MINUTES OF THE REGULAR MEETING
ZONING BOARD OF APPEALS
MAY 18, 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. Absent: Kimberly Carolyn-Faga. Also in attendance were Councilman David Reynolds, 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. Chairman Bogar mentioned that there were six (6) Board Members in attendance and it was up to the applicant whether to proceed with their application.

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The application of **Mr. Thomas Fiorentino, 197 Paris Road, New Hartford, New York**, who is requesting to construct a new covered porch onto his existing home (in the same original location of the old porch). Zoning in this area is Low Density Residential, which requires a 30' front yard setback. Therefore, the applicant is seeking a 9' front yard setback Area Variance. Tax Map #338.000-38.1; Lot Size: 2.21 Acres; Zoning: Low Density Residential.

Mr. Fiorentino appeared before the Board and explained that the old porch was dilapidated and had to be taken down. The new porch will be approximately 6" closer to the house than before and a little wider around the side with a hip roof. He referred to the schematic presented.

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

-Mr. Dean Gordon, 204 Paris Road. He supports the application as he feels it will enhance the neighborhood.

-Mr. Ralph Humphreys: his land borders this property. He has no problem with this as Mr. Fiorentino has done a good job fixing up his house.

No calls or letters were received. There being no further comment, the Public Hearing closed at 6:18 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 approve the application as submitted; and that a Building Permit be obtained within one (1) 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.

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The application of **Mr. Bernard Enea, 4776 Commercial Drive, New Hartford, New York,** who is requesting a 4' x 8' free standing sign (using the existing framework) on that site currently known as Pasta To Go. Zoning in this area is Retail Business 1, which does not allow more than one free standing sign per site. Applicant is seeking a quantity Area Variance for one more freestanding sign. Tax Map #317.013-3-18.1; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on May 8, 2009 and residents within 500' were notified. Mr. Enea appeared before the Board.

Mr. Enea stated he needs a variance for a free standing sign as he would like to use the existing frame to advertise his business. He checked with the Codes Department and that is why he is here. He is looking to put the same size and height as what the Gallery sign has next door to him. The proposed sign will be 4' x 8'. Mr. Enea contacted the NYSDOT and they don't have a problem with the setback. The new sign will be plywood with vinyl on both sides, with two (2) lights facing down to have on at night – the lights will be on a timer – it will not run all night.

Chairman Bogar asked the Codes Officer about the right-of-way. Mr. Booth said the leading edge of the sign has to be 5' away from the right-of-way.

Discussion ensued regarding the other sign he has on the side of the building. Mr. Enea said if the Board wants that off the building, he will take it down (the 4' x 8' sign by the window).

Chairman Bogar asked if there was anyone present to address this application – there was no response. No calls or letters were received. The Public Hearing ended at 6:25 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.

Chairman Bogar stated that the comments received by NYSDOT were that the existing sign was not in the right-of-way, and Oneida County Planning 239 had no recommendations (these letters have been made a part of the file).

Motion was made by Board Member John Montrose to approve the request for the 4' x 8' free-standing sign and that the existing 4' x 8' building sign by the window be taken down; and that a Building Permit be obtained within one (1) 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.

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The application of **Mr. Matthew Bohn, 25 Bolton Road, New Hartford, New York**, who is requesting to construct a 10' x 12' bath & laundry room onto the rear of his existing residence. Zoning in this area is Low Density Residential, which requires a 15' side-yard setback. Applicant is seeking a 5' right side-yard setback Area Variance. Tax Map #339.006-2-59; Lot Size: 60' x 140'; Zoning: Low Density Residential. Legal

Notice was published in the Observer Dispatch on May 8, 2009 and residents within 500' were notified. Zoning Board Members had received photos of the site with the application. Mr. Bohn appeared before the Board.

Mr. Bohn had presented pictures of his property. He will not be going beyond the side of the house – no closer to the neighbor. It will not look like an addition. The new siding will match the existing home. Mr. Bohn said he needs this addition to make access more feasible to the laundry room.

Chairman Bogar asked if there was anyone present to address this application – there was no response. No calls or letters were received. The Public Hearing closed at 6:35 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 Bob Schulman to approve the application as submitted; that the materials match the existing home; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Kristen Shaheen. 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.

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The application of **Mr. Nameer Haider** (represented by Mr. Zain Haider) and **Mr. Zain Haider** is requesting the placement of two (2) driveway gates 8' in height each; one gate at the driveway entrance at **255 Higby Road, New Hartford (property owned by Nameer Haider)** and the other at the driveway entrance **at Upper Woods Road, New**

Hartford (property owned by Zain Haider). Zoning in this area is Low Density Residential which only allows for a 4' high fence in any front yard, therefore, the need for two (2) height Area Variances of 4' each. Tax Map #'s 330.017-1-56.2 (255 Higby Road) and 330.017-1-56.1 (Upper Woods Road); Zoning: Low Density Residential. (This application was tabled until the May 18, 2009 meeting).

Mr. Zain Haider appeared before the Board. He had submitted clearer dimensions on the gate requests – there are no sides on the gates as previously shown. Nothing to block a view. The lights are off the gate on Upper Woods Road. Higby Road gates opens in and Upper Woods Road gate opens out.

Board Member Montrose referred to the 8' height request and how high it would be with a wheel, possibly 8 ½' – Mr. Haider said the 8' was the highest part of the gate.

Board Member Tallman asked Mr. Haider if he could go with a gate not as tall? Mr. Haider said possibly. Mr. Haider felt that the distance from the road for these gates wouldn't make it look that high. The gates will have an electrical arm.

Discussion ensued regarding the fence height.

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

-Ms. Karen Kabino, 16 White Pine Road: Re: Higby Road: she feels a 4' gate would serve the purpose and that an 8' vs. a 4' gate wouldn't change people coming down the driveway. She doesn't have a problem with Upper Woods Road.

-Ms. Karen Matt, 20 Upper Woods Road. She asked if Mr. Haider was going to place a fence on the property on Upper Woods – Zain Haider said there is no intention of putting in a fence on the property. They may at some time but at this point, no.

No additional calls or letters were received. The Public Hearing closed at 6:50 P.M.

Board Member Schulman has a concern with the 8' height. Board Member Shaheen referred to the other variances granted for gates and feels a uniform height should be formed across the Town. Discussion with the other Board Members ensued regarding the height proposed and if the applicant would consider 6'.

The Public Hearing opened again at 6:55 P.M. Mr. Haider was asked if would consider going with a 6' high fence. Mr. Haider again explained how far back these gates would be from the road. Mr. Haider said he preferred 8' but would accept 6' and the posts brought down into proportion. The Public Hearing closed again at 7:58 P.M.

Oneida County Planning 239 and Oneida County DPW comments have been made a part of the file.

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 reject the request for the 8' variance, however, approve the request for a gate with a maximum height, including a wheel, at 6' 6" on Upper Woods Road from the ground up. On Higby Road, a gate would be no more than 6' 6" from the ground up with an allowable height of an additional 2' for a lamp on the corner posts giving a total of post with the lamps at 8' 6" maximum, and the height of the gate at the highest point is 6' 6" as depicted on the drawing submitted by the applicant; and that Building Permits be obtained within one (1) year of approval date; seconded by Board Member Bob Schulman. 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.

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The application of **Mrs. Anita Marchio, 24 Wadsworth Road, New Hartford, New York**, who is requesting to install a 6' fence in her front yard, which is a violation of the Town of New Hartford Code 118-59D3. Therefore, the applicant is seeking an Area Variance for this fence in her front yard. Tax Map #340.008-2-54; Lot Size: 150' x 135'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on May 8, 2009 and residents within 500' were notified. Mrs. Marchio appeared before the Board.

Mrs. Marchio stated because of the location of her house, she put the pool on the side of her property. She needs a fence, especially for the pool. She picked out a white vinyl fence, but it is 4' high. She has amended her request from 6' to 4'. However, fences are now not allowed in the front yard and that is why she needs a variance. Mrs. Marchio stated she spoke to her neighbors and they don't have a problem with the fence.

Chairman Bogar asked if there was anyone present to address this application – there was no response. No letters or calls were received. The Public Hearing closed at 7:10 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 Kristen Shaheen to approve the modified application to a 4' fence; and that a Building Permit is to be obtained within one (1) year of approval date; 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.

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The application of **Mr. Mark Santomasino, 233 Higby Road, Utica, New York (Town of New Hartford**). Mr. Santomasino has erected a 6' high fence in his front yard (corner lot of Higby Road and Old Orchard Road). He is seeking a 2' Area Variance for the overall height of the fence. Tax Map #329.020-8-43; Lot Size: 100' x 160'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on May 8, 2009 and residents within 500' were notified. Mr. Santomasino appeared before the Board.

Mr. Santomasino displayed pictures of his property. He stated there was a 6' fence on the property for 12 years prior to the fence. The older fence was weathered and had to be replaced. He presented a petition from several of his neighbors who support his application (which has been placed in the file).

Mr. Santomasino built the newer fence about 8'-10' out. He said he checked with the Codes Department because he had a pre-existing 6' fence. Board Member Shaheen asked where he put the 8'-10' – Mr. Santomasino said on the Orchard Road side (in the front, the fence was moved forward – the Old Orchard side is where he moved it the most – it wasn't even with the house before).

Board Member Montrose has a concern with the 6' fence too close to the road. Codes Officer Booth said before April 8, 2009, the fence would have to be 2' in back of the front property line and no taller than 4' tall – Old Orchard Road is considered a front yard. Mr. Booth believes the fence is behind the 2'.

Chairman Bogar asked if there was anyone present to address this application – there was no response. No calls received – but the petition has been made a part of the file. The Public Hearing closed at 7:20 P.M.

Oneida County 239 Planning and Oneida County DPW responses were received and have been made a part of the file.

Chairman Bogar has a concern that the fence was built before he needed a variance. He also has an issue with the location of the fence and perhaps it could be moved back further. However, Mr. Santomasino has the support from his neighbors.

Board Member Tallman suggested plantings in the front of the fence. The Public Hearing was reopened at 7:22 P.M. The Board asked Mr. Santomasino if he was going to place plantings –Mr. Santomasino said no, but he is going to paint the fence a cedar-type look so it is not so bright. The Public Hearing closed again at 7:25 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 – 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 – yes;

- 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 John Montrose to grant the application as submitted; and that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Bob Schulman. 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.

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The application of **BG New Hartford, LLC c/o Diversified Developers Diversified Realty** who is requesting a three-lot subdivision for **Consumer Square, Commercial Drive, New Hartford, New York**; map dated April 9, 2009 by Snyder Engineering & Land Surveying; Tax ID #317.013-3-22; 317.013-3-23; 317.013-3-23.61; 317.013-3-23.62. Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on May 8, 2009 and residents within 500' were notified.

The referenced property is a shopping center. For zoning purposes, all proposed lots in the proposed subdivision are being reviewed as shopping center uses due to the fact access to all lots is through the shopping center and the entire project was originally reviewed as a single entity.

The following conditions warrant Area Variances:
-Lot 1: minimum required lot frontage 200' - actual frontage 0
requested Area Variance 200' frontage
-Lot 1: maximum permitted lot coverage 66% - actual coverage 83%
requested Area Variance 17% over maximum allowed lot coverage
-Lot 3: minimum required lot size 60,000 sq ft. - actual 48,785 sq. ft
requested 11,215 sq. ft. Area Variance on lot size
-Lot 3: minimum required lot frontage required 200' - actual 156'
requested 44' Area Variance for lot frontage
-Lot 3: maximum permitted lot coverage 66% - actual coverage 72%
requested Area Variance 6% over maximum allowed lot coverage

Mr. Gary Olin of Bergmann Associates appeared before the Board with a sketch of what is being proposed at the Consumer Square site (lot placements, etc.). They want the ability to take Consumer Square and put it into separate lots. Wal-Mart is Lot #1; Lot #3 is the fueling station and remaining land staying the same as Lot #2. There are no physical changes – they aren't adding to it – just a subdivision to allow the ability for the owners to sell Wal-Mart or fueling station to Wal-Mart or another entity.

A question was asked as to who maintains the road. It was stated that Diversified Developers Realty is responsible for the road – there are cross easements and are covered under those easements. The parking is common so there is an overall parking situation.

Board Member Montrose asked, the only reason this is being done is in the event someone wants to buy a building – Mr. Olin said yes. Mr. Olin also mentioned that easements and restrictions are common to all stores.

Codes Officer Booth said Benderson is still responsible for the traffic light.

It was stated that usually Wal-Mart wants to own their own property – they have first refusal.

Board Member Shaheen mentioned that a situation similar to this happened with The Orchards.

County Planning 239; Oneida County 239K; and NYSDOT responses have been made a part of the file.

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

-Ms. Dorothy Jagiello, 342 Main Street. She received a letter notifying her of this hearing, but she has no comment.

There were no calls or letters were received. 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 Bob Schulman to approve the application as presented and proposed; seconded by Board Member Kristen Shaheen . 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.

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The application of **Mr. Richard Carlson for property at 3523 Mohawk Street, Sauquoit, New York (Town of New Hartford),** which Mr. Carlson is proposing to purchase. This property is zoned Residential/Agricultural 2, which requires ten (10) acres for a farm and to have horses. Applicant would like to keep horses on this property which has 6.68 acres, therefore, Mr. Carlson is seeking a 3.32 acre Area Variance. Tax Map #350.000-1-46.1; Lot Size: 6.68 Acres; Zoning: Residential/Agricultural 2. Legal Notice was published in the Observer Dispatch on May 8, 2009 and residents within 500' were notified. Mr. Carlson appeared before the Board.

Mr. Carlson explained that he is in the process of buying this property and wants to bring a horse that he has now to this property; he is proposing to buy another, and may board one for a friend – no business will be conducted at this property at all. There is a barn on this property (outbuilding), which cannot be seen from the road. A garage could be a plan to put in 2-3 stalls. The horses will be there year round. They are going to put up some fencing – type to be determined. Some paddocks will be put in. They will buy hay for their horses.

Chairman Bogar asked if there was anyone present to address this application – there was no response. No calls or letters were received.

Oneida County 239 Planning and Oneida County DPW responses have been made a part of the file. The Public Hearing closed at 7:50 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 Kristen Shaheen to approve the variance as granted with the condition that there be no more than three (3) horses maximum; 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.

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Chairman Bogar stated that the June 15, 2009 Zoning Board meeting will commence at 6:00 P.M.

There being no further business, the meeting adjourned at 8:00 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals.

dbs