



PLANNING COMMISSION

MINUTES

December 27, 2011

A regular meeting of the City of Cortland Planning Commission was held on Tuesday, December 27, 2011 at 5:15 PM in the Council Chambers at City Hall, 25 Court Street, Cortland, NY.

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

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

New Business

Corporation Counsel Patrick Perfetti briefed the Commission information regarding the status of the 19 W. Court Street (DeVecchio) litigation. He explained that the suit was filed in November and the return date for the response was December 9, 2011 by order to show cause. He stated that on December 1, 2011 he sent out emails to obtain affidavits from Planning Commissioners. He noted that he needed these affidavits to be included with his answer to the suit. He noted that the City was in a precarious situation without those affidavits to explain why the determination is what it is. He explained that he had received a response from Comm. Schaffer that she was on vacation and would respond when she returned on the 27th. He explained that at that point he had no affidavits to send in with his plea and sent in his answer without any. He noted that based on the submissions by Mr. Chatfield, it was his considered opinion that he would be successful. He noted that his success could take on a variety of forms, the least of which, the judge could simply send the case back here to be heard with certain court directives on what to do.

Comm. Spitzer asked if he meant Cortland County. Corporation Counsel Perfetti stated that he meant back to the Planning Commission. Corporation Counsel Perfetti explained that was much the same as what Judge Rumsey had done when he found that the Planning Commission had acted arbitrarily and capriciously. He noted that in light of the history of this case, this puts the City in a position for additional litigation. He explained that because the City was riding on his bare answer, the Judge could and would be within his judicial authority to decide the case on his own.

Corporation Counsel Perfetti explained that so as not to place the City in that position of having that done, a settlement was proposed and presented to the Common Council and the Common Council has approved the settlement and discussions have been had between he and Mr. Chatfield to bring the case to a conclusion. He noted that the matter has not yet been officially approved by the Council and he was reluctant to discuss the details of the settlement proposal until the Court accepts and sanctions it.

Comm. Schaffer asked if this was a proposal between Corporation Counsel Perfetti and Atty. Chatfield. Corporation Counsel Perfetti stated that it was not. He explained that it was sanctioned by the Common Council. Comm. Schaffer asked how the settlement was arrived at. She asked for the procedure.

Corporation Counsel Perfetti explained that he acts on behalf of the City of Cortland. He assumes that the settlement was proposed by Atty. Chatfield or his client, but he did not know. He explained that he took Mr. Chatfield's proposal to the Council, origin unknown, and presented it to his client, the City Council and his client sanctioned it and that's where we are.

Corporation Counsel Perfetti explained that the courts are slow at this time of year because of the holidays and that this was a civil issue. He anticipates a determination after January 13, 2012. He further explained that there was no oral argument on December 9, 2011 in Chenango County.

Comm. Schaffer asked if Corporation Counsel Perfetti had a requested an affidavit from Planning Chair Felix. Corporation Counsel Perfetti stated that he had asked Chair Felix. Comm. Schaffer asked if the minutes could've been used. Corporation Counsel Perfetti stated that the minutes were already part of the record and had been submitted by Atty. Chatfield as part of his papers. He explained that the minutes were what led him to the opinion that it was not defensible without more supporting documentation. Comm. Schaffer noted that when the request for the affidavit was made, she was thousands of miles away and all of her reference papers were here in Cortland.

Corporation Counsel Perfetti explained that an affidavit was a sworn statement and didn't require additional papers. He noted that he can prepare papers. He explained that what was in the minutes was of the greatest concern to him and a stumbling block to succeeding in this Article 78 proceeding. He further explained that upon the advice of their own Zoning Enforcement Officer, which is in the minutes, the request was made to give reasons for denying the application and you failed to do that other than to say basically that the decision was based upon the reasons that you had already given to deny his application. He noted that phrase of denying based on the past decision was in the record, but the reasons were not given and they were not in the written record. He noted that they did not do the proper administrative notice of those proceedings and procedurally, the Commission is on very precarious ground.

Comm. Schaffer noted that Atty. Chatfield had a complete record of the minutes. Corporation Counsel Perfetti stated that he had admonished this Commission and he asked that they allow Atty. Chatfield to go ahead and fulfill making the record and it seemed very clear at the time and in the minutes that there was a great reticence from this Committee to listen to what you presumed be the same arguments that you had listened to all over again, but that is what part of making a record is about. He noted that when the applicant makes a new application, the Planning Commission has to go through all of the same motions all over again and because you've heard it all once before doesn't mean that you get to cut him off and not listen to it again. He noted that it was his opinion that when you don't allow a party to make a full and complete record then you're going to be on very hazardous ground to defend the action that you took, which was to deny the application.

Comm. Schaffer asked if that was case even if the Planning Commission had stated that even there was nothing different in this application being made that day than the one that was made the month or so before. Corporation Counsel Perfetti stated that was correct. He noted that it was the applicants right. He explained that it wasn't the same application, and there was an amendment of the application during the proceedings. He stated that the Commission had to allow the applicant to make a full and complete record. He noted that if the Commission wanted to rely upon previous determinations then there is a proper process that the Planning Commission has to go through to bring those determinations in as part of the record for your benefit, which was not done. He noted that there was a great effort to move on in the proceedings, not allowing Atty. Chatfield to complete his presentation and that comes through clearly in the record. He explained that if the judge gets any hint that this Board pressed the matter and didn't allow Mr. Chatfield to make his case as he should have then the judge can step in and substitute his judgment for this Board.

Corporation Counsel Perfetti explained that he thought that was not something that the City wanted to get into and he felt that the settlement that had been brokered will avoid that. There were no more questions from the Planning Commission.

Chair Felix thanked Corporation Counsel Perfetti for his update.

Comm. Schaffer asked that an Executive Session be held prior to adjournment if all were in agreement.

Item No. 1 – Site Plan Review and Area Variance Recommendation – 110 Elm Street – (Duncan)(SD) - Parking

Mr. Duncan was not sure why he was present. He felt that everything was approved and done. He explained that a fire inspection was done on his building. He noted that he had done some work in his apartment and he had not done any work in that apartment in three and a half (3 ½) years. He noted that Zoning Officer Weber stated that more parking spots were needed.

Zoning Officer Weber explained that the record indicated that there were eight (8) units..... Mr. Duncan stated that he had started out with eight (8) units and then he added an efficiency apartment. Zoning Officer Weber continued agreeing that he had started out with eight (8) and then had received a variance to add one (1) unit in the basement. He stated that was what the records showed and he explained that since then Mr. Duncan has added another unit to the basement without a building permit for that and without any approval.

Mr. Duncan stated that was not true. He explained that there was two (2) added and then there was one (1) more done later. He explained that he had received a permit for that. He noted that he wasn't here to argue with anyone, he thought that he was perfectly legal.

Deputy Chief Knickerbocker stated that Mr. Duncan had received a building permit for the installation of a cellar window, but there was no specified dwelling unit or efficiency apartment or anything that led a reviewer to believe there was a living unit involved. He indicated that there had been eight (8) units with an additional two (2) and this was one (1)

extra in the basement. He indicated that he had personally looked at the other two (2), but this one (1) he had not seen.

Chair Felix asked how many apartments Mr. Duncan had. Mr. Duncan replied that there were ten (10) apartments and one (1) efficiency. Comm. Schaffer noted that an efficiency was an apartment. Mr. Duncan stated that he had eighteen (18) parking spaces. Comm. Spitzer asked if the parking spaces were painted in. Mr. Duncan stated that they weren't marked.

Zoning Officer Weber stated that the current parking spaces were not in compliance with City Code. He had received approval for a variance request where there was some discussion with regards to the number of spots, but there was no mention with regards to the size of those spots. He noted that the eighteen parking spaces appeared to have been approved by the Zoning Board of Appeals at the time the variance was applied for, but no size was noted. He noted that they are less than the ten (10) foot by eighteen (18) foot that is required today. He explained that in his opinion it appears that there was a discussion regarding the number of spaces that Mr. Duncan was to provide and the ZBA was aware of the plan that Mr. Duncan submitted and that plan appears to have been approved. He explained that in his perspective, the plan that you are looking at today for the eighteen (18) parking spaces is the legal approved parking for that property in 2003. Zoning Officer Weber noted that the requirement is two (2) parking spaces per dwelling unit. Comm. Spitzer noted that the current spaces were eight and a half (8 ½) feet by eighteen (18) feet. Zoning Officer Weber also noted that it doesn't appear that Site Plan Review was required back then.

Comm. Schaffer noted that the parking spaces needed to be marked, especially the three (3) in the front. Comm. Schaffer asked if the windows Mr. Duncan installed had been inspected. Deputy Chief Knickerbocker stated he had not been there.

Chair Felix asked if the two (2) apartments in the basement were legal dwellings. Deputy Chief Knickerbocker stated that they were legal. He noted that what caught the efficiency apartment was the three (3) year cycle of fire inspections. Mr. Duncan stated that the efficiency had been there for about three (3) years and is currently rented. He explained that it was picked up when he registered for the Rental Permit Program. Deputy Chief Knickerbocker stated that the unit had been fire inspected, but not everything.

Comm. Schaffer noted that what she was hearing was eleven (11) apartments required twenty-two (22) parking spaces which he did not have. Zoning Officer Weber stated that a variance was needed for the parking and a Site Plan Review was done for the change to the site and the increase in pedestrian or vehicular traffic. He explained that the Planning Commission charge for tonight is to make a recommendation to the Zoning Board of Appeals on the Area Variance request dealing with the parking and you also have the ability to take a variety of different actions in regards to the Site Plan Review application.

Comm. Spitzer asked where three (3) more parking spaces could be put. Mr. Duncan indicated that he could add one (1) more space, but no more than that. Comm. Couch asked how the tenants were managing now. Mr. Duncan that the tenants were managing very well and that in fact, there were currently five (5) tenants that didn't have cars. It was noted that when the building was approved for eight (8) units, there was no requirement for two (2) spaces per unit.

Comm. Schaffer noted that the lot coverage requirement in a Service District was less. Zoning Officer Weber noted that no lot coverage was defined for a Service District. There was some discussion regarding possible ways to gain more parking spaces. Chair Felix noted that he would like to see what grass there was in the front remain there.

Comm. Gebhardt asked how many tenants Mr. Duncan currently had. Mr. Duncan stated that he had thirteen (13) tenants. Chair Felix stated that in his observation, that parking lot was never full. Comm. Schaffer noted that she wanted a fire inspection to be done. Deputy Chief Knickerbocker noted that they would have to modify his permit for the efficiency apartment. Comm. Schaffer recommended approval of the Area Variance. Comm. Schaffer commented that they were perpetuating non-conformity in this situation.

On the motion of Comm. McMahon, seconded by Comm. Schaffer voted and approved to add one (1) parking space for 110 Elm Street, parallel to the west side of the building for a total of nineteen (19) parking spaces and recommend Zoning Board of Appeals approval for the Area Variance and that a new revised parking map be submitted to the Zoning Board of Appeals for approval and that all of the parking spaces be delineated.

Comm. Schaffer noted that they now needed to approve the efficiency apartment. Comms. McMahon and Couch asked to see a building plan. Zoning Officer Weber noted that this was a Code issue and that a permit would not be issued if it doesn't meet building code. Deputy Chief Knickerbocker noted that a fire inspection had been done, but no building inspection had been done. It was noted that there were four (4) apartments on each floor and there were three (3) units in the basement.

Zoning Officer Weber noted that their charge was land use and not building code issues and you'll rely on the Code Office to make sure that the unit meets the building code. He also noted that they were to treat this as a new application and to determine if an additional unit is a density issue. He explained that if the construction was done without a permit, without approval the Commission is not obligated to approve it, just because it is there. Your charge from a Planning standpoint is to determine if the additional unit and density is something you want to see on that lot. Mr. Duncan indicated that he thought this was all handled when he received the permit to put the window in. Comm. Schaffer expressed a concern she had about landlords stuffing additional units in spaces because of the density issue and as well as public health and safety.

Comm. Schaffer spoke of a concern that there were exit windows for all basement apartments at this location.

On the motion of Chair Felix, seconded by Comm. Spitzer, voted and approved the efficiency apartment in the basement at 110 Elm Street pending full Code and Safety Enforcement inspection. (Schaffer – Nay)

Item No. 2 – Revised Site Plan – 7 Crawford St. – (Yaman/Spencer)(R2) – Rear Entrance

Jim Bryan of Yaman Construction was present. He explained that they had received approval for this addition earlier. They owner now wanted to add a rear exit and noted that there was no rear exit from the second floor. Comm. Schaffer asked if this was going to be

a covered porch. Mr. Bryan stated that it was not. Mr. Bryan noted that this was an owner occupied duplex.

Comm. Spitzer asked what material they planned to build with. Mr. Bryan stated that they would be using pressure treated lumber. Chair Felix asked when they planned to complete this project. Mr. Bryan stated that they would begin as soon as the Code Office approved.

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

Item No. 3 – Minutes – November 28, 2011

On the motion of Comm. Gebhardt, seconded by Comm. Couch, voted and approved as amended.

EXECUTIVE SESSION:

On the motion of Comm. Gebhardt, seconded by Comm. Couch, voted and approved to go into executive session.

Adjournment

On a motion of Comm. Gebhardt, seconded by Comm. Spitzer, voted and approved.

I, RAFAEL FELIX, CHAIRPERSON OF THE PLANNING COMMISSION OF THE CITY OF CORTLAND, NEW YORK, DO HEREBY CERTIFY THAT SAID RESOLUTION(S) WERE ADOPTED AT A MEETING OF THE PLANNING COMMISSION OF THE CITY OF CORTLAND, NEW YORK, HELD ON THE 27TH OF DECEMBER 2011.

RAFAEL FELIX, CHAIRPERSON