

Zoning Board of Appeals
City of Cortland
May 10, 2010

A regular meeting of the Zoning Board of Appeals was held on Monday, May 10, 2010, at 5:00 p.m. in the Council Chambers at City Hall.

Present: Chair Dailey, Comm. Brown, Haskell, Hickey and Wickman

Staff: Corporation Counsel Ron Walsh, Zoning Officer Bruce Weber and Cheryl Massmann, Deputy City Clerk

Item No. 1 – 19 W. Court St. – (DelVecchio)(R4) – Application for Interpretation of Zoning Officer’s Decision

Chair Dailey called the meeting to order at 5:00 pm. Chair Dailey then recused himself from this public hearing due to a professional responsibility to Mr. DelVecchio and left the room.

Vice Chair Hickey noted that the public hearing was still open. She noted that Mr. DelVecchio may be at a disadvantage due to the small quorum of four (4) members. Mr. DelVecchio asked if the Zoning Board had all of the information that they needed to make a decision. Vice Chair Hickey noted that the ZBA had received copies of the transcript done of the April 12, 2010 session. She noted that it had arrived late and ZBA members had just received it this evening. She also noted that the ZBA members had received copies of documents submitted by Mr. DelVecchio, which included Planning Commission minutes and his application for interpretation. She stated that she did not feel that she was lacking anything. Mr. DelVecchio stated that for the record, he just wanted to supply the ZBA with everything they needed and that they were not lacking anything. Vice Chair Hickey again assured him that she felt he had supplied everything that the ZBA had asked for.

Zoning Officer Weber stated that he had given the ZBA a draft of his response comments to the transcript that was provided from the April 12, 2010 meeting. Vice Chair Hickey noted that Corporation Counsel Walsh was present to also answer questions. Comm. Brown asked what was originally approved. Vice Chair Hickey responded that the Planning Commission had approved a total of seven (7) units; four (4) in the rear building and an office and three (3) units in the front building. Comm. Wickman asked Corporation Counsel to react to the transcript. Corporation Counsel Walsh noted that he had read the transcript and his reaction was that the granting of the bulk variance with respect to the size of the parking spots was issued under the impression that there was going to be a certain intensity of use of the parcel. He thinks that with the intensity of that use being changed, changing from seven (7) units to nine (9) units, it would be

appropriate that that issue be revisited and would require a new site plan review and another opportunity to consider whether or not the ZBA would like to approve that bulk variance for reducing the size of the parking spaces from ten (10) feet to eight (8) feet. Vice Chair Hickey asked if Corporation Counsel was recommending the ZBA review the granting of the variance for the reduced size of the parking spots. Corporation Counsel stated "yes", noting that conditions had changed. He indicated that the ZBA had a couple of options. They could overrule Zoning Officer Weber's interpretation that two (2) additional units constitute an increase in both vehicular and pedestrian traffic and that would warrant an opportunity for the site plan to determine the number of spaces required under this more intense use or the ZBA could determine that the plan is fine as presented.

Comm. Wickman asked him about a possible re-application to the Planning Commission. Corporation Counsel Walsh stated that was what he was suggesting, based upon the increase intensity of the use. He noted that in the Planning Commission's original finding, the ZBA referenced that in making this bulk variance, they referenced the issue of vehicular traffic being a significant factor. He noted that with the addition of two (2) units there will be more vehicular traffic which changes the premise of on which the bulk variance was granted. He feels that the appropriate posture would be to have a new site plan application submitted because it is not the same intensity of use as was initially as was approved. He went on to note that the law does provide for additional parking space requirements, indicating that the two (2) spaces per unit was really a minimum. He noted that the law allows them under special circumstances to require additional parking spaces when the grant of eighteen (18) spaces was made it was premised upon seven (7) units, but setting this on a street that has no street parking in that immediate area, it's reasonable to anticipate that two (2) additional units which could have legally approximately six (6) additional residents as well as additional guests would lead to an additional intensity of use and certainly warrants a re-review.

Vice Chair Hickey noted that the public hearing was still open and asked the audience if there was anyone who wanted to speak to this.

Jo Schaffer, Planning Commissioner, noted that she would like clarification of what Corporation Counsel was recommending. Vice Chair Hickey explained that what was recommended by Mr. Walsh was that because his adding of two (2) additional apartments increases the intensity of the use and is not what was originally proposed. She further explained that basically this should be sent back to the Planning Commission for site plan review for a proposal that would include nine (9) apartments as opposed to the seven (7) that were approved. Jo Schaffer was confused by that recommendation because the Planning Commission had denied nine (9) units and asked why the ZBA would send Mr. DelVecchio back before the Planning Commission, the original agency that had denied the original parking. Mr. DelVecchio then circumvented the original plan

and went to the ZBA to ask for the additional spaces and in his record indicated that he was going to do it for the original seven (7) apartments. He then converted one more in the front building which was originally supposed to be an office was now becoming another apartment for a total of eight (8) apartments. What he needed was two (2) parking spaces for each unit and she noted that he has that. She also noted that he had agreed that if he needed additional parking because there is no public parking and he would buy permits in the City parking lots for any tenants who might need that space. She went on to say that on the basis of eighteen (18) spaces, he then determined that he could now have nine (9) apartments. She feels that this is a backward procedure and she asked that the ZBA deny this and not send it back to the Planning Commission.

Vice Chair Hickey noted that her take on this was that this was an appeal of the Code Enforcement's decision and the ZBA gets to either uphold the appeal or deny the appeal. She noted that if the ZBA upheld the appeal, then Mr. DeVecchio could proceed. If the ZBA denied the appeal and we support the Code Enforcement Officer, then Mr. DeVecchio would have the option to go back to the Planning Commission. Corporation Counsel Walsh indicated that was a correct interpretation.

Laura Gathagan supports Bruce Weber's decision and does not agree with having more apartments at this location and opposes Mr. DeVecchio's appeal.

Bill Harbin opposes Mr. DeVecchio's appeal noting that there would be extra traffic; extra students on the property and it would be noisier. This property is already the loudest house in the neighborhood and its party central.

Randi Storch opposes Mr. DeVecchio's appeal. She noted that the increased density is an issue and she would like to maintain a balance in that neighborhood between students and families. She noted too much traffic at that location and she finds it a threatening place to walk by with all the students hanging out there.

Craig Little noted that he has seen the neighborhood character change dramatically and he is opposed to Mr. DeVecchio's appeal. He has a sense that that there were agreements made and agreed to and now there is an attempt being made to circumvent those agreements. He likes the mix of families and students and he noted that if we want to maintain our community as a residential community, it is necessary that agreements be adhered to and in addition, that the rules and ordinances, the laws and codes are enforced. He doesn't want the City to back down on enforcing the ordinances and he asked the ZBA to be sure that agreements that were made are adhered to.

Bob Spitzer, hopes the ZBA will uphold the Code Officer's decision. He noted that the Planning Commission and Mr. DeVecchio agreed to four (4) apartments in the new building which now stands at 19 W. Court. Mr. DeVecchio is now arguing that he should be allowed six (6) apartments based upon the ZBA's

earlier actions in 2009 that allowed him more parking spaces. He felt that was a perfectly proper decision by the ZBA based on the information they had at the time, but he thinks that Mr. DelVecchio's argument is without merit for two reasons. First, when the ZBA granted approval for more parking for Mr. DelVecchio, the reasons that he stipulated did not include increasing residency, instead he said that it was to allow for a better pedestrian flow and he said that the increase in spaces was four (4) more than what was required. This was further indication that the existing understanding of the Planning Board was to be four (4) apartments instead of six (6). He noted that it was false that parking determines residency. He noted that nothing in the law says that the number of parking spaces determines building residential occupancy, so there was no legal basis for making that specific claim. He noted that didn't mean that Mr. DelVecchio didn't have any legal remedies. He can stick to the finally wrought agreement that took over two years to hammer out, which took court action and court decision to complete the building which is partially complete and secondly to complete the other parts of the agreement that he concluded with the Planning Commission which included installing an aluminum fence, building a trash structure with siding to match the main building, fixing broken stucco on the main building and some other things. He noted that the remedy is pretty clear for Mr. DelVecchio and noted that it was legitimate and within Mr. DelVecchio's rights. He noted that he felt that the decision of the Code Enforcement Officer was correct.

Orville White feels that density is a problem. He felt that neighborhoods suffer, not necessarily the student housing owners. Neighborhood residents have to put up with the violence, theft, noise, trash, etc. and he opposes Mr. DelVecchio's appeal.

Anne Doyle opposes Mr. DelVecchio's appeal. She wants the ZBA to get things in writing from Mr. DelVecchio when dealing with Mr. DelVecchio. She felt that the Mr. Weber and the Code Office are trying to do what's right.

Attorney Scott Chatfield, land use and zoning attorney from Marietta. He spoke on behalf of his client, Mr. DelVecchio, and the two (2) LLC's involved in this appeal. He noted that he had listened very carefully to what the neighbors had said and he felt that their comments could fairly be reduced to the fact that they would not like to see what they characterize as two (2) additional units on this property and it's for that reason that they asking the Zoning Board of Appeals to uphold Mr. Weber's determination. He noted that those comments start from a faulty assumption as the Vice Chair pointed out. He explained that this particular appeal is an appeal for an interpretation. He is requesting that the Zoning Board of Appeals review Mr. Weber's ruling which denied Mr. DelVecchio's request for a certificate of zoning occupancy. He noted that the reasons stated in Mr. Weber's letter to Mr. DelVecchio, started out with Mr. DelVecchio's proposal to add two (2) dwelling units for a total of nine (9) is contrary to the information that he supplied to the Zoning Board of Appeals and the Planning Commission. Mr.

Weber goes on to explain that the ZBA considered that the area variance was substantial and that traffic was a concern. Mr. Weber went on in the letter saying that with two (2) additional units being proposed, that a new application or request for a rehearing by the ZBA would be required.

Mr. Chatfield noted there was nothing in the first three (3) paragraphs of Mr. Weber's letter there was no reference to the statutes under which Mr. Weber functions, nor is there any reference to any decisions of the Planning Commission nor the Zoning Board of Appeals which imposed conditions which his clients is purportedly violating. He noted that in the fourth paragraph of Mr. Weber's letter, Mr. Weber starts out with an assumption that there are going to be two (2) additional units, there will be an increase in both vehicular and pedestrian traffic and since the Planning Commission can determine the number of parking spaces required, Chapter 300 Article 8, Section 73E, a new application for site plan will be required. Mr. Chatfield explained that the fourth paragraph in Mr. Weber's letter was the only paragraph where Mr. Weber referred to the City Zoning Code and the basis for his determination. He noted that in essence, Mr. Weber was saying that he was denying Mr. DeVecchio request for Zoning Occupancy because a new application for site plan review will be required. He went on to explain that in the section to which Mr. Weber referred, has been alluded to generally. He noted that this provision which allows the Planning Commission upon a finding of extraordinary circumstances to require parking spaces in excess of the minimum number specified in the table of allowable uses. He noted that discretion, that's purported to be granted to the Planning Commission, is exercised only when there is an application for site plan approval pending. He noted that what Mr. Weber did by this letter, is assume into existence a site plan application and then cites a provision in the Code that says where there is a site plan pending, the Planning Commission has this authority. However, the issue Mr. Weber that did determine, was that site plan approval is required. Mr. Chatfield noted that Mr. Weber presumed he knew how the Planning Commission would react with respect to the number of parking spaces they would require and on that basis, assumed that site plan approval was required. Mr. Chatfield noted that when the City Code was read and the circumstances under which site plan approval is required. In Mr. DeVecchio's appeal, he addresses every one of the six (6) criteria set forth in the City Zoning Code under which site plan approval can be required.

Mr. Chatfield read them to the Zoning Board. They were; will there be an alteration to an approved or an existing structure, will their footprints or facades be altered, will there be a change in vehicular movement, will there be a change in vehicular parking or alterations, will there be surface water drainage issues, will there be additional exterior lighting or additional landscaping. Mr. Chatfield explained that when those things are present in a proposed application, and these are clearly laid out in the City Zoning Code, site plan approval is required. He went on to note that site plan was ONLY required when one (1) of those issues was involved, otherwise site plan approval is a delegation of authority to

the Planning Commission by the Common Council which authority is limited to the terms of the statute which delegates it. He noted that it cannot be enlarged upon by the Planning Commission nor by the Zoning Enforcement Officer nor can it be avoided by an applicant. It lays out specifically, the circumstances by which site plan approval is required.

Mr. Chatfield noted that he had listened carefully to Vice Chair Hickey's introductory remarks as well as to the remarks of the residents present and he noted a fundamental flaw in those statements. He noted that what was approved by the Planning Commission was pretty clear and that was approval of seven (7) units; four (4) units in the rear structure and he noted that simply was not true. Mr. Chatfield stated that what was approved was a structure of a specific size, of a specific architecture, at a specific location and associated drainage, associated lighting and associated parking and means of egress and ingress. Those are the things that the Planning Commission has been given authority to deal with under site plan approval and that is what was approved. He stated that there was no limitation on the number of units that could be occupied in the new structure. Only the structure was limited, given a certain size and certain footprint and so on, but not in the number of units. He explained that when Mr. DeVecchio returned to the Planning Commission in February 23, 2009, to seek amended site plan approval because he was rearranging the layout of the parking lot, having obtained an area variance to reduce the size of the parking spaces from ten (10) feet by twenty (20) feet to eight and a half (8 ½) feet by nineteen (19) feet, he applied for amended site plan approval because the City Code requires it. He explained that the City Code stated that if an applicant was altering the parking lot or the lay out of the parking lot, they would need amended site plan approval. Mr. DeVecchio applied to the Planning Commission for amended site plan approval. Mr. Chatfield explained that the amended site plan approval was granted by the Planning Commission, however, in the course of the review, they asked Mr. DeVecchio how many units did he intend to place in the rear building. Mr. DeVecchio told Comm. VanEtten what his building occupancy would be. Mr. DeVecchio told Comm. VanEtten that his building occupancy would comply with the law, but he did not give Comm. VanEtten a specific number. He referred to the minutes of that meeting, noting that perhaps the Planning Commission had made an assumption. Mr. Chatfield noted that he didn't care because first, there is nothing in the City statute that allows the Planning Commission to impose a limit on the number of units that can be constructed within a structure using site plan authority. He explained that there were limits on how many units they may have in a structure, but the only thing the Code covers is the reference to the minimum number of parking spaces required. The Code requires two (2) parking spaces per dwelling unit and accordingly by math, if the applicant only has a certain number of parking spaces available, that will, by definition, limit the number of dwelling units that a particular structure can occupy. Mr. Chatfield noted that provision is provided in required parking, let alone excess parking. He also noted that required parking is allowed to be on an adjacent premises as long as it was within five hundred (500) feet. He explained further that none of that

was germane to the question. He stated that the question before this Board is did the Zoning Enforcement Officer exceed his authority when he determined that in order to obtain a certificate of occupancy for six (6) units in the rear structure, Mr. DelVecchio needed to obtain site plan approval. In order for Mr. Weber to reach that conclusion legally and rationally, he must refer to some section of the Zoning Code that authorizes him to reach that conclusion. Mr. Chatfield noted that Mr. Weber's opinion and speculation or his conjecture as to what may or may not have motivated either the ZBA or the Planning Commission is utterly immaterial. He stated that what was material is the application of the language of the statute to the situation before him. The situation before him was the certificate of zoning occupancy and the reason cited for denying that certificate of occupancy was that the Planning Commission can require a number in excess of two (2) parking spaces per dwelling unit pursuant to Section 73E. Mr. Chatfield indicated has the tail wagging the dog. He explained that Section 73E plays no role in a determination as to whether site plan approval is required unless there is some other reason why such as whether a site plan approval action is pending. It is not in and of itself a reason, nor can it be a reason, to require site plan approval because it presumes that a determination that has not been made by the Planning Commission.

Mr. Chatfield stated that at the last meeting of the ZBA, he referred the ZBA to a number of cases involving statutory construction of zoning ordinances. He assumes that Corporation Counsel Walsh has had an opportunity to read the transcript that had been provided and has reviewed those cases. He stated that what those cases made clear is that zoning determinations must be strictly construed against a municipality and in favor of the landowner. Mr. Chatfield stated that was because zoning is in derogation of common law right that we all enjoy by ownership in property the rights to use our property in a reasonable manner. He stated that zoning regulations by their very nature place limitations on the ability of people to use their property. He noted that the courts have indicated that those regulations must be reasonable and must serve a legitimate public purpose. He noted that because those limitations are by their very nature limitations on constitutional protected right, the courts have repeatedly held that those limitations must be strictly applied and any question, issue or ambiguity in the applicability of those codes or provisions of the zoning regulations must be resolved against the municipality and in favor of the landlord. He noted that was the constitutional balance because a municipality has lots and lots of power and it can exercise that power by the adoption of regulations, but what it cannot do is go beyond those regulations to seek to do what it thinks is good or right or appropriate. Mr. Chatfield stated that was arbitrary and capricious by its very nature. He stated that the ZBA had to find the statutory authority. He stated that had the Planning Commission imposed a limitation on the number of units that could be located in that rear structure, which they did not, but had they done so there would have been a separate appeal immediately because that is in excess of the Planning Commission's authority. He stated that the Planning Commission could approve the square footage, they can approve the size in terms of its

footprint, they can approve its location and they believe that they can approve its architecture, which we disagreed with, but we went along with it. He further stated that they can approve the parking lot, the ingress and egress and the lighting, the screening and the drainage and all of that is in the statute and he noted that the Planning Commission had authority over that. Mr. Chatfield stated that the ZBA will not see in that statute the ability of the Planning Commission to impose a limit on the number units that a multi-family structure can accommodate except as he indicated by implication, by the two (2) spaces per unit parking requirement. He noted that neither the ZBA nor anyone in this room can find anything in the decision of the Planning Commission or the for that matter, the decision of the Zoning Board of Appeals, which in any way limits his clients' rights to the number of units that can fit in that structure. He noted that in short, it simply came down to this, how many units the clients are entitled to under the law is a function of his ability to comply with the language of the City Code and he has in fact, complied to the letter with the language of the City Code. Mr. Chatfield noted that when the Planning Commission and one assumes the reason for Comm. VanEtten's question, was the desire to limit the number of units that Mr. DelVecchio could have in the rear building, but he asked what the building occupancy would be; Mr. DelVecchio specifically said, "Whatever the law allows". He didn't say six (6), he didn't say four (4), he didn't say twelve (12), he didn't say two (2); he said whatever the law allows. Mr. Chatfield noted that the Planning Commission did not impose a limitation on that number, nor did the Zoning Board of Appeals when it granted the reduction in the required parking space size. He added that to the best of his knowledge, every time the ZBA has been requested to grant an area variance to reduce the size of parking spaces for any uses anywhere in the City, they have always been granted. He noted that in the minutes of the variance application, when the ZBA granted the reduction in parking space size, there were comments from Board members and members of the public that the ten (10) foot and twenty (20) foot required parking space size in the City Code is archaic and the exception. He noted that most traffic engineers and designers would concur with the analysis noting that Detroit is no longer making the long boats that they used to make in the 1950's or 60's when most zoning codes were developed. He stated that eight and a half (8 ½) feet by eighteen (18) or nineteen (19) is now the standard size for parking spaces. He noted that the salient issue was that when that request for reduction in parking space size was made by Mr. DelVecchio, this Board imposed no condition on the number of units that could be allowed in the rear structure and frankly it makes no difference, whatever, what this Board's rationale or reasoning might have been as long as it not in your resolution. He stated that as this Board knows when exercising discretion under the area variance standard, they had six (6) criteria to address and the law mandates that if this Board addresses those six (6) criteria and reach a conclusion that a variance is appropriate, the Board is limited in terms in the imposition of conditions, conditions that relate specifically to those six (6) criteria. He further stated that he was sure that the ZBA had reviewed their minutes and that he has as well. He stated that there is no limitation when that variance was granted to reduce the parking space size

and there was no limitation such as we'll give it to you only if you promise not to add two (2) more units in the rear building. He stated that had the ZBA done so (added limitations or a condition) then there would have been an immediate appeal because in our opinion, such a limitation would have been in excess of the ZBA's jurisdiction. He stated that there wasn't any limitation. In summary, Mr. Chatfield stated that his client was seeking to do what the law allows him to do, nothing more and nothing less. He stated that the law permits him that this site is more than large enough to satisfy all of the geometric requirements of the City Code for multi-family and it has been zoned multi-family for years and presumably, when the legislative body established the minimum lot size requirements and the parking space size requirements for multi-family units they did so mindful of the effect of a multi-family use on its environments and the surrounding land uses. He noted that they imposed a universal set of regulations applicable to all multi-family dwellings in the City. He stated that anybody who owned a multi-family piece of land is entitled to develop that parcel in accordance with the limitations imposed by the Zoning Ordinance. He stated that is all he and his client were seeking to do. He noted that this appeal, which he mentioned at the last meeting is not one in equity, but it is one in law. He noted that he was sure that City Corporation Counsel would explain to the ZBA the differences between a determination in law and a determination in equity in terms of the Board to exercise discretion and in terms of its ability to weigh equitable matters. He stated that the issue on this appeal is simply this, did the Zoning Enforcement Officer appropriately interpret the language of the City Code based on this written resolution. Mr. Chatfield found it interesting as he skimmed the memo that the Code Enforcement Officer apparently presented to the ZBA that he starts right out by talking about a matter that is not in the denial letter that was appealed. He doesn't know if that means the Zoning Officer is going to come up with another basis for denial and force another appeal. He noted that he could only speculate, but what he can say is that in reading this letter, it doesn't say anything at all about façade or whether a façade is being altered. He noted that was not a basis for this appeal. He stated that this appeal was about 73E and whether or not it can be utilized as a legitimate justification for requiring site plan approval when there is no other basis for site plan approval required by the statute and the application as a basis for denial of a request for a certificate of zoning occupancy.

Mr. Chatfield stated that this is basically a short version of what he told the ZBA at length at the last public hearing. He noted that if the ZBA had any questions, he would be happy to seek to answer them. He hoped that the record had now been supplemented with all of the documents that he requested be added to the record at the last meeting. He asked if Corporation Counsel Walsh had received a copy of the transcript and Mr. Walsh indicated that he had. Mr. Chatfield noted that he assumed that the ZBA members now had a complete copy of his clients' application as well as the supporting documentation with that application. He noted that he assumed that the ZBA members all had a copy of Mr. Weber's denial letter that formed the basis of this appeal. He noted at the last meeting

ZBA members had not seen some of those things. He asked if there was any other documentation that needed to be there. He noted that he gave them the citations for the cases and he noted that if Corporation Counsel wanted to provide them with copies, that he would.

Vice Chair Hickey asked if anyone on the Board had any further questions. Comm. Haskell had a question. He asked, "What are you doing here?" Comm. Haskell noted that he had been on the ZBA for four or five years and we've never determined who gets a zoning occupancy or how many units people have. He stated that the ZBA's interaction with Mr. DeVecchio that he recalled was changing the parking size regulations, which Mr. Chatfield correctly pointed out we've done a number of times. He didn't see it in the scope of authority of this board.

Mr. Chatfield explained noted that Section 81 of the General Cities Law entrusts to this board the authority to review any determination, order, requirement, etc. of the Zoning Enforcement Officer. In fact it says, of an officer in charge of enforcement of Zoning Regulations pursuant to this chapter. He noted while the actual formal request for and issuance of certificates of zoning occupancy is a relatively rare occurrence in this City, the Code makes it clear that one is required. It states no structure may be occupied without a certificate of zoning occupancy. He stated that his client mindful of the fact, that they had been to court three (3) times so far for this project, was going to dot every i and cross every t. Mr. DeVecchio was not going to take a chance on somebody later on saying to that he was in violation of the law because he failed to obtain a certificate of zoning occupancy. Notwithstanding the fact that virtually no one else in this City has ever gotten one. He stated, that nonetheless, it's in the Code, Mr. DeVecchio made the application for the certificate of zoning occupancy, he made the application to the Code Enforcement Officer, saying here's my building, you've inspected it, it's built, he would like to occupy it as a multi-family residence, he would like to include six (6) units in the rear building. That was the application that you all have in front of you. Mr. DeVecchio went through in his application and specified why it is he is in complete compliance with the zoning regulations as well as the Planning Commission's determination and the Zoning Board of Appeals variance. Mr. Chatfield noted that the Zoning Enforcement Officer then determined to deny. Mr. Chatfield stated that the law says that is our requirement, that if we are aggrieved by any determination of the Zoning Enforcement Officer, we must appeal to the ZBA. There isn't an option, we have to appeal it to the ZBA. He stated that the ZBA, upon such an application has the authority to affirm, reverse or to take such actions as in each judgment ought to have been taken in the first instance. That's virtually the exact language in the statute. He stated that was the request to the ZBA, is the Zoning Enforcement Officer correct under the law with this determination. Mr. Chatfield, noted not these determinations, he things he was handed today, he has no idea what that is other than his opinion and speculation. Mr. Chatfield stated that there is one determination that's been made and that's the one that we've

appealed. He noted that the ZBA has the authority to say that he's right, say he's wrong and in the context of that, make the determination as this board believes is appropriate. We, of course, in turn, if we are aggrieved by your determination, have the ability to appeal that and in turn to the Supreme Court. Mr. Chatfield noted that this was called an interpretation and noted that it was a rare type.

Jo Schaffer asked if Mr. Chatfield had a copy of Article 13, site plan review for the City of Cortland. Vice Chair Hickey asked her if she was referring to the Code or.....

Mr. Chatfield noted that this individual did not identify herself. She stated that she was a member of the City of Cortland Planning Commission.

Corporation Counsel Walsh noted that the provisions of the site plan review are recited in the transcript of the previous meeting. Robert Spitzer noted that in the Minutes of the November 24, 2008, the Planning Commission did make a determination regarding the property at 19 W. Court Street in that the front building was to have three (3) units and one (1) office and the new building to have four (4) units with no more than three (3) unrelated in each unit, so they did, indeed make that determination. It was a unanimous vote and signed by Chair Hansen on November 24, 2008. Mr. Spitzer noted that he agreed with Mr. Chatfield that the standards of reasonableness and legitimate public purpose are very important in these determinations, but he added that these and the other past conditions meet those goals of good government.

Mr. Chatfield added one other thing. He stated that for SEQR purposes, interpretations are exempt and there is no requirement that the ZBA go to an EAF to reach their determination. He noted if there was no further information that the ZBA would like from him, he requested that the ZBA close the public hearing and make their determination in accordance with the provisions of the law.

Vice Chair Hickey asked just to make sure that she was clear on this, if the ZBA closed the public hearing, they still had the opportunity to discuss this with Corporation Counsel. Corporation Counsel Walsh noted that the ZBA didn't have to take action this evening, they had sixty-two (62) days to make their determination. Mr. Chatfield concurred with Mr. Walsh's advice that they had sixty-two (62) days from the close of the hearing to make your decision. Mr. Walsh felt that the ZBA could confer with the Code Enforcement Officer as he is staff. Mr. Chatfield noted that he is theoretically a party to the proceeding and would probably be named in any Article 78 proceeding. Mr. Chatfield stated that he would have no problem, but he requested that any communication that he made with the ZBA be made in writing and that Mr. Chatfield receive a copy of that. That would be his only restriction. He did note that Mr. Weber ought not to speak with the ZBA members outside of the hearing, but if he wanted to communicate in writing with them, he can certainly do that because they are

sitting as an appellate body over his decision which technically makes him one of the parties to the proceeding and you don't want ex-parte communication.

Vice Chair Hickey asked if there was anyone else who wished to speak to this issue. Jo Schaffer stated that this was a matter of interpretation a fact which Mr. Chatfield used five (5) or six (6) times in his statement regarding the site plan review there are actions requiring site plan review and then there are three (3) or four (4) pages of what the procedure is and what the decisions are based on where the general findings are included. She finds that any number of the things that he cites can be extended into the operation of a decision based upon site plan review. She noted that she is not an attorney, just a citizen that is serving on the Planning Commission as part of her public and civic duty. She noted that part of the things that they are required to look at when review any site plan review are immediate neighborhood changes and things of unique, cultural or historical special characteristics. Special characteristics can be other things such as an R1 district, a commercial district or anything else which is considered when we review a site plan. The physical attributes of the neighborhood are required to be considered before we make a decision. That's why she asked if he had the three (3) pages of what the Planning Commission is required to do as a commission. One is the design of the vehicular or pedestrian movement and if it would provide for the safety of the general public. She noted that the neighbors had all expressed their concerns about that particular issue, such as the general character of the street, the close proximity to Main Street, so there are more things to the Code than what was presented to you by Counsel. She wanted to be sure that it was understood that as the Planning Commission, they were holding to more than the six (6) reasons why you should come for a site plan review, but what is really involved in site plan review. She offered to give a copy of her document.

Mr. Chatfield stated that her comments required a rebuttal. Vice Chair Hickey asked him to make his comments brief. Mr. Chatfield stated that what he was referring to was Section 300, section 130 through 135 or 6 or the City Zoning Code. He noted that a distinction had to be made between when is site plan approval required and if it's required; what the Planning Commission can look at and do. He stated that he was not disagreeing with the previous speaker. He noted that when site plan approval is required there are things that are dealing with the arrangement and layout and design that are articulated in Section 300-135. He noted that Section 300-132 defines those actions when site plan approval is required. He stated that was the issue before them. He noted that was the ruling of the Zoning Enforcement Officer. Mr. Weber said, "No, you can't have a certificate of zoning occupancy because site plan approval is required". Mr. Chatfield stated that Mr. Weber had to cite one of the criteria in Section 300-132 in order to reasonably reach a conclusion that site plan approval is required. What he did refer to was the section under parking that gives the Planning Commission the ability to require parking in excess of the minimums when an application for site plan approval is pending, but the first question and

the only question presented to him the way he answer the question regarding the certificate of zoning occupancy is do you need site plan approval in the first instance. Mr. Chatfield noted that when you get site plan approval the City Code goes on to say that the Planning Commission shall consider the following matters and there are criteria numbered one through four and then the Planning Commission shall make general findings with respect to and this is under Section 130 through 135 Section d and it goes on to lay out eleven (11) specific matters that they may make findings regarding and then it says in sub paragraph C, that when approving a site plan the decision of the Planning Commission may be conditioned as follows, they can impose conditions for financial security, they can impose time limitations on the times or duration of operation, they can impose provisions for the termination, conversion or recertification of the manner or operation or use, or any other conditions reasonable under the circumstances. He noted the question becomes can they or did they. He stated that is not cited as a basis in the Zoning Enforcement Officer's ruling. Mr. Weber said they needed site plan approval because they can require additional parking spaces under Section 73 E and that is the issue on appeal right now. That's the only matter being requested that the ZBA decide. That simple, narrow question; not whether we ought to have six (6) units in the rear building or four (4) or whether it's good for the neighborhood or not, not whether there is going to be increased parking or won't be increased parking or whether this is going to be increased traffic or won't be increased traffic or additional noise. The only question before the ZBA is, was the Zoning Enforcement Officer correct when he ruled that we could not have a certificate of zoning occupancy because we needed to have amended site plan approval because the Planning Commission could require additional parking spaces under Section 73 E. That's what he has ruled and that's what we have appealed and that's the question before the ZBA and the only question before the ZBA.

Vice Chair Hickey asked if there were any other comments.

There was no one further to speak, therefore the public hearing was closed.

On the motion of Comm. Wickman, seconded by Comm. Brown, voted and carried.

Vice Chair Hickey	Aye	Comm. Brown	Aye
Comm. Haskell	Aye	Comm. Wickman	Aye

RESOLVED THAT THE APPLICATION FOR INTERPRETATION OF ZONING OFFICER'S DECISION – 19 W. COURT ST. – (DELVECCHIO)(R4) BE PLACED ON THE TABLE FOR DELIBERATION.

Vice Chair Hickey stated that the ZBA members could ask questions of Corporation Counsel Walsh. Corporation Counsel Walsh noted that this was simpler questions than what is being presented. He noted Section 300-132 sets

forth actions that require site plan review. He noted that among those actions are C, when vehicular movement, vehicular parking or pedestrian walkway is altered. He noted that the present site plan for this property fits under this as it included in it that there would be a certain density of use, i.e., that there would be seven (7) units not nine (9) units. He stated that it is self evident that when you increase the number of units from seven (7) to nine (9) there's going to be an alteration in vehicular movement and changes in vehicular movement are not going to ensue if you have six (6) tenants to a parcel. He thought it was quite clear that change calls for a site plan review. He believes that it was appropriate for Mr. Weber to deny the CZO on the basis of there being a change in vehicular movement since the approval of the original site plan for a certain density of use. He thought it was quite simple.

Vice Chair Hickey asked another question. She asked once the alteration of the exterior of the building to provide what apparently will be window space wouldn't that be an item. She granted that was not addressed in the original refusal to issue the CZO, however, it's become clear since then that there is this alteration which should, she thought, also trigger site plan review. Corporation Counsel Walsh noted that before his involvement it was his understanding that there was a determination about the initial application and that there would be no façade change and the interpretation that the addition of windows was a façade change and that wasn't challenged.

Zoning Officer Weber spoke. He stated that in all of the information that has been presented by both Mr. DelVecchio and Mr. Chatfield, especially Mr. DelVecchio's application. It says both structures will not be altered such that their footprints or their facades will be altered. There has been a previous determination made by the City Zoning Office that the addition of windows would, in fact, be a change in the façade. Mr. DelVecchio is fully aware of that. He failed to apply for determination from this Board to overturn that ruling. In fact, there was in the one exhibit that was submitted, Mr. DelVecchio says there's no windows, those are just openings in the basement walls and there was a statement made that they anticipated that Mr. Weber would deny the CZO based on a change to the façade. But Mr. DelVecchio says there is no change to the façade. Mr. DelVecchio and Mr. Chatfield are clearly aware of the determination by the Zoning Officer that windows would be a change in façade. Mr. Weber stated that he was not about to call Mr. DelVecchio a liar, if he says to me that there is no change to the façade, there's no change in the façade. So that's where that comes into play.

Vice Chair Hickey asked if the Board is going to take action on this and if there's potential that it will go back to site plan review, perhaps we ought we ought to know all of the things that might have to be reviewed. Mr. Weber stated that Mr. DelVecchio is more than able to change his application at any time, but what he submitted to him was no change to the façade.

Mr. Chatfield spoke stating that Mr. Weber was just testifying as to the facts towards the record and he noted that if this was going to be put into the record it needed to be put in correctly and not just Mr. Weber's interpretation of it. Mr. Chatfield stated he didn't want to rely on his opinion, he asked that the ZBA look at the documents that are part of the official record of the City.

Mr. Chatfield noted that there was an Article 78 proceeding, it did deal with the issue of façade and the Supreme Court entered a determination which can be referred to so that the ZBA can reach their own conclusions as to whether or not a façade change was or is not involved. Corporation Counsel Walsh noted that the public hearing was closed. Attorney Chatfield objected formally on the record and requested that on the formal record that all of Mr. Weber's testimony after the public hearing be stricken from the record and to not be considered by the ZBA as any part of this determination because he was a litigant and Corporation Counsel was their attorney and there was a difference. Corporation Counsel Walsh stated that he would write an interpretation for the Zoning Board of Appeals. Mr. Chatfield stated that he wanted the ZBA to take their time. Comm. Wickman noted that there is a great deal of information to absorb and the ZBA members have not had time to do that. Comm. Haskell noted that Mr. DelVecchio would like to get on with his project. Atty. Chatfield noted that he would like to have a well thought out decision rather than a quick and speedy one. He noted that this was an issue that was likely to be litigated one way or the other, so he thought that both he and Corporation Counsel would think that this should be well thought out and if that requires that the ZBA take additional time to consider with counsel, he had absolutely no objection. Vice Chair Hickey noted that once they closed the public hearing, the ZBA had sixty-two (62) days to reach a decision.

On the motion of Comm. Haskell, seconded by Comm. Wickman, voted and carried to table this application until the June meeting for interpretation of Zoning Officer's decision.

Vice Chair Hickey	Aye	Comm. Brown	Nay
Comm. Haskell	Aye	Comm. Wickman	Aye

RESOLVED THAT THE APPLICATION FOR INTERPRETATION OF ZONING OFFICER'S DECISION – 19 W. COURT ST. – (DELVECCHIO)(R4) BE TABLED.

Chair Dailey was asked to return to the meeting.

Item No. 2 & 3 – 45 Tompkins St. – (Armideo)(R4) – Area Variance & Special Use Permit – Commercial Indoor Lodging or Sorority.

Atty. James Baranello and Joe Armideo were present. He noted that this application was referred County and City Planning as well as the City Historic

Commission and they have been before all of those boards. He noted that both City and County Planning were recommending in favor subject to a three (3) points of clarification, one of which is whether not commercial indoor lodging includes the use that Mr. Armideo proposed. He noted that commercial indoor lodging has taken the place of rooming houses or boarding houses as well as hotels and motels and not necessarily of a temporary nature. He went on to state that this Board has already granted a special use permit for an identical use to Mr. Armideo across the street for the building on the corner of Prospect and Tompkins. Mr. Baranello noted that they are requesting an area variance because they have a lot width problem. He noted that the current regulations are one hundred five (105) feet and the this lot is seventy-five (75) feet across the front. He noted that it was also half an acre, which is significant. Mr. Baranello stated that there were no exterior changes to the building other than there would be a new handicapped ramp, a new parking lot, new front steps and landscaping.

Comm. Hickey stated that she was a bit confused as to what they were being asked to do. Mr. Baranello noted that he was going to ask for a special use permit for commercial indoor lodging and he is going to ask the ZBA to approve a special use permit for a sorority house pending Mr. Armideo producing for the Code Office a signed lease by a an approved SUNY Cortland sorority. Mr. Baranello noted that at this time, they could not tell the Board that it's a particular sorority or that they had a lease, because they didn't. He also noted it would be cumbersome to have to come back to the ZBA for another special use permit application for what is essentially the same use as commercial indoor lodging. He asked that they approve them both. Mr. Baranello noted that the density of a sorority might be a bit higher. It was noted that there were ten (10) bedrooms in the building. Comm. Hickey noted that they were being asked to approved an "either or" because if a sorority didn't fill the place up, they could house ten (10) occupants. Mr. Baranello noted that they could make a condition of approval that if they did not have a signed lease from a SUNY approved sorority before a year, they would have to come back before this board. Mr. Baranello asked if they would make it eighteen (18) months because of the timing, because he didn't think that they would get a lease for this September. Mr. Baranello noted that the lot was two hundred sixty-nine (269) feet deep and they could easily accommodate parking and the sufficient buffering. Comm. Brown asked if there would be any façade changes. Mr. Baranello stated that there would be no façade changes. Jo Schaffer noted that this project has been before the Historic Board and the general consensus of the Board was positive. Mr. Armideo has made some plans for some landscaping changes which that Board was much in favor of and he has been a reasonable person to work with.

There was no one further to speak, therefore the public hearing was closed.

On the motion of Comm. Hickey, seconded by Comm. Brown, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
--------------	-----	-------------	-----

Comm. Haskell
Comm. Wickman

Aye
Aye

Comm. Hickey

Aye

RESOLVED THAT THE AREA VARIANCE – 45 TOMPKINS ST. – (ARMIDEO)(4) – AREA VARIANCE – COMMERCIAL INDOOR LODGING OR SORORITY BE PLACED ON THE TABLE FOR DELIBERATION.

The criteria for an area variance were reviewed.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance. None demonstrated
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. Not if you're looking for this kind of use which is basically residential
3. Whether the requested area variance is substantial. No and the size of the lot does mitigate the problem with the width
4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district. No
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance. Yes

On the motion of Comm. Brown, seconded by Comm. Hickey, voted and carried.

Chair Dailey
Comm. Haskell
Comm. Wickman

Aye
Aye
Aye

Comm. Brown
Comm. Hickey

Aye
Aye

RESOLVED THAT THE AREA VARIANCE – 45 TOMPKINS ST. – (ARMIDEO)(R4) – AREA VARIANCE BE APPROVED AS PRESENTED.

Comm. Hickey asked if a SEQR was needed for this. Zoning Officer Weber stated that no SEQR was needed for Special Use if the Board indicated that the same answers to the questions of the area variance were considered.

The criteria for a Special Use Permit were then reviewed.

1. That the lot area is sufficient, appropriate and adequate for the use and the reasonable anticipated operation and expansion thereof. No expansion.

2. That the proposed use will not prevent the orderly and reasonable use of adjacent properties. No
3. That the site is particularly suitable for the location of the proposed use in the community. Yes
4. That the characteristics of the proposed use are not such that it's proposed location would be unsuitably near to a church, school, public park or other similar uses. Should not be
5. That the access facilities are adequate for the estimated traffic from public streets or highways, so as to assure the public safety and to avoid traffic congestion, and further that the vehicular entrances and exits shall be clearly visible from the street and not be within fifty (50) feet. Yes

Comm. Hickey asked if a SEQR was needed for this. Zoning Officer Weber stated that he felt that they had gone through the process in that they had acknowledged that they had considered those things.

On the motion of Comm. Brown, seconded by Comm. Haskell, voted and carried with contingencies.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Haskell	Aye	Comm. Hickey	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE SPECIAL USE PERMIT – 45 TOMPKINS ST. – (ARMIDEO)(R4) – BE APPROVED, BOTH THE AREA VARIANCE AND THE SPECIAL USE PERMIT WITH THE RECOMMENDATION OF THE ZONING OFFICER THAT THE ZONING BOARD OF APPEALS DID NOT FIND ANY SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT AND THAT THE SEQR FINDINGS ARE COMPATIBLE WITH THE FINDINGS FOR THE REVIEW OF THE AREA VARIANCE AND THE SPECIAL USE PERMIT IS APPROVED FOR COMMERCIAL INDOOR LODGING OR AS A SORORITY CONTINGENT UPON THE OWNER PROVIDING A SIGNED LEASE FOR A SUNY APPROVED SORORITY WITHIN THE NEXT EIGHTEEN (18) MONTHS.

Item No. 4 – 53 Lincoln Ave. (Doerler)(R2) – Area Variance - Two Unit Conversion from Single Family

Richard Doerler was present. He would like to make two (2) units in this single family six (6) bedroom house. He noted that this will be decreasing density as he is proposing a three (3) bedroom unit downstairs and a two (2) bedroom unit upstairs. He stated that he has been renting to college students and it was student housing when he purchased the property. He stated that he is currently renting to four (4) students.

Anne Doyle spoke saying that she is not in favor of the house becoming two (2) apartments, but she did note that this owner did do what he says he is going to do. She stated that he has done work on the house inside and out. She stated that she approved of this proposal.

Jo Schaffer stated that she admired good landlords, but she is concerned about single family homes being converted to multiple dwelling homes. She noted that she is opposed to the conversion and this application. She is concerned about the density and the increase in traffic and parking.

Mr. Doerler is in an R2 area and it was once a three (3) family house. Zoning Officer Weber noted that it had been a three (3) family dwelling and converted to a single family and this has to go to County and City Planning for site plan review. He noted that there are a few issues with the property. One was lot size and another is lot width and lot coverage and the use of the adjoining property as a driveway is not appropriate. Mr. Weber noted that from aerial photos done in 2006 it appeared that at that time there was a vegetative strip between the two (2) properties and it has since been removed and that is in violation.

Comm. Hickey noted confusion stating that on the record it was a single family with six (6) bedrooms and she noted that was not a typical single family home, so she has to assume that it has not been used as a single family with no more than three (3) unrelated adults. Mr. Weber stated that there was no documentation that indicates how far back that non-conforming use may go. It's listed in the files as a single family, so we have to deal with it as a single family.

Abi Cleary stated that she is opposed to this proposed conversion. She is concerned about her children and the environmental impact of conversions in that area.

Comm. Wickman asked Mr. Doerler if the house at 51 Lincoln Avenue was his property and if that was student housing. Mr. Doerler indicated that he owned it and both homes were student housing. He stated that he is currently rehabbing both properties and he can't afford to only rent to three (3) people. Mr. Doerler indicated that there wouldn't be enough income if he isn't able to convert this property to two (2) units.

Ray Parker, County Legislator, stated that he had grown up at the 51 Lincoln Avenue house. He sees the decline of single family homes and the decline of family in that area. He is opposed to this proposed conversion.

Comm. Haskell stated that this kind of property conversion is discouraged in the Master Plan for the City and it brings up the density issue. Mr. Doerler noted that he is reducing density, but he needs the income to rehab the house. Zoning Officer Weber noted that when there is a two (2) family, it allows for a traditional

family or three unrelated. He noted that while Mr. Doerler stated that he was only going to rent to two (2) bedrooms and rent to two (2) people in that unit, there is no preclusion that when he sells that property, that the next owner may put three unrelated (3) people in there or a traditional family of 3,4, 5 people in there. He asked the Board to take that into consideration, and to consider that there is no definition of student housing therefore it's either three (3) unrelated or a traditional family in each dwelling unit.

Mr. Doerler noted that a young couple could buy the house when he sells it and they could occupy the downstairs unit and rent out the upstairs unit to help them afford the house. He also stated that he is not strictly a student housing landlord. Comm. Wickman stated that people are concerned about multiple unit housing.

Zoning Officer Weber stated that this application and the other at 90 Lincoln would be sent to the City and County Planning because they are within five hundred (500) feet of a County highway and City Code requires that ZBA send any application that requires site plan review to the Planning Commission for their review. He felt that the ZBA should wait for those recommendations to come back from City and County Planning. Comm. Hickey asked him what criteria doesn't this property meet. Zoning Officer Weber stated that there was lot coverage, lot size and lot width.

On the motion of Comm. Hickey, seconded by Comm. Wickman, voted and carried to refer this application to City and County Planning and to keep the Public Hearing open.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Haskell	Aye	Comm. Hickey	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE AREA VARIANCE – 53 LINCOLN AVE. – (DOERLER)(R2) – AREA VARIANCE – TWO UNIT CONVERSION FROM SINGLE FAMILY BE REFERRED TO COUNTY AND CITY PLANNING AND TO KEEP THE PUBLIC HEARING OPEN.

Item No. 5 – 14 Jewett Ave. – (Tucker)(R1) – Area Variance – Garage

Mrs. Tucker stated that she wants to tear down an existing old garage and replace it with a new one on the same footprint. She stated that they had to request a variance because new construction has to be at least three (3) feet from the neighbor's property and the side of the existing garage is less than that. Chair Dailey asked if she had conversations with the neighbors about this project. Mrs. Tucker stated that she had spoken with the neighbors at 16 Jewett and they had no objections. Comm. Hickey asked if they would be using the same footprint and if the problem was that the original footprint was out of compliance. Mrs. Tucker indicated that it would be on the same footprint.

Comm. Brown asked if the proposed garage would be the same height as the old one. Mrs. Tucker indicated that it would be approximately the same.

There was no one further to speak, therefore the public hearing was closed.

On the motion of Comm. Hickey, seconded by Comm. Haskell, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Haskell	Aye	Comm. Hickey	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE AREA VARIANCE 14 JEWETT AVE., - (TUCKER)(R1) – AREA VARIANCE – GARAGE BE PLACED ON THE TABLE FOR DELIBERATION.

The criteria for an area variance were reviewed.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance. No
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. Smaller garage
3. Whether the requested area variance is substantial. Yes
4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district. None demonstrated
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance. Yes

On the motion of Comm. Wickman, seconded by Comm. Hickey, voted and carried the area variance on the same footprint as presented.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Haskell	Aye	Comm. Hickey	Aye
Comm. Wickman			

RESOLVED THAT THE AREA VARIANCE – 14 JEWETT AVE. – (TUCKER)(R1) – AREA VARIANCE BE APPROVED ON THE SAME FOOTPRINT AS PRESENTED.

Item No. 6 – 90 Lincoln Ave. – (Baccile)(R2) - Area Variance - Two Unit Conversion from Single Family

Mr. Gary Baccile could not be present and he asked Matt Ryan, a student, to represent this project application for him. Mr. Ryan explained that Mr. Baccile wants to make two (2) three (3) bedroom units in this single family house.

Comm. Hickey noted that this would be another project that will have to be sent to City and County Planning. Zoning Officer Weber indicated that this would be a formal step to send the application to City and County Planning and site plan approval is required. Comm. Brown noted that they were also requesting to move the driveway. Mr. Weber noted that the owner is proposing to move the driveway from the west side to the east side because there isn't room on the west side for a driveway which is required to be at least eighteen (18) feet wide and to have a four (4) foot buffer strip. He noted that they only have ten (10) feet on the west side. He noted that the original proposal was to have a single driveway with the cars stacked, but that was not appropriate for a two (2) family dwelling, so now they are proposing to create a parking area in the back with four (4) parking spaces, plus room to maneuver. He noted that they would be working with the lot width being less than required and the lot coverage.

Anne Doyle stated that this home had always been a single family home with a barn in the back. She is opposed to a conversion to a two (2) unit multi-unit dwelling.

Robert Bombard is extremely opposed to the conversion. He lives next door to this property. He noted it was a single family home when he moved into his house and it was an enticement to move into that neighborhood. He is also concerned about the loss of greenery that has occurred from people driving onto his property to exit that property. He noted that the proposed driveway will also require the removal of a tree. He is concerned about the increase in crime in this area and the increase in the volume of traffic. There has been an increase in robberies in the area. He also feels that the rear deck of that house will become a party spot and he'll call the police if there is. He noted that there were many more families in the area nine (9) years ago and they are steadily decreasing.

Mr. Doerler noted that the house across the street from his was not student housing and they were dealing drugs and he turned them in. He noted that just because this is rental housing, landlords are still concerned about crime.

Rosemary Taylor is opposed to this project. She noted that they used to live next to a single family home and now that's changed.

Jo Schaffer is opposed to this project. She is concerned about changes in the neighborhoods and urges the ZBA to maintain the integrity of single family

homes. She is concerned about the increased density and traffic. She noted it changes the nature of a neighborhood.

Matt Ryan thinks the community members should voice their concerns to the college president and to the students. He supports the conversions of both this property and the one at 53 Lincoln Avenue. He wants to see more effort between neighbors and students and less blame.

Ray Parker, County Legislator, is opposed to this conversion, but notes it's not just students there are regular City residents that cause problems. He noted part of the problem is with the landlords. He wants to have a co-existence, but you can't have that if single family homes go away.

Matt Ryan understands and considers himself a resident as well as a college student.

Robert Bombard stated that he's not opposed to college students living in the neighborhood. Landlords are friendly, but the problem in losing the single family homes. During Monroefest he had to keep shooing students out of his back yard.

Bill Horvath had a hard time finding a single family home in Cortland and he is opposed to conversion.

Mr. Doerler stated that the rental permit law serves its purpose, but he needs to convert because of it. He'd leave it a single family home if it wasn't for the rental permit law. He can't afford to lose the money he has invested. He again noted that his property was once a three (3) family house.

Anne Doyle asked who goes to check applicant's properties after they've been approved for variances. She has seen violations. It was noted that Zoning Officer Weber did that. She stated that she is opposed to the conversion of this property.

On the motion of Comm. Hickey, seconded by Comm. Brown, voted and carried to refer this application to City and County Planning and to keep the public hearing open.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Haskell	Aye	Comm. Hickey	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE AREA VARIANCE – 90 LINCOLN AVE. – (BACCILE)(R2) – AREA VARIANCE – TWO UNIT CONVERSION FROM SINGLE FAMILY BE REFERRED TO COUNTY AND CITY PLANNING AND TO KEEP THE PUBLIC HEARING OPEN.

Minutes – April 12, 2010

On the motion of Comm. Hickey, seconded by Comm. Brown, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Haskell	Abs.	Comm. Hickey	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE MINUTES OF APRIL 12, 2010 BE APPROVED.

Adjournment

On the motion of Comm. Haskell, seconded by Comm. Brown, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Haskell	Aye	Comm. Hickey	Aye
Comm. Wickman	Aye		

I, BRIAN DAILEY, CHAIRPERSON OF THE ZONING BOARD OF APPEALS FOR THE CITY OF CORTLAND, NEW YORK, DO HEREBY CERTIFY THAT SAID RESOLUTIONS WERE ADOPTED AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE CITY OF CORTLAND, HELD ON THE 10th DAY OF MAY, 2010.

BRIAN DAILEY, CHAIRPERSON