

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
NEW HARTFORD PUBLIC LIBRARY  
SEPTEMBER 17, 2012**

The Regular Meeting was called to order at 6:00 P.M. by Chairman Randy Bogar. Board Members present were Tim Tallman (Mr. Tallman arrived at the meeting at approximately 6:05 PM), Lenora Murad, Taras Tesak, John Montrose, Fred Kiehm and Karen Stanislaus. Also in attendance were Town Attorney Herbert Cully, Codes Enforcement Officer Joseph Booth, Councilman Donald Backman, and Recording 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.

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The application of **Mr. Joseph Nimey** for his property located at **9303 Chapman Road, New Hartford, New York** (adjacent to his existing business at 3930 Oneida Street. This property is located in a Retail Business 2 zone, which does not allow auto sales. Mr. Nimey is, therefore, requesting a Use Variance to sell automobiles from this site. Tax Map #339.016-1-43; Lot Size: .21 Acres; Zoning: Retail Business 2. Mr. Joseph Nimey appeared before the Board. (Board Member Tim Tallman abstained from participating in this Use Variance application).

Mr. Nimey stated he owns and operates Nimey's Auto Repair on Oneida Street and he has several employees. He recently purchased the property adjacent to him at 9303 Chapman Road. When he purchased the property, his intent was to expand his business and try to resolve an ongoing problem at his site since 1983. His father had the business in 1965. The ongoing problem has been that his current site is limited for space. The County, by eminent domain, took some of the property for the roadway and sidewalks, which moved him back 5'. They are having a hard time accommodating their customers and car sales. He has looked at several other sites but they don't want to leave this location. He has started making necessary improvements to the site. The existing home cannot be repaired because it is in major disrepair, and it has been vacant for a year or two. It would not be cost effective to repair it, and he can't imagine anyone renting it in its current condition. He was contacted by Codes Officer Booth who asked him to move the cars off the site, and he explained why he couldn't have an auto sales on this newly purchased property. The garage will stay, but the house will be demolished. He is in the process of getting an asbestos report done.

Mr. Nimey stated his plan would be to limit the cars on his property – 15 to 20 or so cars for sale. He sketched a plan that shows where he can limit the cars on the corner. He will put zero cars on the front corner and place some of the cars on the Chapman Road side, and some cars along near Claim Masters. When the house comes down, he will put about 70% of the cars there. Cars would be 15' off the sidewalk, which would take away a lot of the traffic problem. Codes Officer Booth has worked with him to get cars back from that corner.

His only choice was to buy the property next door. He is seeking the Use Variance to take at least ½ of the used cars off the lot and at least 15' off the road and 15' off the neighboring site. Behind this property, there is plenty of parking for his auto repair customers. He will be moving 50% of his cars off the corner. Also, in the winter time he was limited to snow removal, but that won't be a problem now.

Chairman Bogar asked about the building that will be staying – Mr. Nimey said this is a usable building. The property is zoned for an auto body, but not for car sales.

Chairman Bogar asked Codes Officer Booth if Mr. Nimey is limited to how many cars he can have at the corner now – Mr. Booth said no – it is a grandfathered in use. The auto repair is a permitted use. That property was zoned B2 in 1999 and he could sell used cars and that use extends into this new zoning as a grandfathered use for sales.

Board Member Tesak stated that the newly acquired property was an eyesore and referred to the uses for this property. Board Member Murad talked about any increase in car sales. Mr. Nimey said they keep about 15-20 cars. If he wants to use this area, he would like to increase 5 to 7 cars – lose seven (7) cars up front and gain five (5) more next door.

Board Member Tesak asked Mr. Nimey why he can't move all the retail sales off the property. Mr. Nimey said visibility is much better on the corner but he wants to resolve a problem for himself and the Town. By doing this, he isn't causing another problem. Board Member Tesak asked if there would be any infringement across the walk – Mr. Nimey said no. This would take cars off the sidewalk area because he doesn't need to have that many cars there. Zero cars on the corner on the very point where now there is at least two (2). Board Member Tesak feels Mr. Nimey is proactive with this application. Mr. Nimey doesn't feel this would change the character of the neighborhood and he mentioned several businesses in his area. He feels he is making progress with the improvements. Further, Mr. Nimey said he can't accomplish what he wants to do any other way. This change would give better clearance for cars, school buses and customers would be able to go out Chapman Road – it would create better traffic flow.

Chairman Bogar asked Mr. Nimey what he would do if he did not get the variance. Mr. Nimey said it would take about \$30,000 to fix the house – but he wants to demolish it – it would become parking space. It would hurt his revenue because he anticipated selling cars. Also, in the last thirty (30) days opening up just the parking is accommodating his customers

Mr. Nimey presented a sketch of where the cars could be located on his property.

Board Member Stanislaus asked if he intended to put up a new shop – Mr. Nimey said no – they are remodeling. She also asked if restrictions on how many cars can be on each lot could affect the business – would it help visibility. Mr. Nimey said paying for the new property and the investment in the business

would be a challenge. He can promise he will never have 30 cars there but increase it by five (5) or seven (7) cars. It would look less busy because he would keep five (5) cars on the first property and fifteen (15) in the back on the other property because it sets away from the road. He would like to increase his cars to about 20 or so. This would help to finance costs, etc. 70% of his business is repair and 30% is car sales. If you take the car sales out of it, it doesn't help.

Board Member Montrose asked about cars on the corner. Mr. Nimey said none on the very point – right side of his office he can park about three cars. He would keep about three cars facing McDonald's but off the sidewalk. The corner would be clearly visible.

Board Member Tesak asked about storing parts. Mr. Nimey said this is an auto repair shop and minor repairs only. It is not a collision shop. He will not be carrying any parts for cars.

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

-Mr. Joseph Lanza, 15 Glencrest Boulevard. He was against this until he heard what Mr. Nimey had to say. He feels it is a reasonable request. Mr. Nimey needs to do whatever he can to pull cars off the corner. He referred to changes that may occur at McDonald's, i.e., driveways.

-Mr. Gary Gallagher, 20 Glencrest Boulevard. He has done business with Mr. Nimey. This will be an asset to the area.

-Mr. Bob Murphy, Murphy Excavating. Since the 1960's he has never had a problem with visibility at this corner. Mr. Nimey runs a good business, and he supports three (3) families. He has improved this area greatly. He feels it is a win win for everyone. There is no reason to deny it.

-Mr. John Strachen, Claim Masters, Chapman Road. He is glad to see Mr. Nimey making improvements and cleaning up the area.

-Mr. Donald Backman as 1) private citizen. He owned an auto business on Oneida Street. He came before this Board in 2006/2007 asking for the same thing. He was turned down. The big reason being that you cannot yield a reasonable return (part of the criteria). He is not for or against this. He is in a similar situation. He has a tenant who suffered a financial loss and his client would like to do something different but he didn't get the variance. The client is enjoying a reduced rent because of the situation. He feels this Board has to do the test for financial evidence. Mr. Nimey is a good businessman and good person. He compliments him for cleaning up the area. He wanted this Board to be advised if this variance is granted, he will be back asking for the same consideration because he is in a worse situation – he has a direct financial impact.

2) Mr. Donald Backman as a Councilman: If this is granted, he would like a condition of the variance to restrict him off the sidewalk, as it is a place for sidewalks and handicap accessibility. Also, the Town is about to start to redraw some uses. Perhaps we should look at uses there and how offensive they are, and bring them back into the fold.

-Mr. Joseph Torchia, Chapman Road. He referred to the upgrades made lately in his area. He feels Mr. Nimey is doing a good job. Now he wants to put in a paved lot with cars – he feels it will enhance the area.

-Mr. Bob Murphy reiterated that he has never had a problem with the corner. Mr. Backman said the only reason why he brought this up is because there is an auto repair/sales business on a busy corner. Visibility is restricted. He feels this won't create a hardship on Mr. Nimey not to have cars on the sidewalk. Mr. Murphy feels Mr. Nimey hasn't done anything wrong and we shouldn't address restrictions.

Board Member Tesak asked Secretary Dory Shaw, did he not ask Mr. Nimey that he isn't going to park cars on the sidewalk and Mr. Nimey said he wouldn't. Mrs. Shaw said yes, she had made it a part of the record.

There being no further input, the Public Hearing closed at 6:35 P.M.

Chairman Bogar stated OC Planning 239 and NYSDOT had no comments. He read for the record comments from OCDPW. These are a part of the file.

Chairman Bogar asked Codes Officer Booth if he has heard anything about changes to McDonald's across from this site – Mr. Booth said this is the first he has heard anything.

Board Member Kiehm feels Mr. Nimey hasn't demonstrated the financial documentation. He is asking to add a new business area for this particular business or property. It was never a used car lot. He referred to two (2) other applications, which were denied for the same thing, auto sales. Another type of business could go in on this property, it doesn't have to be auto sales.

Board Member Murad understands Mr. Kiehm's comments but feels everyone benefits by granting this. Chairman Bogar asked Codes Officer Booth, can we put in a stipulation that if Mr. Nimey chooses to sell this property, can we restrict the used car sales. Mr. Booth said if granted, this variance goes with the property. However, we can limit the number of cars.

Board Member Tesak related to the number of businesses in this area. He feels Mr. Nimey has demonstrated how he wants to clean up the area. There is an auto body shop there now and he feels it is a

plus to that corner with Mr. Nimey's proposals. Is it self-created? We have all looked at that house and he would rather see a parking lot with cars. He feels Mr. Nimey has told us what he is planning and asked about what we can do there, and that is why we have a Zoning Officer.

Board Member Montrose feels it is a good solution. He feels no one will put a lot of money into that house. A commercial business is already there.

Board Member Stanislaus feels this application is a good solution, but understands the criteria for a Use Variance. Most of the time it is about financial hardship, but she asked Mr. Nimey further about finances. Mr. Nimey said everything has doubled, utilities, taxes. He would definitely lose half of his revenue because he is doubling everything. She said this is unique because we already have a property where it is grandfathered in and that is important. She referred to the number of vehicles, i.e. about 20 cars there including the other parcel. If we are going to agree to this Use Variance, she feels we should limit him to the number of cars – if we don't, it could become an issue.

Chairman Bogar agrees that it doesn't make sense for the house to be there. He feels we don't need a condition for the sidewalk because he has to abide by regulations, but we need to look at the number of vehicles as well as where to place them. He further stated that this application is getting support from the residents in the area and also would benefit the Town and help clean up the area.

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

- Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – response: discussion ensued, difference of opinion;
- 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: it is unique, but discussed further;
- The requested variance, if granted, will not alter the essential character of the neighborhood – response: - no, it will not alter the character;
- The alleged hardship has not been self-created – response: it is self-created.

Further discussion ensued. Board Member Kiehm reiterated other businesses can go in at this site. Board Member Tesak asked Codes Officer Booth why auto body is so defined. Mr. Booth said we have an Euclidean law with uses listed. The property is a grandfathered use if they continue there. However, to establish a body shop in an RB2 zone is not permitted. As long as it is not discontinued, it is going to still be a body shop.

Chairman Bogar stated there are other uses that could go in there, but they have to meet zoning on a lot of reduced proportions, setbacks, etc. – this is a non-conforming lot. Board Member Tesak said that makes it unique in itself and we can only judge what is before us tonight.

The Public Hearing was reopened at 6:55 P.M.

-Mr. Bob Murphy: is this Board forgetting that Mr. Nimey was placed with a financial hardship by the expansion of the road and he had to limit his business?

-Mr. Gary Gallagher: this application must stand out differently than the others because the building is involved.

-Mr. John Strachen: the corner is a nightmare right now. If we don't approve it, then it remains the same. It is a much better thing to get the cars off the corner. Mr. Nimey is paying taxes on these cars.

-Mr. Bob Murphy: he feels Mr. Nimey is limited now with the number of cars. Why should we tell him how to run his business?

-Mr. Joseph Torchia: it is a repair shop and if he wants to tear down the house and park cars there, he should. He has lived in this area for twenty (20) years.

Mr. Nimey: If there is a stipulation on the amount of cars on an average, he has about fifteen (15) cars there. He would like to have at least fifteen (15), twenty (20) or twenty-five (25) cars.

The Public Hearing closed again at 7:00 P.M.

Board Member Stanislaus referred to the number of cars – it is about cars for sale.

Motion was made by Board Member Taras Tesak to approve this Use Variance application for Mr. Nimey as presented considering the proactive comments made this evening. This is a unique situation and we needed to use the balancing act. Also stating it is without any limits and the Zoning Officer governing it; seconded by Board Member John Montrose. \*It is the consensus of the Board Members to add to the motion to limit the sale of cars to twenty-five (25); no cars parked at the point. Map submitted to be a part of the minutes. See vote below.

Discussion: Chairman Bogar doesn't have an issue about commenting on the sidewalks and he knows what Mr. Nimey has said.

Codes Officer Booth said he would like a clear motion where Mr. Nimey can park cars and where he can't - which corner, etc. Also, delineate the number of cars on this parcel and this location.

It was stated several times by Mr. Nimey that there would be no cars at the middle of the point.

Board Member Tesak to Attorney Cully: with the applicant presenting their drawing, does that not carry over to the next application – Attorney Cully said yes.

Board Member Stanislaus referred to the number of cars limited to this application. Mr. Nimey would like twenty-five (25) cars for both parcels. He will limit the front to seven (7) cars, nothing on the point.

Note: drawing submitted shows 3-4 cars parked along Oneida Street and 4-5 vehicles parked along Chapman Road of Nimey's service station site. Vehicles are not allowed at the intersection of Chapman Road and Oneida Street, specifically between the triangular area between driveway cuts and the corner or intersection of property lines at Chapman Road and Oneida Street.

Board Member Tesak has a motion to take the application the way it is presented to us with the drawing represented and carry over in case the property is ever sold, and no limitations.

\*Vote taken upon motion mentioned above:

Chairman Randy Bogar – yes	Board Member John Montrose – yes
Board Member Terry Tesak – yes	Board Member Karen Stanislaus - yes
Board Member Lenora Murad – yes	Board Member Fred Kiehm – no

(Board Member Tim Tallman abstained).

Motion was **approved** by a vote of 5 – 1.

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The application of **Victory Sign, Inc. for DSW (Designer Shoe Warehouse) at Sangertown Square Mall, New Hartford, New York**. The applicant is proposing to place a sign on the remote side of the building not physically associated with the occupancy. Therefore, the applicant is seeking a 64 square foot Area Variance for placement of this sign. Tax Map #328.008-1-12.1; Total lot size: 101+ Acres; Zoning: Retail Business 1. Mr. Anthony DePerno of Victory Sign, Inc. appeared before the Board.

Mr. DePerno explained that DSW is requesting to have an additional sign at Sangertown Mall. He stated that representatives of Sangertown are fine with this application as long as this Board agrees. The sign will be located at the Target side of the building and as shown on the picture submitted. Mr. DePerno also stated that DSW is a new business and would like the exposure.

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:20 P.M. County Planning 239 and NYSDOT responses were received with no comments.

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 Fred Kiehm to approve the application as presented as the applicant needs the exposure for their new business and it has met the criteria for an Area Variance; and 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 Lenora Murad – yes  
Board Member Fred Kiehm - yes

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

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

Board Member Tesak asked if they had a sign on the marquee also – Mr. DePerno said yes.

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The application of **Mr. Eric Moore, 13 Homestead Road E., New Hartford, New York**. The applicant is located in a Low Density Residential zone, which does not permit a fence in the front yard. He will encroach 24' and 4' into two (2) front yards. Therefore, Mr. Moore is seeking two (2) front yard Area Variances of 24' x 4'. Tax Map #328.005-1-31; Lot Size: 175' x 184'; Zoning: Low Density Residential. Mr. Moore appeared before the Board.

Mr. Moore explained that he would like this fence for his three (3) children to be able to play safely outside. He presented a picture of a 6' wooden stockade fence. Mr. Moore said he would be agreeable to getting a lower fence and different style, but this is what he is proposing.

Board Member Tesak referred to the sketch and suggested squaring it off and he indicated where on the sketch.

Chairman Bogar stated if he was to square it off another 10' to the west side of the property, he would still need a variance as this is a corner lot. Codes Officer Booth mentioned that this would change the application and residents would not have been advised of this change. Mr. Moore feels his original application would look better as presented. He is willing to do what the Board would like as he has put a lot of money into his home and wants it to look nice.

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

Discussion ensued whether to address the application as presented or to suggest another alternative. It was decided to proceed with the application as submitted.

Board Member Tallman asked Mr. Moore if approved, would he be willing to plant bushes by the fence – Mr. Moore said yes. Discussion also ensued regarding the height and style of the fence. It was the consensus of the Board Members to have a 4’ fence. Board Member Tesak asked the applicant if he would be willing to have a 4’ high fence and look elsewhere besides a wooden stockade fence as presented. Mr. Moore reiterated that he has no problem with this request.

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 Area Variance but with a 4’ high fence and that the fence not be a wooden stockade fence; that it meets the criteria necessary for the granting of an Area Variance; and 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 Lenora Murad – yes  
Board Member Fred Kiehm - yes

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

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

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The application of **Mr. Robert Virkler, 184 Paris Road (corner of Paris Road and Morgan Lane), New Hartford, New York**. Mr. Virkler is requesting to place an existing 10’ x 12’ shed on the Paris Road side of his property. Zoning in this area is Low Density Residential, which requires an accessory structure to be 30’ from the front property line. Therefore, the applicant is seeking an 8’ front yard Area Variance (shed is located on rear right corner of his property). Tax Map #338.000-3-6.4; Lot Size: 189’ x 185’; Zoning: Low Density Residential. Mr. Robert Virkler appeared before the Board.

Mr. Virkler said the structure is already up. His house faces Morgan Lane and it was built before the development went in. The back yard is on the Paris Road side. There is a hill located on his property, as

well as a ravine. The shed is 53' from Paris Road – it serves as a pool house also. The shed has been there for two (2) weeks and there is another shed on the property, which will be taken down.

Board Member Tesak asked how he found out he needed a variance. Mr. Virkler stated that Codes Officer Rowlands was driving by and stopped. Board Member Tesak asked if he could move it – Mr. Virkler said it is there because it fits in with where the pool is located. Mr. Virkler presented a letter from his neighbor, Mr. Robert Morris, who supports his application. He would be the person most affected. (This letter has been made a part of the file).

Chairman Bogar asked if there was anyone present to address this application – there was no response. The Public Hearing closed at 7:45 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 – the Board Members felt it could be self-created.

Motion was made by Board Member Karen Stanislaus to approve the application as presented as it has met the criteria for the granting of an Area Variance; and a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes  
Board Member John Montrose - yes  
Board Member Lenora Murad – yes  
Board Member Fred Kiehm – yes.

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

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

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**Big Apple Music, Plaza 5 LLC, Seneca Turnpike, New Hartford, New York.** The Zoning Board of Appeals placed a sunset clause on the 2008-#7 application of Big Apple Music, which allowed for a 128 sf sign with an LED message board as a replacement for what is the sign for Valley Brook Motel. Approval is needed from the Zoning Board to extend that sunset clause so this applicant can move forward to the Planning Board for a Special Use Permit. Tax Map #328.011-1-12.1; Zoning: Retail Business 1.

Codes Enforcement Officer Booth said this Board approved an Area Variance in 2008. This is the Valley Brook Motel sign, which is in the state right-of-way. Mr. Bolos is ready to go forward with it at this time. The procedure is the Planning Board has to look at all LED signs for a Special Use Permit. This will be presented to the Planning Board.

Chairman Bogar referred to when Mr. Bolos first came before this Board a few years ago, and that he feels Mr. Bolos has done a great job with his property.

Board Member Tesak referred to the 2008 approval and should we be looking at the application again. Codes Officer Booth said the sign and the variance are locked in – it was approved.

Motion was made by Chairman Randy Bogar to grant the extension to Big Apple Music for the Valley Brook sign to September 17, 2013; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes	Board Member Tim Tallman - yes
Board Member John Montrose - yes	Board Member Taras Tesak – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus – yes
Board Member Fred Kiehm – yes.	

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

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Draft minutes of the August 20, 2012 Zoning Board meeting were received by each Board Member. Motion was made by Board Member Taras Tesak to approve these minutes as written; seconded by Board Member Fred Kiehm. Board Member Fred Kiehm abstained from voting as he was not in attendance at the last meeting. All other Board Members approved.

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The next Zoning Board meeting is scheduled for Monday, October 22, 2012.

Respectfully submitted,

Dolores Shaw  
Secretary

dbb

**\*Note: see map of Mr. Nimey’s property on next page.**

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9/17/12  
RJB

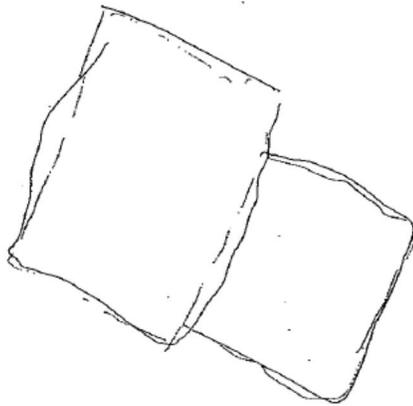
ONEIDA

NO  
VEHICLES

3-4 cars

CHAMPAIN

5 ft



Property line

Plu

40