

Zoning Board of Appeals
City of Cortland
March 12, 2012

A regular meeting of the Zoning Board of Appeals was held on Monday, March 12, 2012 at 5:00 p.m. in the Mayor's Conference Room at City Hall.

Present: Chair Hickey, Comm. McGinley, Place, Funk and Wickman

Staff: Alderman Dan Quail, Zoning Officer Bruce Weber, Capt. William Knickerbocker and Cheryl Massmann, Deputy City Clerk

Item No. 1 – 110 Elm St. – (Duncan)(SD) – Area Variance – Parking (Public Hearing

Mr. Duncan was present and explained that he had been told to add one (1) more parking spot. Zoning Officer Weber explained there had been an increase in the number of units and there is a requirement for additional parking. He stated that the Planning Commission approved this contingent on the parking plan being changed.

Chair Hickey asked if the proposal was for one (1) more dwelling unit and if that was allowable. Zoning Officer Weber explained that the unit was added without a permit. Mr. Duncan stated that he thought he had a permit and that everything was taken care of years ago and the unit has been there for over three (3) years. Comm. Place expressed her dilemma, in that the Planning Commission approved the additional dwelling unit, but that there was no way that even the parking spots currently shown are legal parking spots. Zoning Officer Weber noted that their approval was contingent upon the Zoning Board of Appeals approval of the parking. He explained that in order that the applicant didn't have to go back to the Planning Commission, they gave a tentative approval to the Site Plan based on your findings and the Zoning Board still has the ability to approve or disapprove this. He explained that if the ZBA disapproved this, then the conditional approval that the Planning Commission gave is over.

Comm. Place noted that the back of the lot was only seventy-six (76) feet wide and there are eight (8) parking spots shown. Zoning Officer Weber stated that there were pre-existing parking spaces in certain areas that had been approved previously. Comm. Place noted that none of the spaces were marked and Zoning Officer Weber noted that was true. Zoning Officer Weber noted that there were many places throughout the City that were like that. Chair Hickey noted that often parking was approved without the requirement that lines be laid down. Comm. Place was concerned about the number of parking spaces that had been approved in the past.

Comm. Wickman asked how many parking spaces were required. Zoning Officer Weber stated that he needed two (2) per dwelling unit, he has eleven (11) units and he needs twenty-two (22) parking spaces. Comms. Wickman and Place noted that the parking didn't come close to showing that many. Comm. Place noted that the driveway

was only twenty-four (24) feet wide and there's parking along the side of the driveway reducing the drive aisle to a width of fourteen (14) feet which is not enough for two-way traffic. Mr. Duncan stated that he has owned the property for eight (8) years and there have never been any parking problems. He noted that six (6) tenants didn't have cars. He explained that the building was the Elton Hotel and there were no parking problems even back then. There was further discussion regarding parking spaces.

Mr. Duncan explained how he put in the extra apartment. Comm. Place noted that if they followed the Code, he could get seven (7) spots and four (4) in another area. Chair Hickey asked for the number of approved parking spaces when this was last approved, so that the Commission knew how many were being added. Zoning Officer Weber and Asst. Chief Knickerbocker obtained the property file. Comm. Place asked if people parked along the driveway. Mr. Duncan stated that no one does. Chair Hickey noted that things do change with different owners and they have to look at this as anybody's property. Comm. Funk noted that they had to look at what they could do to bring it into compliance.

Comm. Place asked what types of units were in the building. Mr. Duncan explained that they were mostly one (1) bedroom units, but there were two (2) two (2) bedroom units downstairs and one (1) efficiency unit. Asst. Chief Knickerbocker had the property file and determined that the parking was approved in 2003. Comm. Place noted that the plan showed eighteen (18) parking spaces had been allowed in 2003 for ten (10) units. Zoning Officer Weber stated that they could say that they need to approve two (2) more for the one (1) additional unit for the unit to conform since the other plan was approved. Comm. Funk noted that the map in the Area Variance Application submitted by Mr. Duncan shows nineteen (19) spaces. Comm. Funk noted that they couldn't go back and change what had already been approved that that the Area Variance request was to add only one (1) space instead of the required two (2). There was further discussion regarding the number of parking spaces and the lack of room and the use of the lot. Mr. Duncan stated that there was more than ample room for his tenants. Comm. Place asked if they could restrict the number of units if he sells it. Chair Hickey noted that they couldn't apply those kinds of conditions. Comm. Place did express concern regarding the ability of emergency vehicles to get down the driveway and where was the best spot for parking in driveway to accommodate that. Chair Hickey didn't see room for twenty (20) spaces unless the Board grants a variance for only one (1) extra space.

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

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE AREA VARIANCE – 110 ELM ST. – (DUNCAN)(SD) – AREA VARIANCE – PARKING – 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, already done
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. No, it's only one (1) space, but there is already a serious deficiency resulting from what was approved in 2003.
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. Place, seconded by Comm. Funk, voted and carried.

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE AREA VARIANCE – 110 ELM ST. – (DUNCAN)(SD) – AREA VARIANCE – PARKING – BE APPROVED EVEN THOUGH A DEFICIENCY IS RECOGNIZED IN THE PARKING BY ALLOWING A TOTAL OF NINETEEN (19) PARKING SPOTS AS INDICATED ON THE SITE PLAN SURVEY MAP SUBMITTED WITH THE 2012 APPLICATION AND THAT NO MORE UNITS ARE TO BE ADDED TO THE BUILDING AND THAT PARKING SPACES ARE TO BE STRIPED.

Item No. 2 – 165 ½ Homer Ave. – (Thoman)(GB) – Rehear (Public Hearing)

Attys. David and Patrick Perfetti were present to ask the Zoning Board of Appeals to rehear their request for a Use Variance for their client, Dr. William and Mrs. Cynthia Thoman. He asked to articulate for the record that they appeared here in February under the impression that they were having the rehearing at that time, but the Board took that proceeding as their application for a rehearing and voted on that and that today is actually the rehearing. Atty. Patrick Perfetti asked Chair Hickey to accept the latest materials he was submitting, including a letter and attached photo exhibits and some other materials to augment that letter. Chair Hickey stated that the request was granted. He then stated that he had a couple more items to be accepted by the Chair as exhibits which included more photos, a zoning map of the area and letters from his office notifying the neighbors of the use variance request. Chair Hickey stated that the

commissioners already were in possession of the letters. Comm. Wickman questioned the spelling of Mr. Feldman's name. Chair Hickey asked if there was anyone present to speak to this request. No one was present representing the neighboring property owners to render comments.

Atty. Patrick Perfetti stated that the exhibits, letter and map set out in detail the issue before the Board. He stated that Dr. & Mrs. Thoman need to receive a Use Variance on this property. He explained that the property had long been used by Dr. Thoman as his dental office. He noted that Dr. Thoman has retired and no longer needs to use the property. He stated that thirty-seven (37) years ago it was acquired by Dr. Thoman from his father-in-law, Mr. Kruger and is now owned by the Pollock Trust and is east of the subject property. He noted that the property served Dr. Thoman well for his dental practice. He stated that there was an easement connected to the property which allows for three (3) parking spaces. He explained that was all Dr. Thoman needed for his practice, but noted that it was limiting for the commercial aspect of the building. He stated that lack of parking prevents continued use as a commercial property that presents the hardship that they are seeking to be alleviated from by these proceedings.

Atty. Patrick Perfetti explained that Dr. Thoman had listed the property for sale and it has been continually for sale for the past four (4) years. He noted that realtors, Diann Potter and Dana Decker were present who have been trying to sell this property. He stated that Ms. Potter has submitted an affidavit stating that in over four (4) years she has only garnered one (1) interested buyer, which is Mr. Gary Mole. He noted that Mr. Mole was present this evening and there was a letter of commitment from Alliance Bank indicating that provided that the Use Variance can be obtained to allow Mr. Mole to convert the use of the property from its commercial use to residential use, that he can receive the appropriate financing to finalize the purchase of the property. He noted that he felt the four (4) year period of time represented a clear due diligence on the part of Dr. Thoman to try to obtain a buyer for the property and it represents the issue of economic hardship. He explained that the property has long been assessed at eighty-five thousand (\$85,000) dollars and over that period of time that it's been for sale, the property had been listed at its assessed value. Attempts to sell at auction, also failed. He went on to explain that the asking price had been reduced to the point where Mr. Mole is ready to purchase and Dr. Thoman is prepared to sell at that significantly reduced price. It is current at fifty-five thousand (\$55,000) dollars.

Atty. Patrick Perfetti explained that the property has recently received a lower assessment, but Dr. Thoman did pay the taxes based on the higher assessment over time and he has paid the insurance, paid for the utilities and maintained the property. He explained that Mr. Mole intends to use it as a residence and he felt that it was in keeping with the character of a residential neighborhood, even though it's a commercial district. Mr. Mole intended use is consistent with that block of Homer Avenue.

Atty. Patrick Perfetti stated that this matter had been referred back from County Planning and they recommended approval of this use variance. He explained that their approval and their recommendation that this body approve the variance request allows

the property to be put into its most economically viable use. Both Dr. Thoman and Mr. Mole were present to answer questions. Comm. McGinley asked if the glass company was still operating. Atty. Patrick Perfetti stated that it was not operating. Comm. McGinley noted that they must own the building and a portion of the driveway. Atty. Patrick Perfetti referred her to a map and noted that there was an easement. Comm. Place asked what distinguishes this property from others as to why it hasn't sold. Atty. Patrick Perfetti noted that this parcel is unique as the use became permitted years ago and might not be permitted now. He explained that the commercial use of the building is no longer something Dr. Thoman cares to utilize and he has attempted to sell it and has been unable to garner a buyer. He explained that it is a small building at about one thousand (1,000) square feet and that may not be adequate for other commercial applications other than what Dr. Thoman used it for.

Comm. Wickman asked Diann Potter why it has been so difficult to market this as a commercial property. Diann Potter stated that the biggest problem in marketing the property has been the fact that there is no on street parking and for another business owner to operate, it limits almost every other commercial use for this property. She did note that the plus has been the easement which makes it attractive as a single family use because there is adequate parking for a single family dwelling.

Comm. Funk noted that it was marketed as a commercial property, but he wanted to know how far the price had been reduced before there was an interested buyer. Diann Potter stated that it had gone from eighty-nine thousand nine hundred (\$89,900) dollars to fifty nine thousand nine hundred (\$59,900) dollars, but the agreement now is at fifty-five thousand (\$55,000) dollars. She stated that it has continued to be on the market at that price as a commercial property and there still has been no interest. Atty. Patrick Perfetti stated that Mr. Mole's offer is contingent upon receiving the variance and that the listing remains open until that is approved. Mr. Dana Decker noted that it had been offered at auction and there had been no sale. Diann Potter noted there was only one verbal bid at the auction and that was received from the neighbor next door, but it did not get over ten thousand (\$10,000) dollars.

Chair Hickey reminded everyone that there is a four (4) prong test to determining a use variance. She noted that the first is a reasonable return and the Board must decide whether the evidence indicates that there cannot be a reasonable return. She noted that Atty. Perfetti has stated the case for hardship and that the essential character of the neighborhood won't be altered, but she wanted to hear more regarding the hardship being self-created.

Atty. Patrick Perfetti stated that when dealing with self-created hardship issues, Dr. Thoman has utilized the property in good faith. He noted that the position would be that the steps that have been taken by going to auction and failing to procure a buyer is a significant aspect. He noted that Dr. Thoman didn't buy the property with the intent of utilizing it for income; he utilized it as a commercial property and is not at a point in life where he would care to continue in his dental practice and has chosen to stop and he has taken extraordinary efforts to attempt a sale of this property. Atty. Patrick Perfetti

stated that the nature of the property being used as it was intended and Dr. Thoman obtaining the easements from his father-in-law, were all approved and all proper. He has not done anything without permit and he has not done anything subversive and he has used the property for its intended purposes. Chair Hickey asked him if he was saying that because the City granted permission for this, even if it was wrong of the City twenty-five (25) or thirty (30) years ago to have done that, that the action of the City created the hardship and not the person who applied for the variance. Atty. Patrick Perfetti noted that was not what he was saying.

Atty. Patrick Perfetti doesn't know what the boards who gave the approval for this long ago had considered, but the property now exists as commercial, but it had had no sale and the owner has gone to significant efforts to sell the property under those conditions including at auction and it has not sold. He does have a buyer now who is willing and able to use it as a residential property. He noted that one of the things that differentiates it from other commercial properties that haven't been able to sell is that this seller has gone to some significant effort and cost at those efforts and that Dr. Thoman has not created the hardship. He felt that the hardship was that they couldn't procure a buyer that can continue its use and that the hardship comes from the character of the property because commercial buyers want access to the property for patrons who can park there. Comm. Wickman agreed that he didn't feel that it was self-created with the issue of the location as well as the Cortland economic environment. Atty. Patrick Perfetti noted that there wasn't on street parking in this area and he agreed that adds to the uniqueness of the property.

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

On the motion of Comm. McGinley, seconded by Comm. Place, voted and carried.

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE USE VARIANCE REHEARING - 165 ½ HOMER AVE. – (THOMAN)(GB) – REHEAR – BE PLACED ON THE TABLE FOR DELIBERATION.

A SEQR Review was done.

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

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

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. Given the evidence, there has been a substantial loss in value as well as expense for taxes and maintenance. It is important that this will be owner occupied and not a rental.
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). Yes, uniqueness is due to the size of property and limited parking.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood. True
4. The alleged hardship has not been self-created. No, not self-created as things change over time.

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE USE VARIANCE REHEARING - 165 ½ HOMER AVE. – (THOMAN)(GB) – REHEAR – THAT THE USE VARIANCE BE APPROVED TO ALLOW FOR USE AS A SINGLE FAMILY RESIDENCE.

Zoning Officer Weber noted that once this variance request is granted it is now permitted as a single family home and another variance would need to be filed if the property were to be used for another non-permitted use.

Item No. 3 – 28 South Ave. – (Bennedy)(R2) – Use Variance & Area Variance – Renovations & Parking (Public Hearing)

Ed Bennedy was present and explained that there had been a fire in the building but there is no fire damage to the building and the roof had been replaced. Comm. Place asked why it hadn't been condemned and torn down. He stated that the building has a solid structure and that he had one (1) occupied apartment on the first floor and that the other half of the first floor was vacant and that the second floor was all vacant. Mr. Bennedy explained that the walls are all shot and that he needs to redo the electrical. He can make it a two (2) unit to conform to the R2, but it would seven (7) or eight (8) bedrooms in an apartment. He noted that people don't need that many bedrooms and they can't afford the rent. He would like to finish off the first floor and put one (1) small apartment and one (1) big apartment and another over top. He stated that he would actually lose money, but didn't want to pay the escalating vacant building registry fees. He stated that he would rather just finish the first floor and close off the second floor, but

he can't do that with the City. He explained that he would like to tear down the porch, tear down the back of the building and condense the size of the building and open up the size of the lot and put two (2) three (3) bedroom apartments on the first floor. He noted that upstairs would be four (4) bedrooms and downstairs would be three (3).

Chair Hickey asked how many apartments. Mr. Bennedy that he would like to put in just three (3) with two (2) on the first floor and one (1) on the second. Comm. Place asked if his submitted plans were drawn to scale. Mr. Bennedy admitted that his drawings had started to scale, but things had changed as he progressed. Comm. Place asked him if he had considered just taking off the second floor. Mr. Bennedy stated that he had not thought about that. Comm. Place stated that doing that would cost him less than renovating in the long run. Mr. Bennedy noted that it would cost him to put another roof on besides the cost of demolishing the second floor.

Comm. Wickman asked if he was undertaking the proposed renovations on his own or had he brought in a firm to look at the property. Mr. Bennedy stated that he had brought one in the last time he applied. Comm. Wickman was disturbed by the overall condition of the property, noting that it was one of the worst he had seen. He stated that he had no idea what the interior looked like and he wanted that information. Mr. Bennedy stated that all of the walls would be redone because the plaster and lathe are coming down. Comm. Wickman asked him why he didn't just tear it down. Mr. Bennedy stated that he couldn't afford that.

Comm. Place stated that the cost to remodel this existing structure is beyond Mr. Bennedy's imagination. She felt that he should take off the roof and take down the second floor. Comm. Wickman agreed. He noted that the level of deterioration of the property that he saw makes it unwise to remodel the existing structure, which is in poor condition. He noted that Mr. Bennedy might be better off just tearing the building down.

Chair Hickey asked with regards to the Planning Commission approval as noted in their minutes that there was no mention of the number of units. Zoning Officer Weber stated that it was the same application that was before the Zoning Board asking for three (3) units.

Mr. Bennedy stated that they did most of the work themselves to keep the cost down. Comm. Place noted that the problem was that the building was an eyesore to the neighborhood. Mr. Bennedy stated that the outside of the building would be fixed as well. Comm. Wickman stated that there were a lot of unexpected problems found when remodeling an older home. Comm. Funk noted that for his estimate of ninety thousand (\$90,000) dollars was to gut and renovate the first and second floor and he agreed with Comm. Place that if Mr. Bennedy removed the entire second story and virtually mimicked the existing first floor apartment he could do that for that amount or less. Comm. Place reminded Mr. Bennedy that he would then be in compliance with the zoning. Mr. Bennedy asked if anyone had any idea what it would cost to remove the second floor and lower the roof down. Comm. Place stated that he wouldn't reuse the

same roof; he'd remove the second floor and put some new trusses on. Mr. Bennedy noted that it was a metal roof and that he could probably reuse.

Comm. Wickman noted that he could bring in a company like Crown Construction to give him an estimate. Comm. Place noted that he was free to do what he wanted, but she felt that the only reason he was asking for us for the third unit was to make it economically feasible and we're saying it would be economically more feasible to have just a two (2) unit building.

Mr. Bennedy noted that on that basis, it would be more economically feasible if the City would allow him to do two (2) units and not fine him for the vacant building and he would just close off the second floor. Comm. McGinley stated that she would rather do that. Comm. Place asked for an explanation of the vacant building law.

Asst. Chief Knickerbocker stated that if it was actually vacant space there is a portion of that ordinance that speaks to it, but there is some conflict within the Code. He explained that there was a fire in the building and it set idle for over twelve (12) months. Zoning Officer Weber noted that it does say if it is unoccupied and secured it would not be considered a vacant building or a portion of that. Asst. Chief Knickerbocker felt that there were other qualifiers to consider.

Comm. Place asked what the building code violations were. Zoning Officer Weber noted that there could be a variety of things, such as an unoccupied space that was used for storage, which results in a mixed occupancy in a two (2) family. Comm. Place asked if it wasn't used for anything and no one could get in there and it's secured so no one could accidentally wander up there, then maybe there would be argument that it wouldn't be considered vacant. Zoning Officer Weber agreed. Asst. Chief Knickerbocker felt that the space was non-conforming and couldn't be used. Zoning Officer Weber stated that the argument before the board was that it was a use variance to allow a multi-family where there is only a two (2) family allowed and also all of the other variances that have been spelled out in his review of the application, such as area variances and the use variance involved in the conversion.

Comm. Funk asked Zoning Officer Weber if the board didn't grant the use variance then that space would not be considered occupiable. Zoning Office Weber stated that he could potentially have it as a two (2) family and not have it as a vacant building. Comm. Funk asked if he wanted to proceed with the plan to renovate the downstairs and isolate the upstairs and if we didn't grant the use variance then that space is unoccupiable as a dwelling unit. There was further discussion regarding various viewpoints of the vacant building law.

Chair Hickey noted that the cleanest solution would be to make it a two (2) family home, one (1) up and one (1) down. Mr. Bennedy noted that would be seven (7) or eight (8) bedrooms on each floor and that would not be rentable. Zoning Officer Weber stated that there was nothing that said he had to make that number of bedrooms; he could make a family room, a larger living room, a master suite, etc.

Alderman Quail stated that he could create indoor storage space so items wouldn't have to be stored outside. He also asked if the building had been professionally cleaned. He stated that he had been in the building three (3) years ago and the upstairs was filled with bird droppings and that needs to be professionally cleaned if that space is going to be occupied. Mr. Bennedy stated that it would be cleaned. Asst. Chief Knickerbocker stated that an asbestos survey also needed to be performed prior to demo.

Mr. Bennedy stated that he would rather close off the second floor. He suggested that he could lock it up and close and lock the windows and call it an attic. Asst. Chief Knickerbocker said there still could be issues. Zoning Officer Weber stated that he could make a proposal to use it as storage space as accessory uses to his apartments. Alderman Quail asked for the submission of scale drawings because parking in that area was very limited and it was very challenging in the rear with tight parking and limited greenspace.

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

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE USE VARIANCE & AREA VARIANCE – 28 SOUTH AVE. – (BENNEDY)(R2) – USE VARIANCE & AREA VARIANCE – RENOVATIONS & PARKING BE PLACED ON THE TABLE FOR DELIBERATION.

A SEQR Review was done.

On the motion of Comm. Place, seconded by Comm. McGinley, voted and carried.

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

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

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, no competent financial 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). No, but there's the fact of the fire and it's been sitting vacant.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood. No, but it further increases density in the area and it is a very congested area.

4. The alleged hardship has not been self-created. Yes, it's self-created.

On the motion of Comm. Place, seconded by Comm. Funk, voted and approved to **DENY**.

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE USE VARIANCE – 28 SOUTH AVE. – (BENNEDY)(R2) – USE VARIANCE – RENOVATIONS & PARKING BE DENIED BECAUSE IT WOULD FURTHER INCREASE THE DENSITY; AS WELL AS DUE TO LACK OF EVIDENCE OF REASONABLE RETURN AND THAT THE HARDSHIP IS SELF-CREATED IN THAT THE FIRE OCCURRED PRIOR TO THE PUCHASE OF THE PROPERTY BY THE CURRENT OWNER.

Mr. Bennedy stated that he would leave the property the way it is until he can determine what to do. Chair Hickey told him that the Board needs to see evidence of financial hardship before granting a use variance and that he must meet all four (4) of the criteria.

Item No. 4 - 41 Main St. – (Karam)(CB) – Area Variance – Signage

Charbel Karam, the owner of the Pita Gourmet, was present. He stated that last October he had changed the awning material on the front of his restaurant building and had no idea that he needed to go before the Historic Board to obtain approval before doing this. He needs the awning and signage on that awning so that people can see his restaurant building because the Beach House Mall building blocks the view of his building.

He stated that the Historic Board had a problem with the color, but they are now working together to reach a solution to this. Zoning Officer Weber agreed that the Historic Board and Mr. Karam have come into an agreement and the only thing the Zoning Board is looking at is the issue that there is excess signage on the awning and that is why Mr. Karam now needs to obtain a variance. Linda Kline, Chairperson of the Historic/Architectural Advisory Board was present to answer any questions. Zoning Officer Weber noted that this variance grant would only last until December 2012 and then it will revert to the Historic Board who will have jurisdiction in December for both color and amount of signage.

Comm. Funk asked if in granting this variance was the Zoning Board giving a level of leniency to everyone else in violation by setting a precedent. Mr. Karam stated that he needed the extra signage. Comm. Funk did not want to set a precedent.

Comm. Funk noted that there is an advantage to extra signage and this variance could encourage someone else to try it. Zoning Office Weber stated that the problem with people doing things without approval as it puts Boards in a tough spot. Mr. Karam stated that he had no idea that he needed to apply to put up a new awning. Comm. Place noted that this sounds like the Historic Board and the business owner want time to work on solving this problem. Mr. Karam stated that he will never deal with this issue again.

Chair Hickey asked what the problem was according to the City Code. Zoning Officer Weber stated that stores are allowed one (1) square foot of signage per linear foot of business frontage and even the sign on his building was over the allowed signage. He explained that all of the awning signage is over the allowed signage. Comm. Place stated that she did not have a problem with letting the Historic Board solve this situation.

Historic Board Chairperson Linda Kline stated that she has been working for months on this and it's been difficult. She asked that the Zoning Board give Mr. Karam the use of all signs until December 2012 and then he has to come back with a permanent sign proposal and present it to the Historic Board. She explained that the Historic Board tries to be consistent and this was the only way to achieve a happy ending.

Mr. Karam stated that the current signage was paid for by taxpayer dollars through a grant and he would like to keep all of the signage. He will work with the Historic Board and he needs to get approval for the excess signage. Chair Hickey asked if they could approve a temporary variance.

Zoning Officer Weber gave them their options. He noted they could approve the signage without any conditions, or deny the variance application or approve the signage with the stipulation that any change being made will be at the discretion of the Historic Commission. So, any further decision regarding the amount of signage will be at the discretion of the Historic Commission. Chair Hickey asked where it was guaranteed that he would come back. Zoning Officer Weber stated that if he did not then Mr. Karam was in violation of the stipulation that you had granted because are saying that you're giving full authority to the Historic Commission and they have stipulated that Mr. Karam must come back by December with a new plan and should he fail to do that, he would be in violation.

Comm. Funk asked what happened once they gave up authority, would that be permanent? Zoning Officer Weber told him that the Zoning Board could give the stipulation that they were allowing the Historic Commission to make the final decision on the allowable signage in this case.

Chair Hickey asked Linda Kline and Mr. Karam if they felt they were close to an agreement. Both indicated that they were.

There was no one further to speak, therefore the Public Hearing was closed.

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE AREA VARIANCE - 41 MAIN ST. – (KARAM)(CB) – AREA VARIANCE – SIGNAGE 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. Take down awning or do different signage.
3. Whether the requested area variance is substantial. Yes, three signs are over the limit, but the Beach House Mall does hide his signage
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. Funk, seconded by Comm. Wickman, voted and carried.

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE AREA VARIANCE - 41 MAIN ST. – (KARAM)(CB) – AREA VARIANCE – SIGNAGE BE APPROVED AND CONTINGENT UPON REACHING AN AGREEMENT WITH THE HISTORIC BOARD ALLOW THE HISTORIC BOARD TO MAKE THE DECISION BY DECEMBER 2012.

Item No. 5 - New Business

Chair Hickey would like to request a training session before a meeting. Comm. Place has requested training and also would like information on the Comprehensive Plan. She would like to meet with the Planning Commission to understand how to work with this. It was asked if Corporation Counsel Colasurdo could participate in these training sessions especially regarding Use Variances. Zoning Officer Weber stated that he would set something up within a few months as a new Board member was expected to be appointed by April.

Minutes – February 13, 2012

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	Aye
Comm. Wickman	Aye		

RESOLVED THAT THE MINUTES OF FEBRUARY 13, 2012 BE APPROVED AS AMENDED.

Adjournment

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. McGinley	Aye	Comm. Place	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 12th DAY OF MARCH 2012.

MARY KAY HICKEY, CHAIRPERSON