

MINUTES OF THE REGULAR MEETING
NOVEMBER 13, 2006

The Regular Meeting was called to order by Chairman Joseph Yagey at 4:30 P.M. at which time the Pledge of Allegiance was recited. Board Members present were Hans Arnold, Peggy Rotton, Rodger Reynolds, Bob Wood, Jerome Donovan and Bob Imobersteg. Also in attendance were Councilman David Reynolds, Town Planner Kurt L. Schwenzfeier, AICP, Senior Engineer John Meagher, and Dolores Shaw, Secretary.

Draft minutes of the September 11, 2006 Planning Board meeting were sent to each Board Member for review. Motion was made by Board Member Peggy Rotton to approve these minutes as written; seconded by Board Member Bob Imobersteg. All in favor.

New York Pizza & Deli, Clinton Road, New Hartford, New York. Preliminary/Final Site Plan Review of a proposed pizzeria located at 85 Clinton Road, New Hartford, New York Tax Map #328.015-2-37; Lot Size: 0.22.; Zoning: RB4 Neighborhood Business. Mr. Nicholas Cavalier appeared before the Board.

Town Planner Schwenzfeier presented a site map. NYSDOT was contacted regarding the entrance. They are willing to allow for temporary curbs (concrete/rubber) along with plantings until Mr. Cavalier purchases the building (once this is done he will contact the State for a more permanent entrance). Curbs will be painted yellow and blue and will be located to the corner of the building so the driveway entrance can be defined. When this Board reviews use of both sides of this building (Mr. Cavalier is using only one side of the building at this time), we can request the same type of improvements as Charlie Boy's BBQ, which is located nearby. Mr. Cavalier himself has revised the plan as requested. Mr. Cavalier has shown the parking spaces, plantings, handicap parking, etc. He will have about 3-4 tables inside, but his business is primarily pick up and delivery. There will be no signs located on the plants.

County 239 Planning Review was received with no comments. SEQR was not required for this application.

Motion was made by Board Member Bob Imobersteg to grant Preliminary Approval; seconded by Board Member Peggy Rotton. Vote taken:

Chairman Joseph Yagey – yes
Board Member Jerome Donovan – yes
Board Member Bob Imobersteg – yes
Board Member Rodger Reynolds – yes

Board Member Hans Arnold – yes
Board Member Peggy Rotton – yes
Board Member Bob Wood - yes

Motion approved by a vote of 7 – 0.

Motion was made by Board Member Bob Imobersteg to grant **Final Approval** based on the Building Permit being obtained within one (1) year of approval date (if permit is required); seconded by Board Member Peggy Rotton. Vote taken:

Chairman Joseph Yagey – yes
Board Member Jerome Donovan – yes
Board Member Bob Imobersteg – yes
Board Member Rodger Reynolds – yes

Board Member Hans Arnold – yes
Board Member Peggy Rotton – yes
Board Member Bob Wood - yes

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

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

Chairman Yagey gave the Board an update of why this application was before us. When this plaza was approved, it was done so without a restaurant, just retail uses and it met Codes. However, Benderson is looking to lease a portion of that property to a restaurant (Moe's Grill). This restaurant use changed the parking requirements. At this time, Benderson is before the Zoning Board of Appeals for additional parking. The application has been tabled twice and they are to reappear on November 20th.

Benderson has now revised their plan/drawing, changed the parking; however, they are still short spaces. Chairman Yagey stated that due to the amount of work Benderson has done in the Town and County and talking to their attorney, they asked that we look at the revised plan as a courtesy and for our input before they reappear at the Zoning Board.

Board Member Arnold questioned why it is before the Planning Board, i.e., because the original plan didn't call for a restaurant use. Board Member Arnold was advised that it is a modification to a plan. Also, a restaurant is a Permitted Use in the zone. A question arose as to whether this Board has the ability to deny a Site Plan on a Permitted Use,

especially given the review of this project, Eckerd's, the Public Hearings held with the neighbors, etc. In his opinion, perhaps a lot of people would have looked differently on this project with a restaurant use rather than the retail.

Town Planner Schwenzfeier said this Board cannot approve a project that is in violation of Town Code. The issue is parking because of the change of use. Discussion ensued regarding other projects in the Town relating to parking issues, however, they were in Planned Development Districts, which gives the Planning Board more input.

Chairman Yagey recognized Mr. John Montrose who was present at this meeting and a member of the Zoning Board of Appeals. Mr. Montrose wanted the Planning Board to be aware that Benderson Development had asked for their application to be tabled each time as the Zoning Board was prepared to act on this application. Chairman Yagey thanked Mr. Montrose for his comments.

Town Planner Schwenzfeier referred to the table on the map showing the changes from the original plan. Benderson is now six (6) parking spaces short. There were 86 parking spaces approved originally and they added four (4) for a total of 90 parking spaces.

Mr. Reoon of Benderson referred to the revised map and how they arrived at the reduction in parking spaces, i.e., green space went from 42% to 40% and the Town requirement is 34%. They meet all Town Codes except parking. Everything falls within the setback requirements and the existing drive lanes. He outlined the changes further:

- The front row had 25 spaces and now has 26 along Commercial Drive
- The row along the south has gone from 14 spaces to 15
- The row on the south adjacent to the building went from 8 spaces to 9
- The north side adjacent to the building went from 10 spaces to 11
- The 5th space was added to the north adjacent to Eckerd's and went from 7 spaces to 8 spaces
- Eliminated 1 space in front of the building – there were 22 and now 21 spaces for a net of 4 spaces.

Mr. Reoon was able to accommodate these extra spaces without getting into any setback changes, and they have a slight angle change. Mr. Reoon referred to the sidewalk, which will be tapered from 12' to 8' for better safety. He said they have picked up 4 parking spaces but are still short 6 spaces with the restaurant use.

Attorney Bakner stated that the design was originally approved for all retail and they are taking some of these spaces for a restaurant, but they will take some retail use out for office space, which has a reduced parking ratio requirement. She referred to a

deed restriction on the property for those uses, but there was a question regarding enforceability. She mentioned that Codes Enforcement Officer Back, at the last Zoning Board meeting, had explained that the plan before the Zoning Board was not the plan approved by the Planning Board, and she wanted to thank him for bringing this to their attention which led to some confusion. She further addressed the deed restriction option and what it entailed.

Attorney Bakner stated that it was Benderson's mistake with the site work, and there was a miscommunication regarding parking spaces. They now have the correct plan and are just seeking the feeling of the Planning Board on this revised layout.

Mr. Recoon stated that with winter approaching, they would, with or without Zoning Board approval, go forward and the building be modified, and putting in the 90 parking spaces and eliminate any contingency that the Zoning Board approves. The 90 spaces would be Code compliant. However, if the Zoning Board doesn't approve it, they can't put a restaurant in.

Chairman Yagey asked the developer, if for some reason the restaurant doesn't get approved, you will build the way the plan was approved? Attorney Bakner said Benderson would build it with the additional parking spaces even though the restaurant doesn't get approved. However, they feel the amended plan is better. They would like to build with the plan showing 90 spaces even though the Zoning Board doesn't approve it.

Board Member Imobersteg stated that they would have to change the table as shown on the site plan.

Board Member Arnold feels that the Planning Board has spent a lot of time on this project and other developments in the Town. He feels the issue is not the parking but change of use on the property. He understands that it is a Permitted Use but this Board went into an extensive number of meetings on this parcel and also Eckerd's, and he remembers asking what the nature of the development was. He feels the community was not informed of a restaurant. It is his personal feeling that he does not want to address this change without addressing the community.

The Board Members discussed the traffic flow into this development.

Chairman Yagey referred to the Public Hearing for this development of the retail project, which was held in November 2005. Various people spoke on the project and it is indicated in the minutes that the public was told this plaza would be retail use, not a restaurant.

Discussion ensued further regarding the restaurant use and the number of residents' properties affected. Board Member Wood referred to odors, lighting, and traffic that a restaurant brings, much more than a retail use.

Attorney Bakner stated that if a restaurant use was going to be put in, they would have to come back before this Board – Mr. Jim Rumsey (Benderson) was told this. The Zoning Board has had hearings with residents notified about it.

Attorney Bakner stated that they have not asked this Board to vote on it tonight.

Mr. Robert Maciol, Mayor of the Village of New York Mills, asked to address the Board concerning this amendment. He read from a prepared statement (which has been made a part of the file).

Chairman Yagey felt that this Board would not consider this project until Benderson went back to the Zoning Board for a variance, and we need to be on record to Benderson that this Board has a concern with a restaurant being there based on Mr. Montrose's statement, plus he has the Planning Board minutes stating that no restaurant would be in the plaza. He wanted to say that he felt Benderson didn't know a restaurant would be going in when they first started this project.

Attorney Bakner said they didn't knowingly lie about the restaurant. She also asked the Board Members if they had a problem with the layout of the parking – the answer was no, just the restaurant use.

Recommendation to Town Board: **Local Law "D" 2006 Cell Tower Height.** Town Planner Schwenzfeier stated that the Town Board is requesting a recommendation from the Planning Board for the limitation of the height of a cell tower or a tower of any type be limited to 100' other than a radio tower and a structure/tower for public safety.

Board Member Donovan referred to the Findings for park lands, for which we have been waiting. He feels he doesn't have enough information to vote on this tonight; i.e., what criteria was used for this height limit, and how will it affect telephone services to residents of the Town.

Board Member Reynolds wanted to know if the Town had a policy on wind mills – Town Planner Schwenzfeier said he doesn't know of a zone in the Town that permits it.

The Town Planner was asked to contact the Town Board for further specific information and advise the Planning Board accordingly.

Recommendation to Town Board: Draft Comprehensive Plan Update.

Chairman Yagey felt this was an ideal time to thank Board Member Hans Arnold for his expertise and commitment to be on the committee for the Comprehensive Plan. He attended the meetings and he wanted to personally thank him. He also addressed the Board Members stating that his term as chairman and Planning Board member is up December 31, 2006 – he will not be seeking reappointment. He thanked everyone, including previous Board Members, for the fine cooperation and work. It has been 21 years on this Board and service to the Town. He also stated that Board Member Hans Arnold will be taking over as chairman.

Comprehensive Plan: Chairman Yagey stated that the Planning Board votes on whether to recommend to the Town Board to adopt the Comprehensive Plan.

Town Planner Schwenzfeier said the presentation will be done by Eve Holberg of peter j smith company on Wednesday, November 15th at 5:30 P.M. at the Community Room at Butler Hall (downstairs). She will review the main points and hopefully people will have had a chance to read the plan – it has been made available at the Town Clerk's Office, the Library, online, and a copy in his office. The last time this plan was done was in 1995.

Board Member Rotton had a comment regarding female participation on committees, and aging population. Board Member Donovan had some concerns, which he has documented and which have been given to the Town Planner to forward to peter j. smith. Board Member Donovan felt it is a good document and wanted to know if our recommendation is an advisory one – the answer is yes.

Board Member Arnold stated that the Planning Board should know nothing gets done in this plan on its own. Whether it is an amendment to the Zoning Law, budgeting, subdivision regs – these all come back to the Planning Board. You have to have a plan to move forward. The plan will require further planning and study by the Town Board and it can still be amended. It is critically important to keep this committee intact.

Chairman Yagey again reminded the Planning Board members about the upcoming meeting.

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Board Member Arnold stated that he has served twice with Chairman Yagey. The service Chairman Yagey has given to the Town is remarkable. He feels no one has given so many hours to what has transpired in the Town over the years.

There being no further business, the meeting adjourned at 6:00 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Planning Board

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