar to the existing fence on the side of the property. Mr. Locke said no, the new fence would be much nicer.

Chairman Bogar asked if there was anyone present to address this application – there was no response. He stated there were no calls, no letters

The Public Hearing closed at 7:30.

Comments were heard from Board Members.

Board Member Shaheen said she had no problem with keeping with gate we approved, it will finish off the property. She understands the deer problem and is familiar with Mr. Locke's extensive landscaping. She feels this variance is in keeping with the neighborhood as a whole.

Board Member Schulman states that with regard to fence issues - its when we put them in we have to live with them forever.

Board Member Shaheen discussion on fences you can see through. She feels this is ok because you can see through it.

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Board Member extended - has concerns on precedent issues. People come to us.

Board Member Shaheen - denied solid fence two doors down.

Chairman Bogar stated that each one of these fences is different. Take a look at the property. What is being placed, what type of fence it is , what is actually going to look like on this property.

Board Member Welty commented on the character with the neighborhood. He feels it would be aesthetically pleasing. We need to take every application one by one. He does not have a problem with this variance.

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

Motion was made by Board Member Fred Kiehm to grant the application as presented; that it meets the criteria; seconded by Board Member Steve Welty. Vote taken:

Chairman Randy Bogar – yes
Board Member Tim Tallman – yes
Board Member Kristen Shaheen – yes
Board Member Steve Welty – yes

Board Member Fred Kiehm – yes
Board Member John Montrose – yes
Board Member Bob Schulman – yes

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

The application of **Benderson Development** who is proposing a restaurant to be located at the retail building on Commercial Drive behind Eckerd's Drugs. Tax Map #317.013-3-18.4; Lot Size: approximately 2.3 Acres; Zoning; Retail Business 1. (This application was tabled to be addressed further at the November 20, 2006 meeting for an Area Variance for the number of parking spaces

requested). Teresa Bakner, Esq. And James Boglioli, Esq. From Whiteman, Osterman & Hanna, LLP; Mr. Eric Recoon/Leasing Agent of Benderson Development Co., LLC and Mr. Steve Aldrich, P.E./Traffic Engineer from FRA Engineering and Mr. Larry Wilson of Moe's Grill appeared before the Board.

Attorney Bakner addressed the Board by stating that when they first met with the Board their request was far more substantial than today – seeking variance for 22 parking spaces. Today the request is clearly not substantial as the variance has been reduced to only six (6) parking spaces; a deficiency of only 6.25%.

Chairman Bogar asked Benderson have you looked at the site more closely.

Last month's ZBA meeting noted errors with what is being built on site -vs- that what was approved by the Planning Board.

Mr. Recoon stated the approved site plan was 86 parking spaces but only 82 parking spaces were built. Architects looked close at the zoning code and existing site plan and were able to add four (4) additional spaces (referred to map). On the East side of the site originally approved for seven (7) parking spaces, now have eight (8) parking spaces. The area closest to Commercial Drive is actually 4' different curb was set 4' off from original location so Benderson could have a 12' sidewalk near the tenant's building. So there is an adjustment of 4'. Did shave some of the landscapes down. The original approved plan had 42% green space. This is a 2% decrease in green space. The Town requires 34% green space. The green space is still well above the Town's requirement.

Board Member Tallman stated that the Zoning Board had plans presented that were not approved by the Planning Board. Plans approved by the Board were not the plans submitted by Benderson (erroneous) to the Zoning Board.

Attorney Bakner stated that everything was submitted to the Town in writing; attached to their letter were these plans shown in front of Board now. It's still a development in progress.

Board Member Tallman also stated that since it was identified to Benderson at the last meeting we took the changes of what was built and the issue of what the Planning Board approved. Site plan needed to be amended because the existing (what was built) needs additional spaces and is not what was approved.

Planning Board decided at their last meeting that the determination was to wait to take action until the Zoning Board of Appeals determined whether or not to issue a variance... Providing six (6) spaces. Bring taken to six spaces met the demand needs and the towns requirements.

Board Member Shaheen said this plan has not been approved by the Planning Board.

Mr. Reoon stated a total of 4 parking spaces vs. the approved plan went from 10 to 11 spaces. 4' added +1 space. Went from 25 to 26 net of +1 on the top, net of +1 on the south net of +1 from 9 to 8. For safety reasons cross hatched area across from the curbed area and the back of the parking area plus a space in the front lot cutting the curb/sidewalk down.

Board Member Welty asked where Benderson found 4 feet. Parking - how much do you plan on shaving off that curb. 9/8 on the old and 9/8 on the new - where are we making up the difference. Where did the 4 feet come from.

Mr. Reoon - 8 spaces shown is correct. Make building site the property - responding to original - have you adequately looked at the parking field?

Attorney Bakner stated the variance we are seeking is only for six (6) spaces – down from the original 22.

Attorney Bakner stated that the peak parking use at Eckerd's is 19 spaces and there is actually 66 spaces.

Attorney Bakner brought up the other change that we made to this plaza which we also will be seeking the Planning Board's approval – pedestrian cross walk. Attorney Bakner explained purpose of cross walk between the retail/restaurant/office building and Eckerd's. Benderson does an extremely good job in maintaining their facilities and keeping their tenants happy.

Attorney Bakner/Mr. Aldrich explains the survey conducted on October 12 at the Henrietta Eckerd's; it was found to have a peak parking demand of 25 vehicles. A similar survey conducted on October 20 at the New Hartford Eckerd's was found to have a peak parking of only 19 vehicles.

Chairman Bogar stated that the survey was for October 12th and another particular day could have a much greater impact than 19 cars, correct.

Aldrich's response: it varies.

Board Member Schulman commented on the merger between Eckerd's and Rite Aide; the New Hartford Shopping Center is definitely going to be closed and transferred to Commercial Drive.

Mr. Aldrich stated that a parking demand count for Henrietta Eckerd's was done on October 12th; it was done throughout three (3) hours of the day; and it was found a peak of 25 vehicles on that site. Volume very similar to New Hartford.

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Board Member Shaheen stated the tenants in the Benderson plaza more people utilizing from Eckerd's parking lot into Benderson's.

Attorney Bakner commented that people can shop at Eckerd's and walk over to Benderson. Concept of shared parking.

Board Member Welty expressed a concern on the volume of traffic on Commercial Drive - 26,000 vehicles per day. He asked if there was any other docket other than the 23 year old one they are referring to. Over the last 20 years there have been parking studies that would have sites 10 years different with new land use that did not exist 20 years ago.

Board Member Schulman - study between Henrietta store and Commercial Drive property much comparable. Attorney Bakner's reply, yes. Place becomes established as time goes on traffic increase if people discover

Board Member Schulman expressed a concern about people using Clinton Drive as thoroughfare.

Mr. Aldrich stated it was right in and right out only.

Board Member Montrose didn't agree. Doesn't matter what it's *supposed* to be.

Attorney Bakner said if the Planning Board and the Village Inspector are unhappy we will fix it. Has not been brought to their attention thus far.

Board Member Tallman asked how much volume the store is going to be doing.

Attorney Bakner answered that the highest volume stores represented a worse case scenario can expect here possible to do better business not likely they got them from existing store. The average meal cost is \$8 ; the average time 25 minutes in and out.. Reduced number of seats in store to reduce parking spaces.

November letter clearly stated for the record

Board Member Shaheen stated there's nothing to modify; this can depend on all you have represented here tonight Anything else you feel this Board needs to hear before making a decision. A restaurant was not promoted at this site. Please Board needs clearly state that a restaurant at this

site need to apply for variance plus go back to the Planning Board for a Certificate of Occupancy. Planning Board to approve site plan

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Attorney Bakner again stated that the six (6) parking spaces in comparison to the original 22 parking spaces is very small variance; they worked with all neighbors; Benderson has done everything to address any deficiencies.

Chairman Bogar - understand the minutes from the planning board's meeting. Benderson's original plans to put a restaurant in – had they known it up front, they would have looked at the project differently.

Mr. Bart acting on behalf of the neighbors.

Attorney Bakner stated we want to be good corporate neighbors, recognize issues and concerns; overcome projects was in neighbors' backyards said to him address old issues and make you satisfied.

Attorney Bakner stated that the reality is that Benderson has worked closely with the neighbors; does not want them to be unhappy. Benderson's intent is genuine; want to do everything in their power to rectify problems; that issues have been addressed on timing, lighting, hours of operation, dumpster pick up, etc. - restaurant has to comply with the neighbors. Benderson is seeing Moe's as being an asset.

Board Member Montrose asked if you make the parking lot bigger where are you going to put the snow when you plow it. To which Mr. Aldrich replied that any snow is going to be removed from the site - plow and haul it out.

Board Member Montrose was still not satisfied and asked where are you going to plow it to and then remove it from.

Mr. Aldrich stated that they access snow to removing it have to do what they agree to (referring to map) moving the snow in the middle of the night. Taking up space.

Board Member Schulman had a question for Jerry Back - tell us the description of what is an office.

Codes Enforcement Officer Jerry Back replied a CPA, a lawyers office, doctor's office - would be classified as an office.

Board Member Schulman - make sure no high use options

Chairman Bogar asked if there were any other questions for the developer – anyone in the audience have any questions at which time Mayor Maciol addressed the Board and presented each Board Member with a copy of his Statement (which has been made a part of the file) and he proceeded to read aloud.

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Christine Krupa, New York Mills, addressed parking spaces decided upon other ones that were there grease trap all meet further size criteria where dumpster is going. Showed on the map. No grease dumpster - 55 gal. drum inside.

Mr. Ken Bart, 6 Royal Brook Lane, New York Mills - people from Henderson very helpful to the buffer have issues satisfied with the work that was not done that has been done but still opposed the restaurant in back yard appreciated time and effort Board his part in

Planning Board Chairman Joe Yagey stated that they do not need this variance for Planning Board's approval; Planning Board will abide by the decision by this Board; whatever this Board decides is what they will abide by and move with.

Chairman Bogar read for the record a phone message received from Mrs. Cotrupe, 18 Royal Brook Lane, is opposed the restaurant for the following reasons: high traffic area; cooking smell; alcohol consumption concerns and long hours of operation.

Co. 239 - no recommendation

Mr. Wilson stated they Moe's will serve beer and wine; wine best margin less than ½ %. Customers will more likely want to grab something to eat and a drink. Their main objective will not be to sit and drink beer by any means.

There being no further input, the Public Hearing closed at approximately 8:15 P.M.

The Board Members held discussion:

Board Member Montrose said we are voting on something in ground right now that has been changed 4 months ago for sign variance; there is a sign up and now 6 employees sign broke down 3 across the top 2 anchor stores 4 little ones

November 17th letter - please read Teresa's conclusion.

Board Member Shaheen stated she does not know how the property is being leased; what were used when Moe's approached Benderson and now they are trying to make it fit. First contract is a restaurant property can be listed to other businesses but a restaurant many not be expected for this location.

Board Member Schulman agreed with Board Member Shaheen and he expressed his concern with the reconfiguration of the office space. If office space ever goes in there going to be multipurpose office. 13 spaces is a gross underestimate of the parking use. "Size 12 foot in a size 9 shoe".

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Board Member Welty brought up the Olive Garden in Syracuse - how their parking lot is crazy and they have adequate parking spaces. Seems like they keep coming back to the well – they keep coming back to the well but the well is dry. Right is right. Wrong is wrong.

Board Member Shaheen feels there's been a lot of smoke and trickery from the beginning – they talked about boutique type store to go in and now she's concerned they are not following the talk with this restaurant proposal.

Board Member Schulman - 4,000 – Become a hardship. Hard to rent that space. Going to see them back again asking for another variance. Created an unuseable space.

Board Member Kiehm stated that the Board of Appeals assured there would be no restaurant in that area. Now they're not asking us to put in a restaurant because they already got permission to. He does not agree with the variance for six (6) parking spaces.

Board Member Montrose state that at the Planning Board meeting one of the members thought there would be a lot more opposition from the neighborhood if they had known it was a restaurant going in.

Chairman Bogar stated is not one additional parking space in this case excessive. Look at the ways cars come in there. Granting one (1) spot would be one too many concerning safety. This is one of the busiest streets in the Town of New Hartford. He has a concern with taking exception to Attorney Bakner's statement only six (6) parking spaces, that is minimal. It is not minimal. Had the Planning Board and the neighborhood known what was the whole project or a restaurant be looked at be developed differently. Maybe probably talk more when going through criteria - already gone through it about safety impact in the neighborhood. Health, safety and welfare of the community. One parking spot is too many. Go through criteria:

- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: yes - unanimous; benefit can be achieved by other means.
- 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: yes - unanimous.
- The requested variance is substantial – response: yes - unanimous.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: yes - unanimous.
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: yes - unanimous.

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Motion made by Board Member Schulman to deny the application. Motion was seconded by Board Member Kiehm. Motions been denied unanimously by a vote of 0-7.

There being no further business, the meeting adjourned at 8:40 p.m.

Respectfully submitted,

Tracy L. Palmer