MINUTES OF THE REGULAR MEETING
OCTOBER 15, 2007

The Regular Meeting was called to order by Chairman Randy Bogar at 6:30 P.M. Board Members present were Kristen Shaheen, Steve Welty, John Montrose, Fred Kiehm and Bob Schulman. Board Member absent: Tim Tallman. Also in attendance were Councilman David Reynolds, Codes Enforcement Officer Jerry Back, Town Planner Kurt Schwenzfeier 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. He also advised the applicants that one (1) Board Member is absent this evening and it was their choice to continue.

****

The application of **Mr. & Mrs. Warren Mundrick, 3534 Bleachery Avenue, Chadwicks, New York**, who is requesting to place a 10' x 8' storage shed on their property. This shed will be 3' from the side property line. Zoning in this area is Medium Density Residential, which required a 5' side yard setback, therefore, the applicant is requesting a 2' side yard setback Area Variance. Tax Map #349.012-1-51; Lot Size: 60' x 112'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on October 5, 2007 and residents within 500' were notified.

Board Member Steve Welty abstained from this application.

Mr.. Mundrick appeared before the Board stating that he needed the additional shed for the storage of items. He heats with pellets and stores them off the premises – he would like to place them on his property in a storage area., This will be placed behind his existing shed.

Board Member Shaheen asked if it could be placed anywhere else on the property. Mr. Mundrick said no as the space between the driveway and existing shed is an access to the backyard. It wouldn't work at that location.

Board Member Kiehm stated that most of the lots in that area are small, and at some time or another variances are required for anything someone might want to do.

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

-Mr. Scott Lasalle, 3518 Oneida Street – has no problem with this request.

Secretary Dory Shaw stated that Mr. Robert Corr called the office and has no opposition.

The Public Hearing closed at 6:40 P.M. 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 – response: no.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no.
- The requested variance is substantial – response: no.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance–response: no.

Motion was made by Board Member Fred Kiehm to approve this application as presented; 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 Fred Kiehm - yes
Board Member Bob Schulman – yes
Board Member Kristen Shaheen - yes
Board Member John Montrose - yes

Motion was **approved** by a vote of 5 - 0. (Board Member Steve Welty abstained).

****

The application of **Sangertown Square Mall, Seneca Turnpike, New Hartford, New York**. The applicant is proposing to erect a tenant sign attached to the outside of the building at Sangertown Square Mall. Zoning in this area is Retail Business 1, and the maximum height in this zone is 35'. The proposed attached building sign will be 39' 4" ±. Therefore, the applicant is requesting a 4' ± height Area Variance. Tax Map 328.008-1-12.1; Lot Size: Total acreage is 101 ± acres Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on October 7, 2007 and residents within 500' were notified. **NOTE: The applicant has withdrawn this application and will appear at the November 19, 2007 meeting with a different application.**

****

The application of **Mr. Joseph Carucci (470 French Road LLC), 4488 Commercial Drive, New Hartford, New York**, who is requesting to expand and renovate the existing retail space known as Pets Supplies Plus. The existing structure where they want to expand was the loading dock. The setback for the proposed addition will be 4' 5" from the side property line. Zoning in this area is Retail Business 1, which requires a 10' side yard setback. Thus, the applicant is seeking a 5' 5" side yard setback Area Variance. Tax Map #328.011-1-15; Lot Size: Approximately 1.2 Acres; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on October 5, 2007 and residents within 500' were notified.

Mr. Joseph Carucci, Mr. Philip Sbarra, Architect, and Mr. John Collis appeared before the Board.

Mr. Sbarra explained that there is an existing loading dock on the back of the building which currently has a roof and foundation. They would like to enclose that area for additional storage and bathrooms. There would be no change in the footprint. The building structure is already there and the concrete apron will remain. A garage door will be in place and trucks would still back up to it. This addition would also provide a grooming area for animals which they don't have at this time. Dumpsters will remain at the same location.

Mr. Carucci stated that Pets Supplies Plus has been a good tenant and he would like them to remain at the site – this addition would help them become more marketable.

County 239 was received with no recommendation. NYSDOT responded that any work on the State right-of-way would require a Highway Work Permit, where applicable.

Chairman Bogar asked if there was anyone present to address this application – there was no response. Secretary Dory Shaw stated that Dr. Feldman, 4484 Commercial Drive, called the office and has no opposition.

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 – response: no.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no.
- The requested variance is substantial – response: no.

- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – no
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance–response: no.

Motion was made by Board Member John Montrose to approve this application as presented; that a Building Permit be obtained within one (1) year of approval date; seconded by Board Member Kristen Shaheen. Vote taken:

Chairman Randy Bogar	Board Member Fred Kiehm
Board Member Steve Welty	Board Member Bob Schulman
Board Member Kristen Shaheen	Board Member John Montrose

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

****

The application of **Ms. Mary Sheheen, 6 Balsam Crescent, New Hartford, New York**, who is requesting to construct an 11' x 20' attached garage onto her existing home. Zoning in this area is Medium Density Residential, which requires a 10' side yard setback and this garage will be 4' from the side property line. Therefore, the applicant is requesting a 6' side yard setback Area Variance. Tax Map #328.011-2-8; Lot Size: 55' x 160'; Zoning: Medium Density Residential. Legal Notice was published in the Observer Dispatch on October 5, 2007 and residents within 500' were notified.

Ms. Sheheen appeared before the Board stating that she has an existing carport which is dilapidated and needs to come down. She presented pictures of that structure. Ms. Sheheen wants a garage for storage and to protect her car. Her neighborhood has garages and she feels she isn't asking for anything that would alter the character of the area. She pays $100 a month for storage of her items, and she would like to place them in the proposed garage and eliminate that expense. Ms. Sheheen stated she may want to change a few other things on her home later on, but would address it at that time. She stated that the neighbors do not have a problem with this request.

Chairman Bogar asked if there was anyone present to address this application – there was no response.

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

Motion was made by Board Member Bob Schulman to approve this application as presented, that the siding match the existing home; 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 Fred Kiehm - yes
Board Member Steve Welty - yes	Board Member Bob Schulman - yes
Board Member Kristen Shaheen - yes	Board Member John Montrose - yes

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

****

The application of **Mr. Michael Kelberman, 37 Ironwood Road, New Hartford, New York**, who is requesting to expand his existing mud room, laundry room and garage and also add a bedroom onto his home. The proposed two-story addition will be 6' 1" from the side property line. The zoning in this area is Low Density Residential, which requires a 15' side yard setback, thus, the applicant is seeking an 8' 9" side yard setback Area Variance. Tax Map #340.001-2-47; Lot Size: 147' x 156'; Zoning: Low Density Residential. Legal Notice was published in the Observer Dispatch on October 5, 2007 and residents within 500' were notified. Mr. Kelberman and Mr. Micah Croyle, contractor, appeared before the Board.

Mr. Kelberman explained why he needed the variance and also wanted to address the concerns of his neighbor, who had submitted a letter to the Board Members. He has lived in this neighborhood for fifteen (15) years and has seen a lot of changes. They have a growing family and wanted to address some deficiencies that existed in the home. The major problem is that they need a mud room, laundry room and addition to the garage. The existing garage is a two-stall and only 22' wide – it was stated that a standard garage is 26'. Mr. Kelberman stated that the front of the house would be remodeled with stone

and wood, and the property will be landscaped. The driveway will also be done over. They understand that their neighbors may have some concerns, and they tried to minimize the size of the addition as much as possible. Mr. Kelberman feels this addition will increase the value of his home and homes in the area, not decrease values. He and his contractor referred to the sketches of the proposed project.

Mr. Kelberman presented a petition of neighbors who support his application. All are in agreement that this addition will enhance the home and area. He understands about the rationale to keep a distance between structures, but his area has larger homes on smaller lots and there are homes with only 15' between them. He further stated that about half of the expansion project extends to the backyard. He and his contractor described the layout of the property, which is pie-shaped, and referred to the layout of other properties in the neighborhood. Mr. Croyle explained that when you go in the back, it becomes more substantial and there is a dead zone in the back that doesn't affect anything. It was stated that there are existing trees/shrubs that would not be removed, and the expansion would be difficult to see from the road. Reference was made to the fence of his neighbor and the fence of Mr. Kelberman's as shown by Mr. Croyle. Mr. Kelberman feels there is a substantial amount of area for this addition and he referred to the comment made in his neighbor's letter about an alleyway appearance – Mr. Kelberman disagrees and referred again to the slides as presented by Mr. Croyle.

Board Member Shaheen addressed the applicant - is it your belief that this two-story addition, standing in the second story window, you wouldn't be able to look down into your neighbor's yard – Mr. Kelberman said from any second story you could look down, and he can look down now, but from the ground level there would be no availability to look into the yard.

Mr. Kelberman was asked the square footage of his existing home, which is 2,815. The addition would be 1,104 square feet. Mr. Kelberman explained that he and his contractor feel there is no alternative to what he wants to accomplish on his property. There is a pool in the back yard and it would abut the pool area – they barely have enough room now to get out to the back the way the house sets.

The Board Members asked about the stakes on the property by the garage in relation to the expansion – Mr. Croyle explained what they meant, i.e., those stakes indicated where it would be permissible without a variance. The garage door will be well within the stake that is located in the back. It was stated that Mr. Kelberman is not asking for a three-stall garage, just a two-stall – it will 21' inside and 22' outside. They thought about angling the garage but it wouldn't look good. Mr. Croyle presented another sketch where they would need the variance.

Board Member Schulman referred to an expansion without the need for a variance. Mr. Croyle said if he reduced the addition, there would be no mud room. He reiterated that they tried to minimize it was much as possible.

Board Member Kiehm asked if they thought about buying another home. Mr. Kelberman said they like the neighborhood and the compromise was to fix up the existing home. They have a child with autism and he does poorly with change of any type – to leave would be a major upheaval for him.

Mr. Croyle presented a sketch of what the finished project would look like. He feels that it would certainly add to the value of the homes in this area. He stated that when the house was originally built, it was located to one side of the property and not placed in the middle of the lot.

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

-Mr. Michael Fanelli, 55 Ironwood Road. He doesn't have any objection to this application, but asked about what kind of precedent does this create. What happens if everyone in the neighborhood wanted to add onto their homes – this is his only concern.

Chairman Bogar explained the process for a variance in that every application is reviewed independently. It doesn't mean we would grant an application – each application is reviewed in its entirety.

Board Member Schulman stated to Mr. Fanelli that everyone has a right to seek a variance when needed, the procedure is followed and the Zoning Board reviews it. Each situation is unique.

-Letter for the file from Mr. Daniel Toczala, 35 Ironwood Road – he is opposed to the variance request (see file).

-Petition for the file of neighbor's who support this variance (see file).

Mr. Kelberman referred to the last page of the neighbor's letter who is in opposition and felt it was inaccurate.

The Public Hearing closed at 7:30 P.M. Codes Enforcement Officer Back had no comments concerning this proposal. Board Member Kiehm had concerns about the size of the structure. Board Member Shaheen addressed the need for expansion presented, layout of the property, green space available, character of the neighborhood, and other

mitigating factors. There was discussion between Board Members and review of the sketch presented.

Chairman Bogar felt the applicant tried to minimize wherever they could. After looking at the property and what was presented this evening with plans, he feels comfortable with the request.

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 – response: there was a difference of opinion (5-1 majority in favor).
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no.
- The requested variance is substantial – response: difference of opinion (5-1 majority in favor).
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no.
- The alleged difficulty was self created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no.

Motion was made by Chairman Bogar to approve this application as presented as he felt the need was demonstrated; the Board Members reviewed the sketches as presented; 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 Fred Kiehm - yes
Board Member Steve Welty - yes	Board Member Bob Schulman - yes
Board Member Kristen Shaheen - yes	Board Member John Montrose - yes

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

.

****

The application of **BG New Hartford LLC, c/o Developers Diversified Realty**. The intent for this application is to create a separate lot for an existing **Wal-Mart** store and associated fuel station to allow separate ownership of those facilities. There is no new development proposed, just a change in ownership. In order to accomplish this, the applicant will need a total of six (6) Area Variances as follows:

- Lot #1: Parking setback along western edge of Wal-Mart parking lot – required 10' to 1.27';
- Lot #1: Side yard setback along south side of gas station – required 75' to 66';
- Lot #2: Parking setback along Best Buy parking lot along NYS Route 5A – required 10' to 2.37';
- Lot #2: Side yard setback along Applebee's northerly side – required 75' to 25';
- Lot #2: Side yard setback along Michael's Crafts westerly side – required 75' to 17.3';
- Lot #2: Rear yard setback along Pet Smart southerly side – required 75' to 37.9'.

Tax Map #317.013-6.2; 317.013-3-22; 317.013-3-23; 317.013-3-35; Lot Size: Lot 1 is 28.7 Acres; Lot 2 is 66.275 Acres; Zoning: Retail Business 1. Legal Notice was published in the Observer Dispatch on October 5, 2007 and residents within 500' were notified. Mr. Gary Olin of Bergmann Associates, Architects; Mr. David Budge of Developers Diversified; and Mr. Peter Cummings of Developers Diversified was present (Developers Diversified is the owner of the property).

Mr. Olin presented a sketch of Consumer Square and where the changes are and how they want to subdivide Wal-Mart and the fueling station out of the property. He mentioned that there is a slight change for Lot #1 Parking Setback along western edge of Wal-Mart parking from 10' to 0.00' provided and also Lot #1 Side Yard along south side of Gas Station from 75' required to 67.3' provided. He further explained that this is one (1) lot now. They would like the ability to sell to Wal-Mart or anyone else. At this time, Mr. Olin referred to the variances requested and where they are located on the map.

Chairman Bogar asked if they had anything planned – Mr. Olin said no. It is strictly just a change in ownership by creating two (2) lots rather than one.

Mr. Olin referred to some pre-existing conditions and some that need to be accomplished to make this happen. There is no expansion, just property to be sold off in the future. Wal-Mart normally has their own property and this gives the owner an opportunity to sell it to them. One lot would be Wal-Mart's and the other lot would be the balance of the property – all in Consumer Square.

At this time, Town Planner Schwenzfeier stated that this proposed subdivision is on the Planning Board agenda for *October 22, 2007 depending on what happens with this application this evening. The applicant will have to come up with cross easements. Currently Wal-Mart pays different taxes and the fuel station also. They are taxing the building separately already.

Board Member Montrose asked why this didn't happen at the beginning. Mr. Olin said it wasn't thought about. Since then, development has changed owners several times. It

is not Benderson Development any longer. It is owned by Diversified Developers Realty in Cleveland, Ohio. Board Member Montrose referred to the entrance off Commercial Drive and if there was a possibility for a second entrance. Mr. Olin said no because there is no room to put one in.

Town Planner Schwenzfeier referred to another entrance – there is no way that could be done in the future. There is no access on Judd Road.

Chairman Bogar explained that he heard about another business coming in and his first question was whether another business could fit on that property. However, he was informed by the Codes Officer that there is no room for another business.

Mr. Budge stated if they don't come to terms with Wal-Mart, they can sell it to someone else, but Wal-Mart has first refusal. Mr. stated that Wal-Mart leases – they don't pay a lot of rent. There isn't much return and if they can sell the property and put the dollars somewhere else, they would like to do so.

Chairman Bogar asked if there was anyone present to address this application – there was no response. County 239 Planning referral was received with no recommendation. The Public Hearing closed at 8:10 P.M.

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

Motion was made by Board Member Fred Kiehm to approve this application as presented as it was felt the criteria was met; seconded by Board Member Steve Welty. Vote taken:

Chairman Randy Bogar - yes	Board Member Fred Kiehm - yes
Board Member Steve Welty - yes	Board Member Bob Schulman - yes
Board Member Kristen Shaheen - yes	Board Member John Montrose - yes

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

****

OTHER

-Codes Enforcement Officer Jerry Back is requesting an Interpretation from the Zoning Board of Appeals to determine whether or not Mr. Humphreys use of aircraft on his property is permitted under the Town Zoning Law. Mr. Back feels that the aircraft use is not permitted in any zoning district. The resident feels that an aircraft use is incidental to his property and, therefore, it is permitted. Mr. Back's opinion is that the property owner needs to apply for a Use Variance or a Zone Text Amendment as an airstrip is not allowed in any zone. The Board had a discussion regarding this request. It was determined that an aircraft use is not addressed in the Zoning Law, therefore, it is not allowed or an incidental use to a property. The Board unanimously agreed with the Codes Enforcement Officer's determination. Mr. Back will proceed accordingly.

-Secretary Dory Shaw informed the Board Members that she spoke with Mrs. Charlene Vehoski, 3332 Church Street, Chadwicks, New York with an update concerning her pool. She is trying to sell it, but has closed it for the winter. She didn't want to place it solely in the neighbor's yard. She would like to wait until spring to try to sell it again. The Board Members discussed this and it was decided, with all Board Members in agreement, that the pool cannot be used and that Mrs. Vehoski has until June 1, 2008, to take it down. Mrs. Vehoski will be notified of the Board's decision.

****

There being no further input, the meeting adjourned at 8:53 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Zoning Board of Appeals

Dbs

*The Planning Board meeting was changed to October 29, 2007.