



PLANNING COMMISSION

MINUTES

September 26, 2011

A public hearing followed by the regular meeting of the City of Cortland Planning Commission was held on Monday, September 26, 2011 at 5:15 PM in the Council Chambers at City Hall, 25 Court Street, Cortland, NY.

PRESENT: Chair Felix, Comm. Beckwith, Couch, Gebhardt, McMahon, Schaffer and Spitzer

Staff Present: Corporation Counsel Perfetti, Zoning Officer Bruce Weber, Capt. William Knickerbocker and Deputy City Clerk Cheryl A. Massmann

Meeting was video taped by an audience member.

Public Hearing – Sub-division – 10 Helen Ave. – (Cheetam)(R1) – Transfer of property to 14 Helen Ave.

Colleen Ackler of 14 Helen Avenue was present. She stated that she is buying thirteen hundred (1,300) square feet of property from Mr. Cheetam to straighten her property line to the creek bed so she can beautify and clean up her back yard.

Comm. Schaffer asked if she had spoken with the neighbors. Ms. Ackler stated that she had and that none of them had a problem with this transfer.

There was no one present to speak against the project and no one further to speak.

On a motion by Comm. Schaffer, seconded by Comm. McMahon, voted and approved to close the public hearing.

Regular Meeting

Item No. 1 – Sub-division – 10 Helen Ave. – (Cheetam)(R1) – Transfer of property to 14 Helen Ave.

On a motion by Comm. Schaffer, seconded by Comm. Beckwith, voted and approved.

Item No. 2 – Site Plan Review and Recommendation – Area Variance – 111-113 Pendleton St. – (Truman)(GB) – Review and Recommend to Zoning Board of Appeals

Atty. Patrick Snyder was present representing Mr. Truman. Atty. Snyder stated that Mr. Truman had now applied for an Area Variance. He stated that his client did not want to build something and the variance was for a quarter (1/4) acre parking lot and they don't want to pave it. He explained that the environmental movement is to reduce the amount of paving. Chair Felix asked if Mr. Truman was already using this area for parking. Atty. Snyder noted that it was being used for parking of trailers and storage out back.

Comm. Schaffer noted that the proper dimensions were not shown on the drawing. Chair Felix noted that he thought the parking was more than a quarter (1/4) of an acre. Comm. Gebhardt noted that they could approve the quarter (1/4) acre already being used and to not increase the parking area.

Chair Felix noted that he sees trucks parked there all the time. Atty. Snyder noted that there is some old logging equipment stored there, but the trucks come and go. He stated that there would be between six (6) to ten (10) trucks and he would not add any more vehicles.

Comm. Schaffer noted that she was uncomfortable about giving a variance recommendation without a real site plan. Atty. Snider noted that they could approve the variance with the condition that Mr. Truman stake out an area of two hundred (200) feet by fifty (50) feet and he would keep everything inside of that. Comm. Gebhardt noted that the drawing was confusing because of the address. Atty. Snyder stated it would look better to have the parking behind the building. Comms. Gebhardt and Schaffer would like to see the site plan drawn on a survey map with the area clearly marked out.

Atty. Snyder noted that they are asking for the variance so that the area does not have to be paved.

On the motion of Comm. Schaffer, seconded by Comm. Beckwith voted and approved to **TABLE** the site plan application pending a proper site plan map showing the paved or gravel areas intended for parking and the drive.

Item No. 3 – Site Plan Review – 180 Main St. – (Spadolini)(CB) – Overhead Door Replacement

Chris Spadolini was present. He plans to remove an overhead door and put in a smaller roll-up door and an entry door. He noted that he currently has recycling machines outside and he wants to move them inside. He would like to build a six (6) foot by ten (10) foot room to put those machines in. The room will be open to the public during business hours. He plans to install two (2) locks on the entry door.

Comm. Schaffer asked if he planned to put up any signage. Mr. Spadolini stated that he will be putting up a two (2) foot by four (4) foot lighted sign which will only be lit during business hours.

On the motion of Comm. Beckwith, seconded by Comm. Spitzer, voted and approved.

Item No. 4 – Site Plan Review – 6 Dunsmore Ave. – (Thompson/Yaman)(GB) – Porch

Lynn Thompson and Jim Bryant, of Yaman Construction were both present. Mr. Bryant explained that they were going to rebuild the existing porch on the same footprint.

Comm. Schaffer asked when work would begin. Mr. Bryant stated as soon as they received approval. Comm. Schaffer noted that it currently looks unstable. Mr. Bryant noted that they would be removing the existing porch and adding some more supports and rebuilding.

Chair Felix asked Zoning Officer Weber if he had any zoning concerns. Zoning Officer Weber indicated that he had none. Comm. Gebhardt asked if the concrete was to be replaced. Mr. Bryant stated that it would be replaced by pressure treated wood.

On the motion of Comm. Spitzer, seconded by Comm. Beckwith, voted and approved.

Item No. 5 – Site Plan Review and Recommendation – Area Variance – 49 Elm St. – (Northeast Transformer)(GI) – Parking Addition – Review and recommend to Zoning Board of Appeals

Gil and Patrick Kozer were present Gil Kozer explained the parking addition. He noted that he's planning to add a little gravel onto the west side. Chair Felix asked if the work was already done. Mr. Kozer indicated that it had been done. In the process of cleaning up and the guy threw down some stone for parking, not thinking that a permit was needed.

Comm. Schaffer asked to be shown the parking area. Chair Felix asked how far he planned to gravel. Mr. Kozer stated that it was about ten (10) to twelve (12) feet and it was railroad tailings, consisting of coal. He planned to be about ten (10) parking spaces in.

Comm. Gebhardt asked if this was encroaching on County property. Mr. Kozer indicated yes and no. Comm. Schaffer asked Mr. Kozer if he had spoken with the County. Mr. Kozer noted that the property was owned by the IDA/BDC, but he's always used it. Comm. Couch asked if he was allowed to drive on the County property. Mr. Kozer indicated that he had always done it. Zoning Officer Weber stated that Mr. Kozer should get a letter from the County to allow him to rive on or use the property.

Chair Felix stated that a letter should be presented from the IDA/BDC indicating their knowledge of Mr. Kozer's use of the property and giving him permission to continue that use.

Chair Felix also expressed concerns regarding transformer storage on the property in the unloading area between the two (2) buildings. Mr. Kozer stated that it was not storage, but a staging area to bring the transformers from one building to another and they were only there for a day or so. Chair Felix indicated that his concern was that the transformers were outside. Mr. Kozer stated that he would try to get them inside at night. Chair Felix indicated that the neighbors have expressed concern about it being an eyesore and he would like to see it be less of an impact on the community.

On the motion to Comm. Schaffer, seconded by Comm. Spitzer, to recommend to the Zoning Board of Appeals approval area variance for the parking addition on the condition of receiving a letter from the IDA/BCD be submitted and that attention is paid to the storage of transformers in the transfer area and pending Zoning Board of Appeals approval of the Area Variance to return to the Planning Commission with a more detailed Site Plan application.

Item No. 6 – Master Plan Presentation – 134 Homer Ave. – (CRMC)(PO)

Marc Weiss, Architect, Wayne Minicom, Facilities Manager and Denise Rhen, CFO CRMC were present.

Comm. Schaffer asked if this was a Master Plan presentation or a building plan presentation. Mr. Weiss stated that this was a one (1) to five (5) year projection and projects will only happen as funds occur, and this is their wish list.

Chair Felix asked if they had a Master Plan in writing. Mr. Weiss stated that everything was stated on the drawings. Mr. Weiss showed what the hospital currently owned, properties that the hospital would like to acquire as well as what projects are slated for 2011 and 2012.

Comm. Schaffer noted that the Planning Commission had been looking at piecemeal hospital building plans and they stated that they would not entertain anymore individual projects from the hospital unless they had a sense of what the Master Plan was going to look like for their campus. Comm. Schaffer referred to an undeveloped area and asked about a house in the area. Mr. Weiss indicated that was a rental home. Comm. Schaffer noted that they were proposing to purchase seven (7) more properties to take off of the tax rolls. Mr. Weiss stated that some would remain on the rolls.

Comm. Spitzer stated that a written narrative would be helpful. Chair Felix asked him when they planned on acquiring the properties. Mr. Weiss stated that when they become available. Comm. Schaffer would like to see a calendar of their acquisition schedule.

Denise Rhen, CFOCRMC, reviewed the plans being presented. She spoke about properties that they had acquired on Alveena and Loope Streets. She noted that the planned building of a three (3) story addition on the corner of W. Main Street and Homer Ave. had raised concerns with the City and the lack of financing made not feasible to go forward with that project. She noted that the Kleen Korner property was going to be a joint venture with Family Health network for a joint medical office building, but Family Health has since changed their minds and the hospital can't go it alone. She noted that there is currently no plan for development of that property on Homer Avenue so they graded it, planted trees, seeded it and built the sidewalks. She noted they owned the house on the corner of W. Main and Homer Ave. and that is a rental property currently on the tax rolls. She noted until the time comes that the hospital wants to expand parking, they will come to the City with those plans.

Ms. Rhen explained that the hospital had paved and plans for resealing many of their lots to keep them in good condition. She explained that they wanted to replace the collapsed fencing off of Alveena this year. She explained that the barn in the middle of the dirt lot off of Alveena is being used to store maintenance equipment. She spoke of drainage issues on Alveena and the hope of acquiring a house there to combine some of their parking lots to address these issues. She spoke of the building on the corner of Evergreen and Homer Ave. after TLC moves. The plan is to tear down the old storage barn in the middle of the parking lot being used for storage and use the Evergreen/Homer Ave. building for storage. Tearing down the old barn will expand the parking lot and unify the parking in that area if funding is received.

Chair Felix asked if they planned to build in the next five (5) years. Ms. Rhen stated that the boilers needed replacement within the next five (5) years. She noted that where the co-generation equipment currently is, there's some vacant space there and they are currently doing an analysis of the co-generation plant. If it is not working efficiently, they might go back to National Grid and perhaps put the boilers there.

Ms. Rhen stated that they might enclose an existing loading dock and perhaps put an MRI machine there, but no major building construction is currently planned, just renovation work within the existing footprint. She noted that they would like to do some work next spring on Alveena to the front driveway and sidewalk as they're not in good shape. She noted that since Family Health has moved out of the medical office building and they are thinking of renovating that second floor next year sometime and moving all their administrative office over there.

Comm. Schaffer asked that the hospital provide a copy of these plans and the narrative to the Mayor and the City Council for their information. Ms. Rhen stated that would be done.

On the motion of Comm. Schaffer, seconded by Comm. Couch, voted and approved to accept the CRMC Master Plan presentation pending receipt of the narrative five (5) year plan.

Item No. 7 – Site Plan Revision -19 W. Court St. – (DeVecchio)(R4) – Additional Units and Parking

Atty. Scott Chatfield was there to represent Mr. DeVecchio. Comm. Spitzer announced that at the last month's meeting he recused himself and he has since found the emails in question and has spoken with an attorney and the NYS Dept. of Legal Counsel specialists in municipal law and read the ethics section in the City Charter and is rescinding his recusal and will be participating tonight. He noted that to be crystal clear, he made copies of his emails and would be distributing them after the meeting.

Comm. Schaffer stated that she had also recused herself at the last meeting regarding this site plan and she has pulled out all of the emails she thought were held in the hands of counsel and reviewed them with counsel and she is confident that she will be a competent member without prejudice of the Planning Commission and she rescinds her recusal.

Corporation Counsel Perfetti stated that the two (2) Planning Commissioners did not consult with his office and any advice that was sought by those people did not come from his office. He stated that his position regarding the advice that was rendered to them about even the appearance of impropriety, which they should look to avoid, still stands. He stated that he was interested to know what was disclosed to the legal counsel that they sought and he would assert that it is not controlling on this board that being the duly appointed Corporation Counsel for the City of Cortland that any other counsel that they seek is irrelevant and that in doing so they are further demonstrating their prejudice because it is clear upon his review of the emails that they clearly demonstrated their position that is against this applicant. He asked that this be placed on the record and he made himself available to counsel on either side regarding his opinion.

Comm. Schaffer stated that she took exception to this and noted that Corp. Counsel was there to assist the Planning Commission. Corp. Counsel Perfetti stated that she was indicating that she was rejecting his advice and he needed this to be on public record regarding that.

Comm. Beckwith asked to recuse himself. Chair Felix recognized that. Atty. Chatfield asked that he leave the room. Comm. Spitzer stated that Comm. Beckwith was not required to do so. Comm. Spitzer read a section from the New York State Zoning Law and Practice, "Where a member of a zoning board of appeals excuses himself or herself from consideration of a matter before the board, due to the possibility of a conflict of interest, he or she cannot be directed also to leave the meeting room while the matter is being discussed. Neither the town attorney nor any other person or entity has the authority to preclude the board member, as a member of the public, from attending an open meeting of the board. Even if the matter were to be considered in an executive session, the board member would have the right to be present. OML Opinion No. 3276".

Corp. Counsel Perfetti stated that he was supposed to participate in deliberations if he has recused himself. Corp. Counsel Perfetti stated that one of the ways that he could insure that he doesn't contaminate the deliberations was to not be present in the room.

Chair Felix asked Comm. Beckwith to step out of the chambers.

There was heated discussion between Atty. Chatfield, Comm. Spitzer and Corp. Counsel Perfetti regarding leaving the room verses not leaving the room.

Chair Felix asked that Atty. Chatfield proceed with the project.

Atty. Chatfield asked to place his objection on the record to the redaction of the recusal of two (2) of the members of the Planning Commission. He further stated that as an administrative body, the fundamental issue is that due process and fundamental process be accorded to the applicant. He stated that it was the Commission's responsibility to recognize that and recuse themselves. He noted a decision on this would be made by the Supreme Court in the event that an Article 78 proceeding is presented. He explained that his client cannot get a fair hearing in front of this Commission. He stated that he has assembled many examples of this, which will be presented to the Supreme Court to support their position that a fair hearing cannot be gotten by his client in front of this board.

Atty. Chatfield noted that Corp. Counsel Perfetti wanted to put on the record his opposition to these determinations. He noted that this is about establishing a record for review by the Supreme Court in the event that his client's rights are misused or abused. He noted that the principal issue is impartiality. He stated that it is his position that not only the Board members that recused themselves at the last meeting and have since redacted and Mr. Beckwith recused himself because he has worked with Mr. DeVecchio in the past and this would give the appearance of a conflict of interest in the favor of his client. He feels that the emails shared with many Board members, taints the process and he objects to the entire Board. He noted that emails sent out on August 29, 2011 are also damning effect. He expressed concern with the difficulty that this

Board has insisted that they can hear this case. He asked that it be sent to any jurisdiction other than the City of Cortland Planning Commission.

Atty. Chatfield explained that the plan that was submitted to this Board was approved by this Board two (2) years ago contained a notation on the building in the rear that said four (4) unit structure. He noted that there was a Supreme Court determination by Judge Rumsey that notwithstanding the fact of approval and no geometric requirements were identified that the mere inclusion of that notation was a defacto condition that the rear building as approved was authorized only for four (4) units. He noted that accordingly, his client amended his site plan rather than go to the appellate courts. He stated that this application is identical to the one that was approved except that the rear building contains the notation "multi-unit apartment building" and does not say four (4) unit building and the second change is the location of the dumpster enclosure. He explained that in the lower left hand corner of the site plan, the dumpster enclosure is placed immediately adjacent to a guy wire that sticks into the traveling lane that was approved. He noted that moving the dumpster location from the parking space shown as proposed in the southwest corner, the dumpster is moved from the approved site plan to the west to protect vehicular movement from the guy wire and it makes more sense having the enclosure where it is now proposed and frees up one (1) parking space which shows on the site plan in front of you as a proposed parking space. He noted that there has been no physical alteration from the approved site plan, but for the relocation of the dumpster.

Atty. Chatfield explained that previously two (2) site plan approvals for this location have been granted by this Board. He stated that recently the new Zoning Enforcement Officer has rendered an opinion regarding the method of calculation of the required front yard. His opinion is that it is not sixty-five (65) percent of the amount of yard required by the Code, but rather sixty-five (65) percent of the actual yard that exists forward of the structure.

Comm. Schaffer asked if the lot coverage has changed. Atty. Chatfield stated that it hasn't changed, but Zoning Officer Weber has rendered a determination different from his predecessor which is respect to how one calculates the amount of yard. Zoning Officer Weber stated that he didn't know if that was true or different. Zoning Officer Weber asked if Atty. Chatfield had anything in writing from the previous Code Officer. There was further discussion regarding the calculations used to determine required front yard.

Zoning Officer Weber stated that what was being referred to was Section 300-65 of the City Code which is required lawns in residential districts – Sec. B. He read that section of the Code, stating that sixty-five (65) percent all front yards shall be maintained in a vegetative state and does not indicate a required front yard. He noted that "front yard" is defined as the area between the house and the right of way.

Atty. Chatfield indicated that this precludes your approval because the plan doesn't have sixty-five (65) percent grass forward of the building and if you take the total amount of land forward of the building and the street, subtract from it the impervious surfaces that are located therein, including the driveways, one arrives at fifty-seven (57) or fifty-eight (58) percent, but not sixty-five (65) percent. Atty. Chatfield stated that their land surveyor did the mathematical calculations on the amount of land forward of the

building and calculated sixty-five (65) percent of that and then calculated impervious surfaces and determined that only fifty-eight (58) percent or some number like that was impervious surfaces.

Zoning Officer Weber asked if the green area calculations included the new parking spaces or is this the old, which does not include the new spaces or the existing twenty-two (22) foot curb cut to be made twenty-four (24) feet. Atty. Chatfield stated that he did not know and he doesn't care. He asked to be allowed to proceed. He stated that he was going to present another plan that did comply with the sixty-five (65) percent method. He stated that he was trying to point out that the Zoning Officer could not approve that the plan that was submitted with the application because your Zoning Officer's ruling is putatively valid unless the Zoning Board of Appeals overrules it and they have not overruled that determination. He stated that they were scheduled to be on the Zoning Board agenda last week, but unfortunately it had to be postponed because the Zoning Board of Appeals failed to cause a public notice to be advertised and it now on their agenda for the meeting in October. He noted that to address the issue a slightly modified plan has been prepared.

Atty. Chatfield handed out the new plan and pointed out that there was a notation of an "A" on the top. He stated that this plan is identical to the preceding two (2) plans, but for one (1) modification. He explained that the new plan reconfigured the driveway which has been reduced to twelve (12) feet along the westerly drive width. He noted that the additional greenspace brings the total greenspace forward of the building into compliance with your Zoning Officer's method of calculation and now there's sixty-five (65) percent or more of greenspace and it shows more parking spaces than the eighteen (18) that are required to accommodate nine (9) residential units and this complies with all of the requirements of the Code. He noted that the relocation of the dumpster from adjacent from the building in the rear to adjacent to the westerly property line and the elimination of some blacktop on the westerly driveway, so as to satisfy the sixty-five (65) percent interpretation of your Zoning Officer, this plan is precisely the same plan as built that you approved and went to the Supreme Court and also the notation regarding the four (4) units. He noted that no changes were being made on the site at all of any significance. He noted that they were simply seeking the Planning Commission's stamp of approval on this plan so as to make clear for the record that it is our intention to have nine (9) dwelling units on the entire site; three (3) in the front building, six (6) in the rear building with the appropriate number of parking spaces and to satisfy the Code, the appropriate amount of greenspace and all the other conditions that this board imposed on the approved site plan have been satisfied.

Comm. Schaffer asked why the mathematical exercise. She noted that Atty. Chatfield was presuming that the Planning Commission's original decision was based on changing a four (4) unit building to a multi-unit building and now he's asking them to look at it differently.

Atty. Chatfield stated that at the last Planning Commission approval of this site plan that they asked Mr. DeVecchio "how many units will be located in the rear structure" and he replied, "As many as the law allows". Comm. Schaffer stated that it was as many as the Planning Commission approves.

Atty. Chatfield noted that this sort of prejudicial statement is offensive to him. He noted that his client didn't agree to four (4) units in the rear building and stating that he agreed to that is false and fraudulent. Comm. Spitzer stated that the plan that the board approved was four (4) apartments in the rear. He noted that Mr. Chatfield challenged that, it went to the Supreme Court and Judge Rumsey, in his decision, said that and that is why you are here with an amended site plan. Atty. Chatfield stated that was exactly right.

Comm. Schaffer stated that the amended site plan also said that the office is being removed in the front building, where the applicant had agreed to maintain an office for property management.

Atty. Chatfield stated his recollection was that the first approval, the one obtained prior to the amendment by the Zoning Board of Appeals on the parking lot size contemplated an office which had existed in the front building. He went on to explain that the second approval contained no such notation or limitation nor was an office space permitted by the last approval by this board. It was not shown in the plans and there was not reference to it in the presentation, nor was Mr. DelVecchio seeking approval for the office. He noted that there has not been an office in the front building in quite some time.

Comm. Schaffer stated that she would check with Corp. Counsel regarding past approvals.

Atty. Chatfield stated that what he was seeking was approval by the Planning Board of the site plan "A" that was presented this evening, which is in essence, the same one that was submitted with the application, but for the narrowing of the entrance driveway to twelve (12) foot which is the minimum requirement in the City Code, which thus brings our greenspace forward of the structure within the sixty-five (65) percent based Zoning Officer Weber's method of calculation of greenspace.

Comm. Schaffer asked if the board was dealing with the application revision that was dated August 9, 2011 in which the proposed use of property is 1. Add five (5) parking spaces, 2. Add two (2) dwelling units in the rear building and 3. remove office from the front building.

Atty. Chatfield stated that was insisted upon because the Code Enforcement Officer..... He explained that there has been a huge amount of conversation between his client and representatives of the City. He stated that there was an issue regarding whether the office space was supposed to be in the front building, so to make absolutely certain that there was no question about that, his client added that in to the application. Not that he had approval for an office or that he tried to construct or occupy an office based on the site plan approval that was granted, he would have immediately been thrown a citation for violating the site plan because the site plan did not show the office or authorize it to be there. He also noted that they also had two (2) other proposals. He explained that they could get up to twenty-six (26) parking spaces on this site, complying with the sixty-five (65) percent requirement, but they don't wish to make any changes to the plan because every time they make changes, it's going to raise another issue. He hasn't presented these other plans, because he is waiting for the board's decision on this plan.

Zoning Officer Weber asked about the property to the west belonging to Hoffman and what its classification and use was. Atty. Chatfield was not sure. Zoning Officer Weber stated that by determining what that property's classification was, can determine the location of that dumpster. He noted Section 118 of the City Code deals with dumpsters and if there's a buffer required, then the dumpster would have to meet the buffer setback.

Atty. Chatfield asked what the buffer setback was. Zoning Officer Weber stated that it would be determined when they determined what the property to the west was. He asked what the available options were.

Zoning Officer Weber stated it was not the zoning district, but the use of the property that determined the buffer requirement. He noted that the requirement Section 118-2 stated that no dumpster shall be located in any required buffer strip that is required by Chapter 300, then in the required buffer strips it is dependent on what the use of the property is next door. He read further and noted that if the property to the west is a single or two (2) family dwelling, the buffer strip would be required. In addition, Section 118 requires that around the dumpster there be a six (6) foot high stockade fence or other similar screening deemed appropriate by the Zoning Officer. He stated that the other question he had was if there was a distance between the dumpster and the parking spaces as to what that driving aisle is and previously this area which is now designated for new parking spots is designated as snow storage, so is there now another new area for snow storage?

Atty. Chatfield asked why there would be a new area for snow storage. He stated that they would put the dumpster where they had it before and would still have twenty-four (24) parking spaces and they only need eighteen (18), if you don't want it there. Zoning Officer Weber stated it wasn't a case of him not wanting it there, he was just pointing out the regulations. Atty. Chatfield stated that Mr. Weber didn't know what the regulations were as he didn't know what the property next door was zoned as and whether these regulations were going to be applicable. He stated that the Zoning Officer was just raising issues to escape the process. He asked for a decision tonight, either an approval or a denial. He asked that it be placed on the record that they will simply put the dumpster back to where it was before, they will eliminate that parking space and now they are down to only twenty-three (23) parking spaces.

Comm. Schaffer asked where they were headed with this. It appeared that they were putting in parking to justify apartments.

Atty. Chatfield noted that Zoning regulations are not about permissions, but about prohibitions. He explained site plan review. He stated that they did not have the right to tell his client.....

Corporation Counsel Perfetti noted that Mr. Chatfield has the right to make a record for the basis of litigation and doing anything to truncate that is inappropriate. Comm. Spitzer stated that Atty. Chatfield didn't have the right to filibuster. Corporation Counsel Perfetti stated that Atty. Chatfield was not filibustering and that he had gone on to other information regarding what your proper roll is here.

Comm. Schaffer stated that she felt that she understood what their proper role was. There was discussion between Corporation Counsel and Comm. Schaffer regarding Atty. Chatfield's rights to make a record.

Atty. Chatfield explained the reason they were here tonight was because the judge interpreted a notation on the plan as a defacto limitation that was on the site plan that was approved, but did not indicate in anyway that the Planning Board had the ability or the right to impose the limitation on the number of units that can be accommodated on this site. He noted that the number of units to be accommodated requires site plan approval, however, the number of units that are on the site is not a function of this board's desires, preferences, but a function of whether or not we satisfy the Code and the site functions within the guidelines of the site plan approval statute. He stated that nine (9) residential units; three (3) in the front building and six (6) in the rear complies in all the specs with your zoning regulations. He noted that the plan in front of them with the modifications that we propose meets all of those requirements and it is virtually the same plan that you have already approved on two (2) separate occasions. He noted that when the dumpster is moved back and when they eliminate the blacktop on the westerly driveway so that the greenspace meets the Code Enforcement Officer's interpretation of his method of calculation this plan satisfies 100% of the requirements of the City of Cortland Zoning Regulations.

Comm. Schaffer stated that she felt this application needed to be separated into two (2) parts. Comm. Spitzer did not agree, he felt it was appropriate to act on this application.

Zoning Officer Weber noted that the two (2) plans aren't actually going to be the plans.

Atty. Chatfield noted that Plan A with the dumpster placed back where it was in the last approved plan is THE plan that he is asking the Commission to approve. Zoning Officer Weber stated that he heard him say that he was going to be changing some parking spaces. Atty. Chatfield stated that those parking spaces didn't show on Plan A.

Zoning Officer Weber stated that Plan A showed parking spaces all the way to the south property line except for an undetermined distance and it was originally supposed to be snow storage. He also noted that for clarification, that the property to the west is a single family dwelling. He noted that any new area that is proposed needs to meet the ten (10) foot buffer requirements. He had the property file in his possession and he stated that the property to the west was a pre-existing, non-conforming single dwelling unit and the buffer requirements of Section 300-92 A would be applicable.

Atty. Chatfield stated that no new area was being planned on the westerly side of the property and actually they were eliminating some. He noted that the dumpster enclosure can be there. He stated that there will be no actual dumpster. It is an enclosure to mirror the existing structures in which garbage cans are awaiting pick up and removal. He asked if that altered anything.

Zoning Officer Weber stated that still needs to meet the buffer requirement.

Atty. Chatfield stated that they will agree that the dumpster enclosure will go back to the area where it was shown on the original plan. He summarized what they were doing.

Atty. Chatfield stated that they were requesting that the Planning Board grant us amended site plan approval based on the plan identified in front of you, as Plan A, with the change of moving the dumpster enclosure from the west side property line where it is shown to the area identified on Plan A as a proposed parking space. Basically at the southwest corner of the building, which is the same location that the dumpster enclosure was originally shown on the last approved site plan. Atty. Chatfield noted that it would no longer be a parking space, it would be an area variance and that's the same as the last plan that was approved by the Planning Board.

Comm. Schaffer noted that if amending the site plan, he must include everything on one site plan. She noted that she would like to see all the things that have been approved for this site over the past three (3) years or so, put on one site plan.

Atty. Chatfield stated that all were on there to the best of his recollection and knowledge. He noted that the property has been inspected by the Zoning Department and the Building Department and the last issue that was an issue was the painting of the guardrails, but everything that was required by this Board has, in fact, been accomplished and is, in fact, done and on the site.

Zoning Officer Weber stated that he disagreed with that and stated that he didn't have a list of the items with him. Comm. Schaffer noted that they were going to court anyway if they were denied.

Atty. Chatfield stated that obviously it wouldn't go to court if the site plan was approved or if a neighbor feels aggrieved and appeals it.

Zoning Officer Weber asked if he had the distance from the rear of the parking spaces to the west property line. John DelVecchio stated that it was seven point six (7.6).... Zoning Officer Weber asked again, if he had the distance from the westerly most point of the parking spaces which is..... John DelVecchio stated that they put the garbage enclosure back. Zoning Officer Weber stated it was not about the garbage enclosure. John DelVecchio stated that the property line at the southwestern corner was seven point six (7.6) feet and it was shown on the plans. He noted it was four point six (4.6) if you count that as a parking spot.

Zoning Officer Weber stated that was not what he was talking about. He stated that he was asking for the distance from the westerly most point of the parking on the western portion of the multi-unit apartment building to the west property line. John DelVecchio stated that it was twenty-four (24) feet. Zoning Officer Weber asked him where he was getting that from as he didn't see it. John DelVecchio stated that from the retaining wall it was twenty-two point one (22.1) to the corner of the building and the property line....the retaining wall was two (2) feet thick and there was no retaining wall by the garbage enclosure. Comm. Schaffer stated that there was supposed to be a retaining wall there. John DelVecchio stated that he didn't think that was so.

Zoning Officer Weber stated that the driving aisle is intended to be utilized for onsite vehicular circulation and all driving aisles shall be twenty-four (24) feet in width, however, the Planning Commission may, upon proper presentation, permit a narrower

driving aisle. He noted that if it was going to be narrower, he would like the Planning Commission to address that.

Atty. Chatfield stated that he understood that, but wanted to preface it by asking if there was a distinction in the Code between a driving aisle and a driveway. Zoning Officer Weber stated that there was. Atty. Chatfield asked if that distinction had to do with whether there was or was not parking on both sides. Zoning Officer Weber stated no. Atty. Chatfield asked Zoning Officer Weber to explain the difference between a drive aisle and a driveway.

Zoning Officer Weber stated that a driveway is at least eight (8) feet in width....he then went on that the driving aisle to him and this is where the Planning Commission has the ability to allow something less than what is in the Code and a driving aisle, to him, is the space needed to access a parking space and to get out of that parking space and into the driveway. He noted that he would consider the area where you come in to the southern most portion of the building to be the driveway. He went on to state that the driving aisle would be the area that would be utilized to be able to back out of this space and then proceed out the driveway.

Comm. Beckwith excused himself at 6:50 PM

There was further discussion regarding drive aisles and driveways between Atty. Chatfield, the Commission and Zoning Officer Weber. Atty. Chatfield noted that the site plan with the drive aisle widths has been submitted and approved on two (2) occasions and he submits to the Commission that an application with a twenty-four (24) foot width for a driveway to serve a parking space has never been applied in the City of Cortland in its history. He noted that he understood the spirit that Mr. Weber's comment that this should be dealt with by the Planning Commission because they have discretion. He noted that the problem was that he had less confidence in the likelihood that the Planning Commission will grant any relief, variance or alteration of any conceivable construction of the Zoning Ordinance and they are not willing to concede that we need such relief. Atty. Chatfield stated that they were going to do what they were going to do.

Comm. Spitzer placed a motion on the floor to disapprove the site plan that was before the Planning Commission. No second was made.

Atty. Chatfield asked to make it clear for the record that he was formally withdrawing the plan that was submitted with the application and submitting for approval "Plan A" that the Planning Commission was handed to you this evening with the modification that the dumpster enclosure is moved from where it shows on "Plan A" to where it is located on the original last approved plan by the Planning Board and the elimination of the proposed parking space wherein the new dumpster enclosure location would be. That is the plan that he is asking the Board to consider.

Comm. Schaffer stated that Atty. Chatfield has asked the Planning Commission to withdraw an application.... Atty. Chatfield disagreed with her and stated that he is withdrawing the modified plan that was submitted with the application and that is part of the site plan process.

Comm. Spitzer wanted clarification. Atty. Chatfield stated that the application that the Commission had received is before them, but the plan that was appended to that application is NOT because that plan does not comply with Mr. Weber's interpretation of how one calculates open space in the front yard. Atty. Chatfield stated that the Commission can't approve the plan that was submitted with the application and he is asking that Plan A, as modified, to approve as part of that application.

Comm. Spitzer made a motion to disapprove the application and Plan A which is before the Planning Commission.

Comm. Gebhardt wanted to say something before a vote was called. He stated that this plan stated that there were five (5) parking spaces and he asked them to be identified. Atty. Chatfield asked him if he was referring to Plan A. Comm. Gebhardt stated that what he had was what he had received and reviewed before he came to this meeting tonight. He stated that was the plan he was told that he would be reviewing and approving or disapproving. The plan noted they were adding five (5) parking spaces, adding two (2) dwelling units and removing an office. He stated that Atty. Chatfield hadn't even told him what he planned to do with the office. He stated that this was his turn to speak noting that Atty. Chatfield has been very eloquent this evening. He noted that one thing he stated, which he felt was important, was that the purpose of this Board and the Zoning Code is to provide for the good of the people and that's what this Board is trying to do. He thought if it was just a matter of law; you, other attorneys and the Code Officer could sit down in a room and handle this application and every other application, but the people on this board, month after month try to determine what is best for the good of the people. He stated this is what they are trying to do here and he noted that Atty. Chatfield, so eloquent, and his friends are snickering and laughing here and we are just trying to do our job. He stated that he was very offended at Atty. Chatfield's attitude and demeanor in this room, very offended.

Atty. Chatfield stated that it was his intention to offend him and he thanked him. He noted that Comm. Gebhardt summarized, moments ago, exactly what the problem is with this Board. He stated that you believe in your hearts that your job is to do what you think is right and best for the citizens of the City of Cortland. He noted it was their job to administer a set of regulations.

Comm. Gebhardt then stated why don't we have a set of attorneys do that, because they know the law better than we do. He stated that Atty. Chatfield was trying to convince the Board based on the law and Mr. Weber comes up with a point that it isn't exactly as the Code shows and you're supposed to have twenty-four (24) feet to turn around. He noted that Atty. Chatfield just dismissed that. He noted that Atty. Chatfield has been telling the Board that they have to go by the letter of the law and our Code Enforcement Officer then said you don't, so what am I supposed to do. Comm. Gebhardt noted that Atty. Chatfield said that they should never make an allowance for that based on the history of this Board and you don't have any idea what I'm thinking about this project. Comm. Gebhardt stated that Atty. Chatfield had an idea of what Comm. Gebhardt thought about him right now.

Atty. Chatfield stated that he now knew what Comm. Gebhardt thought about the project now. Comm. Gebhardt disagreed with him.

Atty. Chatfield stated that Comm. Gebhardt said that this was the plan that he was told that he would be considering tonight.

Comm. Gebhardt stated that the Clerk sent him the information. There was discussion between members about when information is received. Comm. Spitzer asked that the Commission proceed with the application. Atty. Chatfield agreed with him.

Comm. Spitzer made a motion to deny the application and the Plan A as submitted.

Zoning Officer Weber asked Comm. Spitzer to clarify....

Atty. Chatfield stated that it was the Commission's job, not Mr. Weber's, to tell them what to do. They should make up their own minds about what to do.

Zoning Officer Weber stated that he was letting them make up their own minds, but he was trying to do for the Planning Commission to make a record for them, just like you did for your client. Atty. Chatfield stated that was not Mr. Weber's function. Zoning Officer Weber stated that it was his function to be here and give information to the Board. Atty. Chatfield stated that he was making a record and he wanted the record to reflect that Mr. Weber is willing to suggest to you that you need to have some reasons for your decision.

Comm. Spitzer stated that was all understood. Comm. Schaffer stated that she had received her information ten (10) days prior to this meeting and she understood that was what would be discussed tonight, these three (3) issues. Comm. Spitzer stated that Mr. Chatfield had presented his case. Comm. Schaffer felt that some things had not been discussed and therefore could not be voted on.

Comm. Gebhardt asked Atty. Chatfield what would be done when the office was removed and what would that space become. Atty. Chatfield stated that to make it clear, there was no office; there has been no office for two (2) years and the last site plan that the Planning Commission approved did not show an office in the front building. He noted that accordingly, we have not had the right to have an office in that front building for two (2) years. He stated that that notation was included in the plan, simply to make it clear, because there was some confusion as evidenced by comments tonight, as to whether there is or is not, was or wasn't an office in the front. He noted that there was a long time ago, but there hasn't been for two (2) years and there is not one there now and there will not be one there in the future, an office in the front building.

Comm. Schaffer stated that she remembered an office in the original interior plan and the office had a closet and she wanted assurance if there was no office that there was no closet, as well. Atty. Chatfield stated he could not give her that assurance because it was not part of this board's responsibility to design the interior of a structure. He noted that the Code Enforcement Officer has the right to cite them if they were using property improperly pursuant to the Zoning regulations and the interior design and layout of a structure, the relationship of buildings is not the province of site plan approval.

Zoning Officer Weber asked Atty. Chatfield that if the office space was removed what was that space being used for now. Atty. Chatfield stated that he had no idea and he didn't care. Zoning Officer Weber stated that Atty. Chatfield had just stated that the

Zoning Officer should care and that's why he asked. Atty. Chatfield told him that he was welcome to come out and take a look. Atty. Chatfield stated that the issue was, what was allowed by site plan approval and the last time acceded to the board's demands and left the site plan with a notation that said four (4) units in the rear, notwithstanding that his client in response to the questions from the Board stated that we are going to put whatever units we want. He noted that he didn't want to get into the history of this project, but he could go through everything. He further stated that what he wanted was a simple site plan approval for a site that contains nine (9) dwelling units, appropriate parking, ingress and egress and all the rest based upon the plans that you already approved on two (2) occasions previously.

Comm. Schaffer stated that he had made a mistake in his addition noting that the Planning Commission approved seven (7) units, not nine (9) and for him to claim that there are nine (9) reflected that Atty. Chatfield had not read what the Commission had approved.

Atty. Chatfield asked her if she even listened to what he said. He stated that he is asking for approval of nine (9) noting that they have not approved nine (9) in the past and if they had done so, he wouldn't be here. He stated that they approved seven (7) and Comm. Schaffer agreed with that statement.

Atty. Chatfield stated that there was one (1) site plan before them and it was for nine (9) dwelling units on this parcel with appropriate parking, pursuant to your site plan regulations. He asked that they approve it or disapprove it.

Comm. Schaffer felt that for Comm. Spitzer and she to make a motion would be weird. Comm. Spitzer stated that was not a matter of concern for him.

On the motion of Comm. Spitzer, seconded by Chair Felix, to deny the site plan application and Plan A map.

Atty. Chatfield requested a polling of the Planning Commission.

Comm. Couch – Aye
Comm. Gebhardt – Abstain
Comm. McMahon – Aye
Comm. Schaffer – Aye
Chair Felix – Aye
Comm. Spitzer – Aye

Comm. Spitzer asked that the record show that the Board's prior decisions on this matter: number of occupants.....

Atty. Chatfield stated that the motion was passed without opinion or comment and it therefore cannot be supplemented now.

Comm. Spitzer stated that he could supplement it.

Atty. Chatfield stated that he cannot as the motion was already adopted and passed.

Corporation Counsel Perfetti stated for the record that he concurred with Atty. Chatfield in that the motion cannot be supplemented.

Item No. 8 – Site Plan Review – 93-95 Tompkins St. – (Grodinsky)(R2) – Fence

Atty. Chatfield announced that he would be representing Mr. Grodinsky. He proceeded to give the history on this site plan application. He noted that the property to the east was owned by Mr. Calabro and he gave the impact on Mr. Calabro's property. Atty. Chatfield stated that Mr. Ruggiero, property manager, was present as a representative for this application. There was some discussion regarding the differences in Mr. Grodinsky's signature on two (2) separate documents. Comm. Schaffer asked that be noted for the record. Atty. Chatfield stated that he also noted that they looked substantially different. Deputy City Clerk Massmann noted that a FAX had been received in her office from Mr. Grodinsky on Aug. 2, 2011, stating that the law firm of Cardinale and DelVecchio would be representing him in the City of Cortland Planning Commission in regards to the site plan review on the above referenced property.

Atty. Chatfield stated that the Cardinale & DelVecchio law firm had asked him to appear to assist counsel on behalf of Mr. Grodinsky.

Atty. Chatfield noted that the conversation at the last meeting, focused on what would be the effect on the construction of the fence on the ability of Mr. Calabro to use his property. He noted that there was an agreement in the past between Mr. Calabro and Mr. Grodinsky sharing services and snow plowing functions, etc. Mr. Calabro's property enjoyed the benefit by way of this agreement by being able to use a portion of Mr. Grodinsky's property to be able to ingress and egress his property. He noted that agreement subsequently has expired and Mr. Grodinsky does not wish to continue that. In fact, he noted, Mr. Grodinsky desires to exercise dominion and control over his property to the exclusion of Mr. Calabro. He noted that accordingly an application for site plan approval to allow the construction of a fence approximate to the property line, so as to be able to delineate Mr. Grodinsky's property, was submitted. He noted that at the last meeting, they were unable to resolve the matters. He noted that while that meeting and this meeting weren't public hearings, the Board, at the last meeting allowed the representative of Mr. Calabro; counsel from Bond, Schoeneck & King, to provide information and make comment. Atty. Chatfield stated that he had already indicated that he would object to that this evening, if that occurred because it is not a public hearing.

He reminded them that the application for the fence was made pursuant to the City Zoning Code that a structure, which is defined as a combination of materials, requires site plan approval. He stated that Mr. Grodinsky wanted to get the Planning Commission's input as to what kind of fence, what size fence and within reason, where would you like it. He stated that he frankly didn't care whether the Board approved or denied this application. He stated that Mr. Grodinsky would be exercising control over his property and will be prohibiting Mr. Calabro and Mr. Calabro's tenants from utilizing his property. He explained that in the event that this Board chooses not to grant site plan approval, unlike the previous case, there will be no litigation, but what there will be will be a series of boulders placed along the property line so as to separate Mr. Grodinsky's property from Mr. Calabro's property. He stated that boulders would not require site plan approval from the Planning Commission or the City.

Atty. Chatfield stated that it was entirely up to the Planning Commission as to whether they preferred to see a series of granite boulders along the property line or whether they would prefer to see a fence.

On the motion of Comm. Gebhardt, seconded by Chair Felix, to allow Mr. Grodinsky to put in a series of boulders.

Comm. Schaffer noted that the split fence had been repaired and that it looked very nice. Mr. Ruggiero stated that he couldn't take any credit for that, he only managed the property.

Atty. Chatfield stated that he was not asking permission to place boulders. He stated that if the Board did not want to grant site plan.....

Comm. Gebhardt stated that Atty. Chatfield had just threatened this Board with boulders and he's making that motion and he's not going to accept anything else and again stated that there was a motion on the floor.

Atty. Chatfield called Comm. Gebhardt an idiot in a loud voice and charged the Commission table. He was physically restrained by other counselors present. There was much shouting. Comm. Couch asked that 911 be called and asked Corporation Counsel Perfetti to call the Police. Corporation Counsel Perfetti asked that Chair Felix call a brief recess.

Chair Felix called a recess.

Atty. Chatfield approached the Planning Commission and asked that the site plan application for 93-95 Tompkins St. – (Grodinsky) – Fence be withdrawn.

Item No. 10 – Minutes – August 22, 2011

On the motion of Comm. Spitzer, seconded by Comm. Schaffer, noted and approved.

Adjournment

On the motion of Comm. McMahon, seconded by Comm. Spitzer, voted and approved.

I, RAFAEL FELIX, CHAIRPERSON OF THE PLANNING COMMISSION OF THE CITY OF CORTLAND, NEW YORK, DO HEREBY CERTIFY THAT SAID RESOLUTION(S) WERE ADOPTED AT A MEETING OF THE PLANNING COMMISSION OF THE CITY OF CORTLAND, NEW YORK, HELD ON THE 26TH OF SEPTEMBER 2011.

RAFAEL FELIX, CHAIRPERSON