

Zoning Board of Appeals
City of Cortland
July 11, 2011

A regular meeting of the Zoning Board of Appeals was held on Monday, July 11, 2011, at 5:00 p.m. in the Mayor's Conference Room at City Hall.

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

Staff: Mayor Feiszli, Corporation Counsel Perfetti, Zoning Officer Bruce Weber, Asst. Fire Chief William Knickerbocker and Cheryl Massmann, Deputy City Clerk

Item No. 1 – 162 Tompkins St. – (ExpressMart)(SD) – Revision to Approved Special Use Permit & Area Variance – Fence (Public Hearing)

Patrick Hyde was present for Express Mart. Mick Lowie, a neighbor to the project, was also present. Mr. Hyde explained that he had met with Mike Dexter of the Landscape and Design Commission. Three (3) requests had been made:

1. That best management practices be used for the planting of all trees and shrubs.
2. Two (2) types of shrubs had been changed and new ones recommended.
3. That the approved twenty (20) foot long fence be modified to ten (10) feet of four (4) foot high open fencing off of Broadway and that the second ten (10) feet be at a five (5) foot height closed fencing for privacy and shielding the neighboring property from car head lights at Mr. Lowie's request.

Comm. Brown asked Mr. Lowie if the proposed fencing change affected his site line when backing out of his driveway. Mr. Lowie indicated that it did not.

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

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

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

RESOLVED THAT THE REVISION TO APPROVED SPECIAL USE PERMIT & AREA VARIANCE – 162 TOMPKINS ST. – (EXPRESSMART)(SD) - REVISION TO APPROVED SPECIAL USE PERMIT & AREA VARIANCE - 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. Benefit being sought on behalf of neighbor. No other feasible method.
3. Whether the requested area variance is substantial. No
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 and No. It's self-created, but they're responding to the neighbor's request.

On the motion of Comm. Wickman, seconded by Comm. Brown, voted and approved the revised Special Use Permit and Area Variance to allow a change in fencing with the first ten (10) feet off of Broadway to be at a height of four (4) feet and open style and the remaining ten (10) feet to be at a height of five (5) feet and closed style.

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

RESOLVED THAT THE REVISED SPECIAL USE PERMIT AND AREA VARIANCE - 162 TOMPKINS ST. – (EXPRESSMART)(SD) - BE APPROVED TO ALLOW A CHANGE IN FENCING WITH THE FIRST TEN (10) FEET OFF OF BROADWAY TO BE AT A HEIGHT OF FOUR (4) FEET AND OPEN STYLE AND THE REMAINING TEN (10) FEET TO BE AT A HEIGHT OF FIVE (5) FEET AND CLOSED STYLE.

Item No. 2 – 27 Lincoln Ave. – (Burhans)(R2) – Area Variance – Driveway Expansion

John Burhans was present. He explained that he is constructing a new driveway. After meeting with the Planning Commission, he is now going to start at a width of twelve (12) feet going to a width of fourteen (14) feet. He noted that there will be no change in the curb cut width. He explained that the buffer would now be four (4) feet, increasing the existing buffer.

Chair Hickey asked what the final width would be at the front of the garage. Mr. Burhans indicated that it would be twenty-five (25) feet. Comm. Brown asked who owned the fence at the side of the driveway. Mr. Burhans stated that he had put the fence up.

Chair Hickey spoke with Zoning Officer Weber, noting that usually an area variance application was received from the owner of the property, rather than a tenant. Zoning Officer Weber stated that the owner had given Mr. Burhans a letter giving him the ability to act on her behalf.

Corporation Counsel Perfetti noted that was correct as he had handled the matter as part of his private practice.

Chair Hickey asked Zoning Officer Weber if the Area Variance was still required. Zoning Officer Weber stated that after his review of the revised plan, he had determined that an Area Variance was still required.

Mr. Burhans pointed out to the Zoning Board that he would also be removing the gravel drive on the other side of the house.

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

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

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

RESOLVED THAT THE AREA VARIANCE – 27 LINCOLN AVE. – (BURHANS)(R2) – AREA VARIANCE – DRIVEWAY EXPANSION 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. No
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. Will look better
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. Haskell, seconded by Comm. Wickman, voted and carried.

RESOLVED THAT THE AREA VARIANCE – 27 LINCOLN AVE. – (BURHANS)(R2) – AREA VARIANCE – BE APPROVED TO ALLOW THE DRIVEWAY TO BE TWELVE (12) FEET WIDE AT THE ENTRANCE AND GRADUALLY WIDENING TO TWENTY-FIVE (25) FEET WITH THREE (3) PARKING SPACES BETWEEN THE HOUSE AND GARAGE AND THE ELIMINATION OF THE GRAVEL DRIVEWAY ON THE WEST SIDE OF THE HOUSE.

Item No. 3 – 3 Miller St. – (Block)(R2) – Area Variance – Pool in a Floodway

Dave Block was present. He explained that he had learned about the floodway and flood zones. He noted that he had spoken with his neighbor who explained that he had once had eighteen (18) inches of water in his basement, but in 1970 Dry Creek was dredged.

Chair Hickey asked him to describe the pool. Mr. Block stated that it was an eighteen (18) foot circular pool that was fifty-two (52) inches deep. It has steel walls, a plastic liner and plastic top rails.

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

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

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

RESOLVED THAT THE AREA VARIANCE - 3 MILLER ST. – (BLOCK)(R2) – AREA VARIANCE – POOL IN A FLOODWAY 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. No, this is the only way
3. Whether the requested area variance is substantial. No
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. Self-created

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

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

RESOLVED THAT THE AREA VARIANCE - 3 MILLER ST. – (BLOCK)(R2) – AREA VARIANCE – POOL IN A FLOODWAY BE APPROVED FOR AN ABOVE GROUND SWIMMING POOL EIGHTEEN (18) FEET ROUND AND FIFTY-TWO (52) INCHES HIGH IN A FLOODWAY ZONE.

Prior to taking agenda Item No. 4, the Zoning Board of Appeals voted to go into Executive Session on recommendation of Corporation Counsel, to inform them of the facts and the law.

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

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

RESOLVED TO GO INTO EXECUTIVE SESSION.

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

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

RESOLVED TO COME OUT OF EXECUTIVE SESSION.

Item No. 4 – 36 Clayton Ave. –(Seales)(R4) – Use Variance – Expansion of Non-conforming Use

Gary and Judd Seales were present. Gary Seales explained why they were requesting a use variance. He explained all of the steps that were gone through prior to tonight. He explained that he went to the Code Office before the property was purchased to determine the status of the property. He explained that they had applied for a Demo Permit and a Building Permit. He went on to explain that based on the application for a Building Permit they were told that they had to go for Site Plan Review and to the ZBA for both side and rear yard variances. He noted that they went to the Planning Commission and received approval for the Site Plan on November 22, 2010. They then went before the ZBA and received approval for both side and rear yard variances on December 13, 2010. He explained that they had submitted their building plans along with confirmations of asbestos and lead testing at the same time. He noted that

because of all of the activity going on, they had asked them for any permit that was needed in order to not get hassled. He explained that they needed a Building Permit, a Demo Permit, a Heating Permit and a Plumbing Permit. He noted all of which were received. He further explained that the work was completed based on the plan that was submitted and they are here today basically to ask for a Use Variance. He noted that the scope of the plan was discussed at length when they came before the ZBA during the session on December 13, 2010 in which the approval was received for both variances that they had requested. He asked for the ZBA to approve the use variance as he believed that they complied with all of the requirements for this project.

Comm. Wickman asked how many people would be housed at this property. Gary Seales replied that there would be eight (8) in two (2) apartments.

Chair Hickey commented that a Site Plan Review was done and that it was approved. She asked for an explanation as to what was approved at that time. Gary Seales explained that what was approved was the Site Plan that they had presented showing the building and renovations and what was being done on the lot.

Chair Hickey commented that the ZBA had not dealt with was the addition. Gary Seales explained that the ZBA had dealt with a front yard variance, a rear yard variance and during that discussion; we went through the addition, the removal of the rear enclosed porch and the addition of three (3) additional feet onto that structure. He noted that all of that was reviewed with the ZBA. Chair Hickey noted that would not have been an Area Variance. Gary Seales agreed. Comm. Hickey asked Zoning Officer Weber if he agreed with this recollection of how things went. Zoning Officer Weber agreed with the history presented. The Zoning Board members then referred to the December 13, 2010 ZBA minutes.

Chair Hickey noted that the deliberation and motion all had to do with the rear and side yard setback. Gary Seales pointed out a portion of the minutes where a discussion took place regarding the removal of the rear porch and increasing it by three (3) additional feet.

Chair Hickey stated that what they were looking at today was an expansion of a non-conforming use into an area that prior to the construction was the lot, so the non-conforming use was expanded into the area that wasn't previously used for that non-conforming use. Gary Seales agreed with that interpretation.

Chair Hickey noted that then took the ZBA out of the Area Variance category and into a new higher category, that of a use variance, which is much harder to grant. Gary Seales stated that had they known at the beginning of the project that they needed to do that, they would have gone to great lengths to discuss that and they would never have undertaken the project had they not had approval to do that, but as you can see the project is now done for all practical purposes.

Chair Hickey noted that one of the things that the ZBA will be considering in granting a Use Variance is hardship. She explained that it comes under two (2) headings. One (1) is hardship associated with the property itself and the other is financial hardship.

Gary Seales stated that the financial hardship was that this property has been completely done and reconfigured and there has been quite a bit of money put into it to reconfigure it the way it is and for some reason, that if that addition is not on there, he would lose approximately one third (1/3) of the occupants in the house which represents a quarter of the occupants in the house because it can't be re-configured at this point because it's all done. He noted that it would be a twenty-five (25) percent loss in revenue as income. He explained that if they had known from the beginning, they would not have made the investment.

Chair Hickey stated that she felt that the courts would say that you should have known.

Judd Seales stated that he had done due diligence by going to the Code Office before they purchased the property and by talking to all of the people that they needed to talk to before they started. Gary Seales stated that if there was an omission on their part alone, he would say, maybe, but the fact that that they did due diligence by going to the Code Office and asking for all of the needed permits and went before all of the Boards and picked up all of the permits that they were asked to pick up, but we didn't know that we needed this particular variance or they would have applied for it. He noted that unfortunately the project is now complete, the money has been spent, and we did all that we were asked to do and it is fully rented to students who are coming in this fall.

Comm. Brown asked if this was a two (2) family. Gary Seales said that it was; it was an up and down.

Jim Reeners, landlord and a City property owner, spoke. He referred to how earlier zoning was laid out and its importance to the City. He felt that with the increase in demand by students to live off campus, but near the college; many properties were over occupied and increased density. He noted that the lot at this address was non-conforming in size and he doesn't understand why there aren't only three (3) in each unit if that's what the City law is. He stated that the City Boards have to take a stand. He stated that he doesn't believe in any of these previous variances that the amount of occupancy was covered. He stated that when he has gone before the Planning Commission they were interested in the Site Plan which is where the building sits, what is being done on the lot and things that pertain to that building and the use of that building. He stated no floor plans had to be submitted, it was not required. He said that he has submitted that, but didn't know if the Seales had submitted one. He felt that what was happening in the house was not in full view of the Planning Commission. He stated that Judd and Gary went into this project assuming eight (8) students. He noted that the ZBA had already granted more than the forty-five (45) percent lot coverage already on a non-conforming lot based on what he has heard today. He explained that on a conforming lot, its sixty (60) percent coverage.

Mr. Reeners asked when this was going to stop....to come after the fact to try to get something done rather than covering all of the bases prior to this. He noted that there comes a time that the ZBA has to look at what's written and use it.

Joann Dukalow, a Hill property owner, stated that the work done on this property is a tremendous improvement to the neighborhood.

John DeVecchio stated that he agrees with the Seales noting that they've done everything that they could do and that someone in the City Building Department wasn't doing their job. He asked how anyone could invest seventy-five thousand (75,000) to a hundred thousand (100,000) dollars on that property. They did everything that they had to do and they've been in the business for years and that is why they went to the extent of getting all of their variances and they did what they were told to do. He noted that they got Plumbing Permits, Building Permits, Variances, Site Plan Review and they built the building according to the way the plans were approved, not plans that were submitted maliciously not showing some of the things that were going to be done. Their hands are clean and they've done everything that they can do and why should they be penalized. The Building Department obviously overlooked it. He noted that the Building Department people had many years of experience behind them and should've known what they were doing. The Seales made that property beautiful.

Tim Frateschi, Harris, Beach Attorney, stated that he would like to speak, but noted that he was representing a client who was coming before the Board later on the agenda with an identical type of variance request.

Atty. Frateschi stated that what he was going to say could be considered for this application because he was going to ask the Board to consider it for the Use Variance. He felt that there was a fall back position that this Board can look at. He would argue that Section 300-124 allows for an extension for a non-conforming use. He read from that section of the Code and made reference to the second sentence from that section. He stated that he would argue that buildings that had been multi-family buildings when the Chapter was enacted are manifestly arranged and designed for such use as a multi-family home and therefore your Code allows for the non-conformity to be extended into different areas of the lot.

Chair Hickey noted that if that were the case, someone could build to the edges of the property. Atty. Frateschi stated that was not the case, you still needed an Area Variance; explaining that you would still need to meet the dimensional requirements of the house and noted that the Seales did get an Area Variance. He noted that the only thing that they wouldn't be able to do was to extend the non-conformity unless some entity or Board decided that the building or lot were manifestly arranged or designed for the use that is taking place on that site at the time the Chapter was enacted. He felt the Board should know that they had the right to interpret the Code after the Code Enforcement Officer had determined whether or not the buildings with the extensions or expansions are manifestly arranged or designed for such use.

Corporation Counsel Perfetti stated to Chair Hickey that in light of what has just been put forth, he felt that she might like to take administrative notice of Judge Sherman's decision relative to an interpretation of Section 300-124 to which Mr. Frateschi just spoke. He stated that given administrative notice of that opinion and how it is interpreted by Justice Sherman, acting as a Supreme Court Justice in that matter, I would respectfully disagree with Mr. Frateschi's interpretation of how the Code permits an expansion into areas of the lot, which Madame Chair, you spoke to. He respectfully disagreed with Mr. Frateschi as a colleague and he understood he was advocating on behalf of a client, but he would assert that there has been a judicial determination that that is not what the Code in fact means.

Chair Hickey stated that the Board would take administrative notice of Judge Sherman's decision that was rendered today and read the decision to the Board.

Mr. Frateschi stated that the Judge never got to the second sentence of that section of the Code and that second sentence wasn't before the Court and that the judge's decision was based simply on the fact that his client did not believe a variance was required.

Corporation Counsel Perfetti stated that the Judge found that to be incorrect and that a variance was required and that is a settled matter in that case.

Chair Hickey stated that it was unlikely that the judge didn't include both sentences in his decision.

Mr. Frateschi stated that he didn't think the judge's decision forecloses this Zoning Board's authority to interpretation of the second sentence of Section 300-124 and that's his position.

Corporation Counsel Perfetti advised that this Board should be guided by the judge's decision.

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

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

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

RESOLVED THAT THE USE VARIANCE – 36 CLAYTON AVE. – (SEALES)(R4) – USE VARIANCE- EXPANSION OF NON-CONFORMING USE BE PLACED ON THE TABLE FOR DELIBERATION.

The criteria for a use variance were reviewed.

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial. No evidence shown
2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood). Not unique, a lot of non-conforming lots in the area.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood. This is a neighborhood that still has many R1 properties and this increases density.
4. The alleged hardship has not been self-created. Yes, ignorance of the law is no defense.

Chair Hickey read from Section 300-146 of the City Code regarding granting of a use variance.

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

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

RESOLVED THAT THE USE VARIANCE – 36 CLAYTON AVE. – (SEALES)(R4) - USE VARIANCE – EXPANSION OF NON-CONFORMING USE BE APPROVED - DENIED.

Atty. Scott Chatfield addressed the Board indicating that the motion failed for want of a majority vote and as a result is remains open for sixty-two (62) days. He explained that at the end of the sixty-two (62) days, the new statute says that it's automatically denied if you fail to over rule the Code Officer's determination which was that he needs a Use Variance. A motion was made and a motion failed and if an affirmative vote of this Board isn't passed within sixty-two (62) days then the Code Officer's ruling stands.

Item No. 5 – 111-113 Pendleton St. – (Truman/Snyder)(GB) – Interpretation of Zoning Officer's Decision.

Deputy City Clerk Cheryl Massmann read a letter from Atty. Patrick Snyder asking for the Board to table this interpretation request until the next month's meeting.

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

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

RESOLVED THAT THE INTERPRETATION OF ZONING OFFICER'S DECISION – 111-113 PENDLETON ST. – (TRUMAN/SNYDER)(GB) – INTERPRETATION OF ZONING OFFICER'S DECISION IS TABLED.

Item No. 6 – 5 Monroe Hgths. – (Calabro/Casullo)(R4) – Interpretation of Zoning Officer's Decision

Chair Hickey informed the Board that in light of Judge Sherman's decision of today, that administrative notice has been taken of this decision and that this item is moot as the Judge has made the decision for the Board.

Item No. 7 – 5 Monroe Hgths. – (Calabro/Casullo)(R4) – Use Variance – Expansion of Non-conforming Use

Atty. Tim Frateschi is representing Mr. Calabro, the property owner. He asked the Board for an interpretation of the second sentence of Section 300-124 of the City Code. He explained that their position was that before this law was enacted and these buildings were built, they were established for multi-family use and are manifestly arranged or designed for such use. He asked them to provide a basis for their decision.

Corporation Counsel Perfetti advised the Board to resist an invitation to interpret this. He referred to the evidence that the applicant must provide to establish that he meets the criteria for the use variance. That is what the application is and that is what the Board is considering.

Atty. Frateschi noted that in the application put together by Atty. Fran Casullo, they made several requests of the Zoning Board. Some of which are now moot because of the court decision. He further explained that parts of the appeal of the stop work order letter of June 17, 2011 speak to the very issue he is talking about. He wants the Board to tell him why they can't use the second sentence of Section 300-124.

Corporation Counsel Perfetti stated that the court's opinion had been provided. He stated that he believed that the judge looked at the statute in its totality and in its application to these properties which are the subject of the requested variances this evening. He noted that the Board's purpose tonight is to receive evidence regarding the requested variance and the various criteria that need to be met and all four (4) criteria need to be met.

Atty. Frateschi explained what he was trying to prove with regards to Section 300-124, noting that there was no need to go into the use variance issues.

Corporation Counsel Perfetti noted that this was a strained interpretation of the statute.

Mr. Calabro stated that the Judge looked at this as a fact of law. He noted that the Zoning Board looked at it with a more broad review process. He felt that the Judge sent it back to the ZBA to do their job which is to review it. He wants to improve his

properties, stating that he's a responsible landlord and that he went through all the proper channels.

Corporation Counsel Perfetti noted that the powers of the Zoning Board of Appeals are outlined in Section 300-144. He asserted that as an administrative Board they do not have the liberty to deviate from what the Judge has established to be the law of a case. He advised that the Judge has given them guidance that they should consider.

Mr. Calabro stated that this Board has the responsibility to review this.

Tom Sabari of Sabari Architecture spoke about inspecting this property to review its current design. He noted that the current structure had a low head height, no egress windows and it was not insulated to New York State Energy Code. It was also not constructed on a complete foundation. He explained that to comply with the Building Code which provides a minimum of seventy (70) square feet per bedroom, the expansion was necessary. He noted that they met the setback requirements of the property. He noted that this expansion also benefited the City Fire Department. He described the past history of this project and asked to have the stop work order lifted.

Comm. Haskell asked if they were changing the footprint. Atty. Frateschi stated that there is an expansion of one hundred thirteen (113) square feet.

Corporation Counsel Perfetti stated that the ZBA can't lift the stop work order, they can only act on the variance and that may make the stop work order moot.

Chair Hickey asked Zoning Officer Weber if it was true that no variances were required.

Zoning Officer Weber noted that this is a single family dwelling and when he looked at the proposed project, it was his understanding that it was going to be a reconstruction, just as Mr. Sabari indicated. It was not to be an expansion. That's how I remember the proposal. As a single family dwelling, no site plan review is required and no variance and no site plan review were required at that time.

Mr. Calabro stated that when he met with Mr. Weber, that he had brought in a full set of architectural plans and Mr. Weber reviewed them all. Mr. Weber reviewed them all and saw the dimensions on there and saw all of the addition and Mr. Weber said that no variances were required. He then went ahead and had a complete set of architectural drawings done and stamped and a permit was issued. He also spoke with Capt. Knickerbocker about some renovations to the second floor, with relation to a bedroom. If this application is denied, then he would only be able to have eight (8) students left.

Zoning Officer Weber stated that when it became clear that the addition had become larger, it was indicated that a variance was needed for that.

Mr. Calabro stated that was not true. He noted that when the plans were brought to Mr. Weber, it was indicated that there would be two (2) bedrooms there.

Corporation Counsel Perfetti stated that no cross talking would be allowed and that all comments were to be directed to the Chairman.

Capt. Knickerbocker articulated what his remembrance of the sequence of events was.

Atty. Fran Casullo gave his recollection of the sequence of events prior to the issuance of the stop work order. He also questioned the amount of time that had elapsed before the stop work order was issued.

Atty. Frateschi went back to the use variance request and to why they were here.

Mr. Calabro stated that Zoning Officer Weber and Capt. Knickerbocker won't communicate with him.

Corporation Counsel Perfetti stated that they were litigant parties and had been directed not to speak with Mr. Calabro.

Mr. Calabro wanted to know where he should go with this property and he had not been given a reason for the two (2) stop work orders.

Corporation Counsel Perfetti stated that Mr. Calabro should confine his comments to the use variance and not look for the City to provide remedies on what he should do relevant to his properties.

Jim Reeners spoke about the zoning and that R4 is for higher density and what the ZBA's job is. Mr. Reeners stated that Mr. Calabro was not increasing density, but making things safer and he also wants to protect his investment. He wants the City to get their act together.

Atty. John DelVecchio, Jr. stated that he was representing DelVecchio Family, LLC and is opposing the application and he asked to call witnesses to provide information to help the Board reach a decision and the information will be general in nature in narrative form.

Atty. Frateschi asked if they would be placed under oath.

Corporation Counsel Perfetti noted that the request was not improper, but this sworn testimony has potential future ramifications beyond this Board in judiciary.

John DelVecchio gave his history of 5 Monroe Heights and his former partnership with Mr. Calabro.

Mr. Sabari stated that they were only increasing the square footage by one hundred thirteen (113) feet. Mr. DelVecchio, however, stated that the foundation was thirteen (13) feet by twenty-two (22) feet and is larger than the drawings that were presented.

John DeVecchio asked Capt. Knickerbocker if any plumbing permits were issued for this building and he showed pictures which showed a sewer pipe installed at the property. He found that no plumbing permits had been issued. He presented pictures and made other points about this project. He then asked to see a site plan for this project. He also submitted items to Corporation Counsel Perfetti to be included in the record. These items were marked by Corporation Counsel with exhibit numbers to identify items given to him. He stated that Mr. Calabro built a larger addition than what was shown on the plans and he gave his facts.

Capt. Knickerbocker stated that no site plan was required for a single family.

Atty. Scott Chatfield asked to be sworn in. The stenographer hired by Atty. DeVecchio swore Atty. Chatfield in.

Atty. Chatfield noted that he was not here speaking in opposition, but to give his opinion as an individual with a lot of experience in land use planning and zoning law. He then outlined his credentials to speak to this. He explained that he was not representing anyone, but had been asked by Mr. DeVecchio to appear to provide legal information. He stated that he was here to present the principles of law applicable to the issues in front of the Board. He gave use variance history and information on self-created hardship. He also gave information on why ZBA's exist and what needs to be submitted to a ZBA as proof for a request for a use variance. He gave an explanation of non-conforming use. He gave his opinion on this project and the use variances applied for, both this property and 15 Pleasant Street.

Atty. DeVecchio, Jr. stated that this Board can't issue a variance.

Corporation Counsel Perfetti advised the Board that they should not be intimidated by the threat of a lawsuit and also that this should not be a debate forum.

Mr. Sabari took the opportunity to respond to some of the points that had been made and noted that they looked at it as a grandfathered use. He noted that construction was not a perfect science and that an eight (8) inch discrepancy is a module in masonry and it is not uncommon for foundations to be off by eight (8) inches.

Atty. Frateschi again brought up the Section 300-124 issue as it relates to this use variance.

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

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

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

RESOLVED THAT THE USE VARIANCE – 5 MONROE HGHTS. – (CALABRO/CASULLO)(R4) – USE VARIANCE – EXPANSION OF NON-CONFORMING USE BE PLACED ON THE TABLE FOR DELIBERATION.

The criteria for a use variance were reviewed.

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial. No evidence provided.
2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood). Nothing presented.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood. Will not alter the character.
4. The alleged hardship has not been self-created. Self-created.

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

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

RESOLVED TO ADOPT A MOTION TO DENY THE USE VARIANCE – 5 MONROE HGHTS. – (CALABRO/CASULLO)(R4) – USE VARIANCE – EXPANSION OF NON-CONFORMING USE AS REQUESTED BY THE APPLICANT ON THE GROUNDS THAT THE APPLICANT FAILED TO CARRY HIS BURDEN OF PROOF RELATED TO THE STATUTORY CRITERIA AND THAT HARDSHIP – IF ANY – WAS SELF CREATED.

Item No. 8 – 15 Pleasant St. – (Calabro/Casullo)(R1) – Use Variance – Expansion of Non-conforming Use

It was noted that this property was in an R1 zone.

Atty. Frateschi asked the ZBA what the owner of this property was supposed to do in this case.

Corporation Counsel Perfetti stated that it was not appropriate for this Board to go on record with an opinion for a remedy. Mr. Calabro may have to go back to the Judge for additional determination.

Atty. Frateschi noted that Mr. Calabro was raising the roof and removing knee walls, but he was not changing the footprint, only expanding the headroom. Site Plan was granted by the Planning Commission and building permits were issued. He noted that there are four (4) dwelling units in this one (1) residence.

Mr. Calabro asked for clarification regarding the removal of the knee walls and the raising of the roof.

Corporation Counsel Perfetti stated that they were relying on the Judge's decision that your client is expanding the living space by raising the roof.

Atty. Frateschi noted that if the knee walls had to remain that Mr. Calabro will put back the knee walls.

Corporation Counsel Perfetti noted that it is not the ZBA's job to give advice. Mr. Calabro has an architect and numerous lawyers and he can resort to the resources that he has to discover what he should do. He also advised Zoning Officer Weber and Chief Knickerbocker in light of the litigation and his interpretation of the decision and order, it may not be complete. Based on the Judge's wording it appears that he anticipates and even invites further review by the Court pending this evening's proceedings and this Board's determination.

Atty. Frateschi asked who Mr. Calabro should call. Corporation Counsel Perfetti suggested that Mr. Calabro might contact the City Law Office.

Atty. Frateschi stated that his client will put knee walls back.

Corporation Counsel Perfetti noted that it was not proper to lobby for certain changes that would be acceptable.

Comm. Brown asked why a Use Variance was being applied for.

Zoning Office Weber stated that these were existing bedrooms, but they were portrayed that there would be no changes, but upon closer review of the submitted plans the bedrooms showed an expansion of height, thereby increasing the space.

Atty. Frateschi asked them to review Section 300-124 especially the second sentence and allow his client to expand a non-conforming use.

Atty. John DelVecchio, Jr. asked the ZBA to deny the Use Variance application for the same or similar reasons as were used for 5 Monroe Heights.

Mr. John DelVecchio submitted photos on this project and they were accepted by Corporation Counsel Perfetti and marked. He stated that Mr. Calabro misrepresented what was there. He noted that no demolition permit, asbestos permit or lead abatement permit had been obtained. He purported that this had been an unfinished attic. He stated that Mr. Calabro was increasing the upper floor by sixty (60) percent.

Corporation Counsel Perfetti noted that he is continuing a numerical sequence for items submitted and received at tonight's meeting.

Mr. Sabari stated that the drawings that he submitted were certified by him and that nothing was misrepresented. He stated that the space was designed under the old code and was habitable space as defined differently in the old City Code.

Mr. Calabro stated that he wants to know what needs to be done to the building to satisfy the requirements of the City.

Corporation Counsel Perfetti stated that he needed to see his own attorneys for that advice.

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

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

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

RESOLVED THAT THE USE VARIANCE – 15 PLEASANT ST. – (CALABRO/CASULLO)(R1) – USE VARIANCE – EXPANSION OF NON-CONFORMING USE BE PLACED ON THE TABLE FOR DELIBERATION.

The criteria for a use variance were reviewed.

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial. No evidence shown.
2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood). Not unique.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood. Will not alter essential character.
4. The alleged hardship has not been self-created. Self-created.

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

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

RESOLVED TO ADOPT A MOTION TO DENY THE USE VARIANCE – 15 PLEASANT ST. – (CALABRO/CASULLO)(R1) – USE VARIANCE – EXPANSION OF NON-CONFORMING USE AS REQUESTED BY THE APPLICANT ON THE GROUNDS THAT THE APPLICANT FAILED TO CARRY HIS BURDEN OF PROOF RELATED TO THE STATUTORY CRITERIA AND THAT HARDSHIP – IF ANY – WAS SELF CREATED.

Item No. 9 – Minutes – June 13, 2011

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

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

RESOLVED THAT THE MINUTES OF JUNE 13, 2011 BE APPROVED.

Adjournment – 9:45 PM

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

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

I, MARY KAY HICKEY, 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 11TH DAY OF JULY 2011.

MARY KAY HICKEY, CHAIRPERSON