

Zoning Board of Appeals
City of Cortland
February 13, 2012

A regular meeting of the Zoning Board of Appeals was held on Monday, February 13, 2012 at 5:00 p.m. in the Mayor's Conference Room at City Hall.

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

Staff: Mayor Tobin, Zoning Officer Bruce Weber, Capt. William Knickerbocker and Cheryl Massmann, Deputy City Clerk

Item No. 1 – 165 ½ Homer Ave. – (Thoman)(GB) – Rehear Request

Attys. David and Patrick Perfetti were present and asking the Zoning Board of Appeals to rehear their request for a Use Variance for their client, Dr. Thoman. Chair Hickey noted that this was not a Public Hearing. Zoning Officer Weber stated that this is a request to have a rehear, then the Board has to decide if they will rehear this, then publishing a formal notice of that Public Hearing to rehear.

Chair Hickey noted that the Board would hear information from those present to help them decide whether or not to have a rehearing.

Atty. Patrick Perfetti noted that his father had done most of the preparation for the submission of this request to rehear. He explained that he had prepared to present that information. He noted that originally this Use rehearing request had been submitted for consideration on December 20, 2011. He noted that Dr. Thoman, representing himself, had made the original application and the Zoning Board voted to deny his request, but the Board was short a member at that time. He explained that they have since augmented the information presented by Dr. Thoman to give a more complete and full history regarding the property. Atty. P. Perfetti distributed fourteen (14) photos of the property and neighboring properties showing the situation as it is. Atty. P. Perfetti then gave a history of the use of the property and former ownership history. He explained that Dana Decker of Heritage Realty and two (2) other of his realtors have attempted to market this property since 2007 with no prospective buyers coming forward. He indicated that at one time it was put up for auction and there was no buyer. He then noted that now a buyer, Mr. Gary Moll, has come forward with the interest of buying the property at a greatly reduced price and using it as a single family residence after some renovations. He stated that demonstrated economic hardship and that County Planning had recommended approval of this request. He stated that he believed that the photos showed that the Use Variance is wholly consistent with the surrounding properties. He noted that the prospective buyer is offering to purchase the property for less than half of the assessed value, which is in the mid-eighty thousands. This is a further demonstration of economic hardship.

Atty. P. Perfetti asked if any neighbors had been contacted and if they had registered any complaints with the proposed use of this property. Chair Hickey believed that the neighbors had not been contacted. Zoning Officer Weber and Chair Hickey stated that it's the applicant's responsibility to contact the neighbors and that information is part of the application. Atty. P. Perfetti noted that the building is only one thousand (1,000) square feet and only had one (1) patient parking space and two (2) spaces for the doctor and his staff person and currently dentists and doctors don't have solo practices as he once did.

Comm. Funk asked if neighbors had been contacted to increase the easement to provide more parking or had an effort been made to market the property to neighboring businesses. Atty. P. Perfetti noted that had not occurred. Comm. Wickman noted that the glass shop in the rear is closed. Comm. Funk asked if the building was large enough to meet the required zoning size to be used as a residence or if an Area Variance was also required. Zoning Officer Weber stated that was for new construction, not for an existing building and that section is not applicable to this property. Comm. Funk asked if there were any other contingencies required by the mortgage lender other than installing a shower. Mr. Moll, the prospective buyer, stated just the shower. Comm. Funk stated that he would have to install new windows, because the building didn't meet light and ventilation requirements in any of the rooms for use as a house. Realtor Diann Potter noted that they were aware of what needs to be done and there are no issues as far as what needs to be done to make the building acceptable. Atty. P. Perfetti stated that his client needs a Use Variance approved and then sale would go through and then the buyer will go through compliance with all of the regulations that the City requires for a single family dwelling. He felt that perhaps the sale price reflected the investment the buyer would have to make in order to make the building a habitable dwelling space.

Chair Hickey asked that more focus be placed on what might change the Zoning Board's mind on their previous decision so some of the other people present did not have to return another night. Atty. P. Perfetti noted that this application for a rehearing presents the complete history of the property with documentation, the easements that are pertinent to the property and note that the easements are attached to the property and stay with the property and subsequent buyers will be bound by those agreements. He noted the photo exhibits submitted and stated that neighbors will be contacted prior to the submission deadline. He felt that the requested change of use is in character with the present neighborhood character.

Chair Hickey noted that the Board had been advised by the former City Corporation Counsel Patrick Perfetti that Use Variances are extraordinary and should only be granted in cases of extreme hardship and the purpose of making them so difficult to get is to force them to get non-conforming properties to revert to a use that conforms to the district that they're in. Atty. P. Perfetti stated that the proposed use they're seeking would make it conform to the surrounding properties.

Chair Hickey spoke of a significant financial hardship example learned at a training session. Atty. P. Perfetti noted that example was not necessarily applicable here. He stated that Dr. Thoman has paid taxes on the full assessment on this property with no tax credits and the property has been for sale for five (5) years at half its assessed value and has only garnered one (1) interested buyer at half the assessed value, that certainly does create an economic hardship and was not a hardship created by Dr. Thoman. Atty. P. Perfetti noted that Dr. Thoman has made significant efforts to sell this property and that didn't produce a buyer.

Chair Hickey asked if there was anyone else wishing to comment. Atty. P. Perfetti noted that the seller, the buyer and the realtors were present to answer questions and that showed that this was a good faith effort to bring about this transaction and put this property back into use at a fair market price although much less than the assessment.

Zoning Officer Weber noted that the vote to rehear needed a unanimous vote of those Board members present.

On the motion of Comm. Wickman, seconded by Comm. Brown, voted and approved the request to rehear the application for a Use Variance for 165 ½ Homer Avenue.

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Wickman	Aye

Chair Hickey noted that this will be scheduled for the next regular Zoning Board of Appeals meeting.

RESOLVED THAT THE REQUEST FOR – 165 ½ HOMER AVE. – (THOMAN)(GB) – REQUEST TO REHEAR APPLICATION ON USE VARIANCE BE SCHEDULED FOR A PUBLIC HEARING ON MARCH 12, 2012.

Item No. 2 – 166 Madison St. – (Carter)(R1) – Use Variance – Beauty Salon

Realtor Jason Hage and applicants Erica Prindle and Rick Carter were present as well as Tim Alger representing the seller.

Jason Hage stated that the applicants proposed to purchase this property and make the building into a beauty salon. He explained that it is currently owned by the Cortland Regional Medical Center and is not on the tax rolls. He explained that it has always been used as a commercial building. He explained that it had been on the market for six (6) years and in 2007 they had a buyer approved by this Board to use the building as a martial arts training center and the real estate transaction never took place.

Chair Hickey noted that since then the commercial use had lapsed. Jason Hage noted that was why they were before the Board. He explained that it is set up for business and that the building has not been maintained and this buyer will put the money back into the property and establish a taxable value. He noted that Erica Prindle and he had

gone door to door to all of the neighbors asking them if they supported the use of this building as a beauty salon and all but one signed agreeing and supporting this use. He also noted that this would also provide three (3) or four (4) jobs. Chair Hickey noted that the Board had received a petition with three (3) pages of signatures of most of the neighbors agreeing to this use.

Comm. Brown asked if this property was ever zoned commercial. Chair Hickey noted that it was zoned residential, but has always been used as commercial. Realtor Tim Alger, representing CRMC, noted that it has been on the market for a very long time and only one (1) out of fifty (50) prospective buyers who looked at the property has shown an interest. He stated it will need extensive renovation work to fit the needs for a beauty salon and the purchasers are willing to do that. He is hoping that this request will be approved. He noted that if the martial arts academy had located there, they would have been open until 10:00 pm or so nightly with much more evening traffic and a beauty salon will be open in the daytime hours with less traffic. Erica Prindle noted that the beauty salon would not be open late.

Comm. Wickman noted that he had grown up in a home where his mother opened a beauty salon in a room of their home, but the town where he grew up had no zoning. He did note that he found it an acceptable use.

Comm. Brown expressed concern that approving a non-conforming use for a beauty salon would cause a problem if it went out of business and any commercial enterprise came into that location. Zoning Officer Weber stated that non-conforming uses don't transfer to new uses; they have to apply for their own use variance. Comm. Wickman noted that if approved, this was only being approved for a beauty shop and nothing else.

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

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Wickman	Aye

RESOLVED THAT THE USE VARIANCE - 166 MADISON ST. – (CARTER)(R1) – USE VARIANCE – BEAUTY SALON 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. It's always been commercial and never been residential and it has lost two thirds (2/3) of its value. Limited demand for these kinds of properties.

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). It's unique, this commercial use pre-dates the Code.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood. Won't alter it, it has always been there. Looks like a business.

4. The alleged hardship has not been self-created. Hospital bought it and used it that way, but did not create it.

Comm. Brown asked if the rear gravel area was going to be used as a parking lot. Zoning Officer Weber stated that at the Planning Commission meeting it was indicated that there was not going to be parking in that area.

Holly Melucci, an applicant for a different variance, asked to be excused for a few minutes and would return for her application. Chair Hickey excused her.

A SEQR review was done.

No significant environmental impacts were found.

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Wickman	Aye

RESOLVED THAT NO SIGNIFICANT ENVIRONMENTAL IMPACTS WERE FOUND AND A NEGATIVE DECLARATION WAS ISSUED.

On the motion of Comm. Brown, seconded by Comm. Funk, voted and approved the Use Variance for a beauty salon, with the site plan as submitted to and approved by the City Planning Commission.

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Wickman	Aye

RESOLVED THAT THE USE VARIANCE - 166 MADISON ST. – (CARTER)(R1) – USE VARIANCE – BEAUTY SALON BE APPROVED WITH THE SITE PLAN AS SUBMITTED TO AND APPROVED BY THE CITY PLANNING COMMISSION.

Item No. 4 – Minutes – December 12, 2011

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Wickman	Aye

RESOLVED THAT THE MINUTES – DECEMBER 12, 2011 BE APPROVED.

Mayor Tobin was present and introduced himself. He stated that quorum and attendance were things he wanted to address. He addressed the Board noting that he is getting to know everyone and he thanked them for serving. He is looking for recommendations for nominees to serve and that political party affiliation as dictated by the Charter limits affiliation of no more than four (4) of any party, so he is looking for any affiliation other than Democrats. He made note that work is going forth on the passage of the City Comprehensive Plan.

Item No. 3 – 23 Front St. – (Melucci)(R1) – Area Variance – Addition

Holly Melucci was present. Ms. Melucci stated that she would like to go with Plan A which is to add a two (2) story addition to square off the back of the house and add a mudroom and an upstairs half bath and also possibly add a carport on the side of the garage. She stated that the house was built in 1900 and that there was a lot behind the garage that did not belong to this parcel. She stated that they had paid the back taxes owed and purchased that lot and combined it with their parcel.

Zoning Officer Weber stated that a side yard setback is the only issue. Chair Hickey noted that lot coverage was determined not to be an issue and that would be taken off the application. Ms. Melucci explained that recently their furnace went and it now looked like they would not be able to afford to build the addition, but she asked if they could be allowed to build the carport. Ms. Melucci asked if they could still go forward with the area variance application, in case she came into some money.

Zoning Officer Weber stated that no variance was needed for the carport over the driveway as long as it met the setback requirements. He also explained that there was no timeline for an area variance approval and the beginning or completion of construction unless stipulated and that an area variance goes with the property.

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

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 23 FRONT ST. – (MELUCCI)(R1) – AREA VARIANCE – ADDITION 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. Could build in another spot.
3. Whether the requested area variance is substantial. Yes and 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. Brown, voted and carried.

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 23 FRONT ST. – (MELUCCI)(R1) – AREA VARIANCE – ADDITION BE APPROVED.

Adjournment

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. Funk	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 13th DAY OF FEBRUARY 2012.

MARY KAY HICKEY, CHAIRPERSON