

**MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
JULY 20, 2009**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present were Kristen Shaheen, John Montrose, Bob Schulman, Fred Kiehm, and Tim Tallman. Also in attendance were Councilman Richard Woodland, 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.

The application of **Mr. Mark Weibel, 10 Sherrill Lane, New Hartford, New York.** Mr. Weibel is proposing to construct a roofed front porch onto the front of his existing home. Zoning in this area is Medium Density Residential, which requires a 30' front yard setback and the porch will be 28' back. Therefore, applicant is seeking a 2' front yard setback Area Variance. Tax Map #339.007-6-34; Lot Size: 80' x 110'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on July 10, 2009 and residents within 500' were notified. Mr. Mark Weibel appeared before the Board.

Mr. Weibel presented a diagram and sketch of the project. There were steps going to the front door before, but no porch. This will come out about halfway to the sidewalk. There will be 1' of overhang on the roof. The new shingles will match the existing house roof. He also presented a statement from his neighbor, Mr. Richard Mason, 8 Sherrill Lane, who supports the application.

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

-Mr. Jim Messa, 25 Sherrill Lane – he supports this application as he feels it will add value to Mr. Weibel's home and to the neighborhood.

There being no further input, the Public Hearing closed at 6:05 P.M.

At this time, the Board Members 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 – no;

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

Motion was made by Board Member John Montrose to approve the application as presented; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes	Board Member Tim Tallman - yes
Board Member Kristen Shaheen - yes	Board Member Bob Schulman - yes
Board Member John Montrose - yes	Board Member Fred Kiehm - yes

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

Mr. Michael Saggese, 9551 Chapman Road, New Hartford, New York is requesting permission to allow the 6' stockade fence in his front yard. Zoning in this area is Low Density Residential, which does not permit fencing in a front yard. Applicant is seeking a 199 lineal foot Area Variance for this 6' high stockade fence in the front yard. Tax Map #340.000-1-0; Lot Size: 202' x 244'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on July 10, 2009 and residents within 500' were notified. Mr. & Mrs. Saggese appeared before the Board.

Mr. Saggese explained that he had a chain link fence on his property with trees, however, when the County did their project, things changed on his property. He placed this new fence as a barrier for noise and safety for his children from the traffic. Mr. Saggese explained about the heavy truck traffic, accidents within that area, and how his children need to stay within the fence area for their protection – he feels this fence avoids a lot of potential problems. He stated the fence is actually 5' 8" high and was installed by him, his wife and a neighbor. In his application, he attached a list of people who support this.

Board Member Shaheen asked why he couldn't use a 4' high fence –Mr. Saggese explained that this size fence acts as a noise barrier. Board Member Shaheen asked if the fence was on his property –he said yes and he had the County there also.

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

-County Legislator James D'Onofrio addressed the Board stating he understands that fences are controversial and appreciates the work the Zoning Board does. However, he explained how busy Chapman Road has become with traffic, speed and especially heavy trucks – it is a busy thoroughfare and the residents have had to deal with this affecting their standard of living. He feels the applicants deserve this variance request for their safety and welfare. He supports the application.

-Mr. Frank Cerminaro, 9541 Chapman Road. He lives next door and appreciates having the fence there as it gives him privacy also. He referred to a number of accidents in the area. The fence is on an empty lot and it's not bothering anyone. He supports the application.

-Mrs. Zarnoch, 9556 Chapman Road. This fence is all about a safety issue, and the road is hazardous. She also referred to the number of accidents on this road. She supports the application and feels the fence shouldn't be an issue.

-Mr. Gene Torchia, 9557 Chapman Road. He feels the fence stops the noise from the road. There was a fence there before but because of the changes to the road had to come down. He supports the application.

-Mrs. Linda Saggese, 9551 Chapman Road. She explained the number of accidents in and around her home. She feels the fence helps to avoid a bad situation.

-Mr. Charles Sandwith, 17 Christopher Circle. He opposes the application; he doesn't see any other fences in the area; he feels site distance is an issue; and he is concerned about fences acting as snow fences.

-County Legislator D'Onofrio again explained the circumstances of residents living on Chapman Road – it becomes a quality of life issue.

-Mr. Lenny Grucza, 18 Christopher Circle (he called this into the Zoning Board secretary). He feels the fence looks out of place, but he is not opposed.

There being no further comments, the Public Hearing closed at 6:30 P.M.

County 239 Planning was received with no comments and County DPW 239K comments have been made a part of the file.

The Board Members discussed how this area has changed; the previous fence that was torn down; whether this Board would set a precedent, etc.

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

Motion was made by Board Member Tim Tallman to approve the application as submitted as it was demonstrated by the applicant the need for this fence; and that a Building Permit be obtained within one year of approval date; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar - yes	Board Member Tim Tallman - yes
Board Member Kristen Shaheen - yes	Board Member Bob Schulman - yes
Board Member John Montrose - yes	Board Member Fred Kiehm - yes

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

Mr. Thomas Torchia, 1 Wheatley Circle, Utica, New York (Town of New Hartford), who is requesting permission to keep his existing shed 7 ½' from the right side property line. Zoning in this area is Low Density Residential, which requires an accessory structure to be 10' from the side property line. Therefore, the applicant is requesting a 2 ½' side-yard setback Area Variance. Tax Map #330.013-1-28; Lot Size: 104' x 149'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on July 10, 2009 and residents within 500' were notified. Mr. Torchia appeared before the Board.

Mr. Torchia referred to the last time he appeared before the Board and the issue regarding the placement of this shed too close to his home. Codes Enforcement Officer Booth stated that the State Fire Code cites 6' from an adjacent structure and the Town zoning stipulates a structure to be 10' from the side property line.

Mr. Torchia said at this time the shed is 2.5' from the house and that will be moved. The reason why he can't go 10' from the side is it will block windows on his home, and he

feels it is more aesthetically pleasing with this request. He said the neighbors are fine with it, especially those who weren't in favor previously. He presented a statement of people who are in favor and which is a part of the file. (The Area Variance tonight is for the side-yard setback).

The Board Members suggested rotating the shed to fit on the property where he wouldn't need a variance. Mr. Torchia reiterated that a window would be blocked if he did this and explained further why it would not work out.

Chairman Bogar referred to the frost proof foundation for this shed as it is over the size of what is considered a shed. He also mentioned the crushed stone that Mr. Torchia said he would put in. Codes Enforcement Officer Booth said the size of a shed is just a building Code – we could look at this as a garage. Mr. Booth also said the applicant is required to get an engineered plan for the frost proof foundation.

Board Member Kiehm asked if this shed was suppose to be moved last year. Mr. Torchia said yes, but he talked to the Codes Officer about it and then winter came, but he has been in touch with Mr. Booth. Codes Officer Booth said he has been conversing with Mr. Torchia.

Board Member Schulman said we always try to work things out where a variance may not be needed and suggested rotating the shed. Mr. Torchia was asked if he talked with the company who will be moving the shed if they could rotate it also. Mr. Torchia said he did not.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Therefore, the Public Hearing closed at 6:45 P.M.

The Board Members discussed this application; rotation/placement of the shed to conform to the zoning; the variance request of 2.5'; neighbors' input; moving the shed away from the house to comply with the Fire Code (Mr. Booth said this will be in compliance with the Fire Code once the shed is moved). Chairman Bogar stated he is not sure about the rotation of the shed or how it would look.

At this time, the Board Members 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 - difference of opinion;

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

Motion was made by Board Member Kristen Shaheen to approve the application as submitted provided he continue to conform with what he previously agreed to with the Codes Enforcement Officer; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes	Board Member Tim Tallman - yes
Board Member Kristen Shaheen - yes	Board Member Bob Schulman - no
Board Member John Montrose - no	Board Member Fred Kiehm - no

Motion was tied by a vote of 3 – 3. (The applicant needed four votes for approval).

The application of **Mr. Joseph Sheets, 3483 Snowden Hill Road, New Hartford, New York**, who is proposing to sell a piece of property at 3714 Snowden Hill Road to the current tenants. Zoning in this area is Agricultural which requires 60,000 square feet of lot size and 200' of frontage for a single family dwelling. Mr. Sheets is seeking a 32,000 square foot Area Variance for lot size and a 95' frontage Area Variance. Tax Map #349.000-4-15.1; Zoning: Agricultural. Legal Notice was published in the Observer Dispatch on July 10, 2009 and residents within 500' were notified. Mr. & Mrs. Sheets appeared before the Board.

Mr. Sheets said they have owned the property for ten years. The tenants there now want to buy the house and if they couldn't buy it, they would look elsewhere. This is part of a 45 acre parcel. Mr. Sheets said the way the house and garage is positioned, it is landlocked.

Chairman Bogar referred to the discrepancy on the map which is being referred to as #1. Mr. Sheets said someone else may own a section of that – they don't know. The person who owned it died and the children inherited it. There is no lot of record for this part. They haven't tried to find out more about this.

A question arose as to whether they would still have enough frontage even if 100' is not their property – the answer by Board Member Shaheen is yes; it is still a legal lot. The

Board Members reviewed the map which parcels are identified by #1, #2 and #3.

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

-Mr. John Knott, 3736 Snowden Hill Road. He is familiar with the property. There is a deed for the 130' parcel but it was never recorded. He said it is trying to get resolved now – he doesn't know the attorney but the Real Estate agent is working with that attorney and the Town to resolve the matter. It would reduce the frontage to 170' (this issue just came up). Mr. Knott also wanted to know about access. Mr. Sheets said the tenants are willing to have them have a right-of-way in the deed to have access to their driveway.

Board Member Shaheen asked if the frontage was drivable – answer was yes. If they wanted to put a driveway in on either side they could? – answer was yes.

-Marclyn Green, 3728 Snowden Hill Road. She lives next door. She asked about a possible driveway between her and Ms. Middaugh. Mr. Sheets said he is not saying he wouldn't do it, but right now he has no plan to do so.

Discussion ensued regarding whether this issue of the 130' in dispute could change the application. Board Member Shaheen said Mr. Sheets would still have enough frontage but not continuous frontage.

There being no further input, the Public Hearing closed at 7:05 P.M.

The Board Members reviewed the application and labeled the map in the file as #1 with 300' frontage; #2 with 105' frontage; and #3 with 110' frontage. Board Member Montrose asked, if Mr. Sheets owns all of #1, that is a legal right-of-way; you can take #2 and #3 and make another right-of-way even if it is separate – Board Member Shaheen said yes. If #1 is only 170' then he would need a variance to make that a legal lot – he would have to take part of #2 or get a variance. It was stated that he has no intention of conveying #3. It was stated that he would still have the frontage even if he doesn't have 100% of #1 and #3. The question is #2 with 105' of frontage. There is a house on #2.

Chairman Bogar asked Codes Enforcement Officer Booth: how does this figure in with what the Planning Board is doing with regard to minimum lot sizes – Mr. Booth said it is contrary to what they are proposing but there are substantially similar lots in this area so it wouldn't be out of character in their neighborhood – this would be a larger lot in that area. Mr. Booth said this currently has a lot of frontage because it is on the same parcel, but it is not contiguous.

Board Member Schulman stated that as long as the one piece of property in question isn't going to be an issue, even subdividing it, he will still have enough frontage. They just want to break the house off for the tenants.

Chairman Bogar referred to what has been done in the past in similar situations.

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

Board Member Montrose asked, if we separate that lot with the house on it and the barns, are the barns all going to meet the setbacks? It was stated that the barns are separate.

The Public Hearing opened again at 7:15 P.M. Mrs. Sheets discussed the setbacks with the Codes Officer previously. Mrs. Sheets said even if she did own that other parcel in question and get it subdivided and make two more lots out of it – do we need another variance? Can we automatically do that – it was stated no, it needs subdivision. It would be better if they keep two conforming lots. They would have to connect the piece to the side of the house to subdivide it. The barns stay with the bigger parcel. The Public Hearing closed again at 7:20 P.M.

Board Member Shaheen feels it is a very different case than what has been before us previously because that was to create a building lot. This is an old farm house – they aren't going to build anything on it. They would probably lose their tenant if they don't go forward with this. The 130' doesn't come into play. The tenant doesn't want to buy #3 and it may impede the setbacks between the barns and the property line.

Board Member Montrose asked, the 105' side – is this the lot that the house is on when this is done – the answer is yes - it will have a jog in the back of the property.

Motion was made by Board Member Kristen Shaheen to approve this Area Variance for access to the property as presented with the condition that in the deed created, they have a permanent easement or right-of-way using that driveway back to their property; seconded by Board Member Tim Tallman. Vote taken:

Chairman Randy Bogar - yes	Board Member Tim Tallman - yes
Board Member Kristen Shaheen - yes	Board Member Bob Schulman - yes
Board Member John Montrose - yes	Board Member Fred Kiehm - yes

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

The application of **Sangertown Square, LLC, Route 5 & 5A, New Hartford, New York**. Applicant is located in an RB1 zone which allows for two (2) building mounted signs at 80 square feet each. Applicant wishes to place two (2) signs measuring 127 square feet each on the building, thus necessitating a 47 square foot Area Variance for each. Additionally, the applicant is seeking to place a third sign at 127 square feet on the building, thus necessitating a quantity Area Variance for the third sign/127 square foot Area Variance. Tax Map #328.008-1-12.1; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on July 10, 2009 and residents within 500' were notified. Mr. Darrin Houseman appeared before the Board.

Mr. Houseman explained that the request is for J.C. Penney's building. They have three signs there now and are looking to replace them. They will be the same size and location. The only change is the color – nothing else changes. J.C. Penney's has been at this site for 29 years and the signs need to be replaced.

Chairman Bogar asked if there was anyone present to address this application – no response. OC Planning 239 had no comments. The Public Hearing closed at 7:30 P.M.

At this time, the Board Members 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 – no;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – no;
- The requested variance is substantial – no;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no;

- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – no.

Motion was made by Board Member Fred Kiehm to grant the application as presented; and that a Building Permit be obtained within one year of approval date; seconded by Board Member John Montrose. Vote taken:

Chairman Randy Bogar - yes	Board Member Tim Tallman - yes
Board Member Kristen Shaheen - yes	Board Member Bob Schulman - yes
Board Member John Montrose - yes	Board Member Fred Kiehm - yes

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

The application of **Mr. George Koury, 31 Clinton Road, New Hartford, New York**. Mr. Koury is requesting a Use Variance for this property for a retail food and grocery business. This area is zoned Medium Density Residential and the Schedule of Use, Area and Bulk Regulations does not permit a retail use. Therefore, the applicant is seeking a Use Variance to construct a retail building. Tax Map #328.016-4-62; Lot Size: approximately 6 Acres (fronts on Clinton Road and Merritt Place); Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on July 10, 2009 and residents within 500' were notified. Mr. Koury appeared before the Board.

Mr. Koury explained that he is currently the owner of the market in the New Hartford Shopping Center. When his lease expires, he would like to expand his business and he purchased 6 ½ acres at 31 Clinton Road. He will construct a 60' x 40' building so he can continue his retail fresh fruits and vegetable business. He has owned this property since December 2008 and he bought it for his retail business. He said he was not aware of the zoning at that time, and he did not have an attorney.

The Board Members reviewed the plot plan. Chairman Bogar asked Mr. Koury how much traffic is generated at the Shopping Center. Mr. Koury said approximately 100 patrons or more. Chairman Bogar asked if he had any trucks. Mr. Koury said has no trucks - he has a wagon he pulls with his car – he picks up supplies from local farmers daily.

Mr. Koury mentioned the number of cars that travel Clinton Road (10,000 daily) and he doesn't feel his type of business would be an issue. The building will set back about 68' from the edge of the road and it will have a greenhouse also. The depth of the project is 141'. His intention is to use the first acre and landscape in the back towards Merritt Place

– he will not disrupt the neighborhood. He will grade the front and take into consideration water runoff.

The Board Members discussed the adjacent properties, i.e., Central Asphalt – Codes Officer Booth explained this business was there prior to the Zoning Ordinance and further explained the zoning in this area.

Board Member Shaheen asked Mr. Koury, short of his investment and once it was determined this business is not a permissible use, did you try to market it – Mr. Koury said no.

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

-Mr. Ken Kostolecki, 44 Clinton Road. He submitted a petition of 120 residents who are against the variance. Mr. Koury should have investigated the zoning of this property before he purchased it. What happens with the property if the variance is granted and Mr. Koury sells it? He spoke about traffic problems, accidents, noise and pollution. He works hard for his property and is concerned about the devaluation of his home. There are markets within a mile or so from this property. He is opposed.

-Ms. Holly Mathews, 28 Clinton Road. She addressed the criteria for a Use Variance; concern about a retail business in a neighborhood; she can't see a hardship being met; he could put a home on this property and stay within the proper zoning; quality of life being affected; scale of the proposed change is large; vehicle traffic; pedestrian traffic; visibility; lighting; environmental issues; and negative effect on the neighborhood/homes. She referred to a number of accidents within this area. She would like this Board to reject the variance and protect her property and give her peace of mind.

-Councilman Richard Woodland for the 4th Ward. He has concerns of ingress and egress at this site, especially the lack of shoulders in this section of Clinton Road. He referred to two fatalities in the area. He feels there will be lighting and security issues, it is a residential neighborhood and he feels road improvements aren't in place at this time, and is concerned about storm water runoff issues as well. People have had a hard time selling their homes – this for granting this variance. He received many calls from people in this area against this project. He is opposed.

-Mr. Matt Watkajty, 13 Grace Terrace. He feels the variance is substantial. He also addressed traffic, proximity to Grace Terrace; worried about left turns into this project; increased number of vehicles; noise pollution, and safety of children. He has a summer youth program and when he crosses Clinton Road, it might take at least 10

minutes before it is safe to cross. Safety for these children is his priority. 200-300 vehicles passing by and coming into a store is a problem. He is opposed.

-Ms. Gail Knobloch, 14 Grace Terrace. She is worried about lighting, sewage problems, noise; rodents. Merritt Place is wooded now – what if Mr. Koury decides to place something in the middle of the property towards Merritt Place. There is too much traffic in this area.; concerned about security also. She is opposed.

-Mr. Frank Russo, 32 Clinton Road. He will be looking directly at this business. He referred to accidents in front of his home; worried about ingress and egress at that site as there is a bad curve. If there was one house there with one car, it would be much better with traffic than a retail use. What if he expands, or wants to sell. He should have done the research before he bought the land. He is opposed.

-Mr. Ralph Savage, 42 Clinton Road. He presented a letter to the Board. He is concerned about devaluation of his home, which is the biggest asset that anyone has; adverse effect of the neighborhood; increased traffic; noise pollution; setting a precedence; any future use of that property; financial gain for the property owner at the residents' expense. He is opposed.

-Mr. George Koury, Sr. He addressed traffic and what he feels exists on that road now; he feels that commercial development would bring more money for people's homes than a residential use; lights would be turned off at 7:00 P.M.; no removal of trees – it is a farmer's market; small parking lot would be built with trees on it; he doesn't see a problem with crossing the road; most bigger stores would look to move in an area with more than 6 acres so there wouldn't be a threat of a big store coming in at any time; he sees no issues with drainage; he wants to improve the area; hours of operation would be 7:00 AM to 7:00 PM; the market would be closed in the winter – it is seasonal only.

-Mr. Dick Mathews, 28 Clinton Road. He thanked Mr. Koury for getting rid of the existing building on the property. However, he feels granting this would lead to other things and if we wanted to change our properties to commercial – they would have to get approval from the Town to do so. What if people don't want to convert to commercial? He referred to another building in the area that might allow this type of business. He is opposed.

-Ms. Barbara Waddington, 7 Great View Place. She is concerned about any future plans for Merritt Place. If granted, she would like to see conditions placed, i.e., no access to Merritt Place. Also, she is concerned about traffic. She is opposed.

-Ms. Nancy Manion, Marley Place. Opposed to variance – she owns 4 acres and people try to buy her property for a home. She feels Mr. Koury’s property would be a nice place for a home – it is not useless land.

-Mr. Wesley More, 10 Grace Terrace. Against the Variance. He bought his home as residential. This is against the zoning; it is a drastic change in a residential area.

Letters of opposition were also submitted by Mr. Roger Elmer, 32 Merritt Place; Aaron & Melissa Shupp, 38 Clinton Road; Kathy & Nick Montesano, 4 Great View Place. Telephone calls received in opposition were from Carolyn Mohr, Merritt Place and Carla Fasolo, 34 Clinton Road.

Oneida County Planning 239 was received with no recommendation and NYSDOT comments have been made a part of the file.

Chairman Bogar thanked the residents for their input. There being no further comment, the Public Hearing closed at 8:20 P.M.

The Board Members reviewed the comments from the residents and the application for the Use Variance, which requires detailed information from the applicant. Board Member Shaheen hasn’t seen any detailed financial information. The property was recently purchased and the applicant should have checked the zoning before purchase.

At this time, the Board Members went through the criteria necessary for the granting of a Use Variance:

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – no;
- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood – no;
- The requested variance, if granted, will not alter the essential character of the neighborhood – it would alter character;
- The alleged hardship has not been self-created – it has been self-created.

Motion was made by Board Member Chairman Randy Bogar to deny the application of Mr. Koury as it has not met the criteria set forth for a Use Variance; seconded by Board Member Fred Kiehm. Vote taken:

Chairman Randy Bogar - yes
Board Member Kristen Shaheen - yes
Board Member John Montrose - yes

Board Member Tim Tallman - yes
Board Member Bob Schulman - yes
Board Member Fred Kiehm - yes

Town of New Hartford
Zoning Board of Appeals Minutes
July 20, 2009
Page 14

Motion to **deny** was by a vote of 6 – 0.

Chairman Bogar reminded the Board Members that the next meeting would be **August 24th** at 6:00 P.M.

There being no further business, the meeting adjourned at 8:47 P.M.

Respectfully submitted,

Dolores Shaw
Secretary

dbS