

Zoning Board of Appeals
City of Cortland
August 13, 2012

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

Present: Chair Hickey, Comm. Funk, Place and Stoll

Staff: Director of Administration and Finance Mack Cook, Zoning Officer Bruce Weber, Asst. Chief William Knickerbocker and Cheryl Massmann, Deputy City Clerk

Item No. 1 – 19 W. Court St. – (DeVecchio)(R4) – Interpretation of Zoning Officer's Determination (Public Hearing) - Continuation of Tabling at applicant's request until September 10, 2012 meeting.

Chair Hickey announced that at the applicant's request, this will be tabled until the September 10, 2012 meeting.

Item No. 2 – 13 Lansing St. – (MacHenry)(R1) – Area Variance – Driveway

Chair Hickey noted that this was a continuation of the Public Hearing left open at the last Zoning Board meeting. Robert MacHenry was present. Atty. Francis Casullo was there to represent him. Atty. Casullo noted that he was not retained for the July meeting and he reiterated that Mr. MacHenry is seeking to build a garage and asking to build and pave a new driveway to that garage and is seeking a variance to do that. Atty. Casullo presented a petition of support signed by fifteen (15) of the neighbors including Alderman Quail who lives on the street. Atty. Casullo noted that it would drastically upgrade the property as well as add to the value.

Comm. Place asked if a scaled site plan was being presented. Mr. MacHenry stated that he had not submitted anything more from the last time, noting that the drawing originally presented was not to scale. Atty. Casullo stated that Mr. MacHenry would do anything requested by the Board.

Chair Hickey noted that the Board understood that the building of the garage was not an issue, but it was the driveway. She noted that the feeling that was expressed by some of the Board members, was that in an R1 district, additional driveways are not aesthetically pleasing. Atty. Casullo responded that this lot has been used this way for many years. He asked that the Board note how many neighbors signed the petition supporting this project. He felt that it would add to the aesthetics and put the vehicles and other items in an enclosed brand new garage with a brand new paved driveway.

Chair Hickey noted that one of the suggestions that came from the Board was to go ahead and build the garage, put in the new driveway, but take out the old driveway. Mr. MacHenry noted that the problem was that the old driveway was a shared driveway with 11 Lansing and if he took out the driveway, he would be taking out half of 11 Lansing's driveway, which was shared by his mother who lives there.

Comm. Place noted that 11 Lansing's driveway was eight and a half feet (8 ½ ft.) wide and she doesn't understand the reluctance to access the house from the new driveway by crossing the patio area. Mr. MacHenry stated that there was a fence there. Comm. Place stated the fence was around the pool, not the patio. Mr. MacHenry stated that the fencing around the patio was not shown on the older survey that was being looked at. Comm. Place noted that he could install a gate. Mr. MacHenry stated that the patio shown is all enclosed and is actually a room today.

Comm. Place sees no reason given for the Board to grant a variance. Mr. MacHenry noted that if the property hadn't been sub-divided there would be no problem. He also noted that he has more greenspace than most properties in the City. Atty. Casullo noted he was troubled by the Board's reluctance as this will improve the property and noted that this is a public hearing to find out what the neighbors think and some of the neighbors are here and they're totally in favor of it. He noted that Alderman Quail supports this and sees the value in this. Atty. Casullo stated that Mr. MacHenry is willing to provide additional plans and if the Board wanted, they could indicate some additional conditions and his client is willing to accept those.

Mrs. Riccardi spoke in support of the project as she wanted her street to look nice and she thought that having a new garage and driveway would make Mr. MacHenry's property look very nice. She noted that they have two (2) driveways on their property. Mr. Riccardi noted that there are four (4) other houses on that street that have double driveways.

Mr. MacHenry noted that it was suggested by the Board at the last meeting that he connect the two (2) driveways and he would have no problem. Comm. Funk noted that if there was another way for Mr. MacHenry to do this without the Board having to bend the rules, they had to make those suggestions to see if any would be an option for him.

Chair Hickey noted that the Board has turned down most of the requests for two (2) driveways in an R1 District as they tend to detract from the property's appearance in general.

Atty. Casullo stated that he felt that they had stated all they could and Mr. MacHenry did what he was asked to do, which was to survey his neighbors and the vast majority of them are in favor of this. Atty. Casullo noted that Mr. MacHenry had not done scale plans and if they're wanted, they will do it. He noted that if there were some other conditions placed that they could meet, they were willing to do that and work with it. He stated that allowing this wouldn't hurt the City, but ultimately it was the Board's decision whether or not to allow this.

Comm. Place asked Atty. Casullo how the Board could look like they weren't making a capricious judgment. Atty. Casullo noted that it has been used this way for years. Mr. MacHenry agreed, noting that they've been driving on it for years. Chair Hickey agreed that it was clear that they've been driving on it, but that didn't make it right. Comm. Stoll noted that the lot was big enough to put in a driveway. Mr. MacHenry noted that there was an existing curb cut and it was intended for a driveway.

Chair Hickey noted that it was not an approved driveway, but she was possibly willing to consider granting this, but she had no idea what dimensions they were looking at. She stated that they were talking about an enormous garage. Comm. Place noted that the proposed garage is bigger than his house. Mr. MacHenry stated that it was thirty (30) by forty (40 feet). Comm. Place stated that was twelve hundred (1,200) square feet. Mr. MacHenry stated that he was well aware of how big the garage was going to be, he had done his homework.

Comm. Place noted that by his drawing that he had presented that she was unsure. Mr. MacHenry stated that he spoke with Mr. Weber and asked what was needed and Mr. Weber told him to just put something on paper to give the Board an idea what there would be and that's what he did. He stated that he didn't know he had to provide a drawing to scale. He noted that if he had known, he would've done that. Atty. Casullo asked the Board to let him know what was needed and they would provide it.

Comm. Funk stated that he was leaning in favor of this, but he would like to see a scale plan and he would like to see him address the screening towards the driveway so that it's not just a big huge driveway. Comm. Place stated that she wanted to know how it was going to affect the trees that were currently on the site, noting that it currently was a lovely lot. Mr. MacHenry stated that the trees were not coming out of there and that he liked those trees himself. He noted that his father had planted those trees.

Atty. Casullo noted that they would get a survey and do a scale drawing with screening and note the affect of trees on site. Comm. Place noted that what was originally presented was not to scale. Mr. MacHenry asked if there was a setback number that he should keep in mind.

Zoning Officer Weber stated that the garage must be in the rear yard. Atty. Casullo stated that he would meet with Mr. MacHenry and they would mark up the existing survey and they will provide the location of the proposed garage, the dimensions, how he was going to provide some screening and some buffer and stay consistent with the City of Cortland Zoning requirements. Mr. MacHenry asked what was meant by screening and buffer. Comm. Funk stated that he should indicate trees and bushes and landscaping and the dimensions of the driveway itself. Atty. Casullo stated that they would do this.

Chair Hickey noted that this was a productive delay and going another month was probably in his favor because it takes a vote of four (4) members of this Board in order

to approve anything and four (4) is all that is here today, so one (1) person disagreeing would sink it at this point. She hoped that in September, they would have a more complete Board. Atty. Casullo stated that they would consent to adjourn this matter to the September meeting. Chair Hickey stated that they would hold the public hearing on this open until the next meeting. Atty. Casullo stated that he would go on the record as the representative of Mr. and Mrs. MacHenry and that they would have no problem with moving to the September Board meeting and they will get everything to the Board before the submission date for the September meeting. Comm. Place noted that the submission deadline was August 29, 2012 for the September meeting.

On the motion of Comm. Funk, seconded by Comm. Stoll, voted and approved.

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Place	Aye	Comm. Stoll	Aye

RESOLVED THAT THE PUBLIC HEARING ON THE AREA VARIANCE – 13 LANSING ST. – (MACHENRY)(R1) – AREA VARIANCE – DRIVEWAY - BE HELD OPEN UNTIL THE SEPTEMBER 10, 2012 MEETING.

Item No. 4 – 131-141 Homer Ave. – (NYSEG)(PO) – Special Use Permit – Relocation of Regulator Station

Mr. Ralph Hoy of NYSEG was present. He explained that the existing gas regulator station was in a pit on the corner of West Main Street and Homer Avenue and NYSEG wants to relocate that station and put the equipment above ground onto hospital property in the southeast corner of their parking lot off of Rt. 11. The hospital is in favor of this and has given NYSEG an easement to do this. He noted that having the regulator station underground poses a safety issue with corrosion. He explained that they plan to install an eight foot (8 ft.) by twelve foot (12 ft.) metal building. He noted that to meet Code the building had to be fire proof.

Comm. Stoll asked how many feet was it from the daycare center. Mr. Hoy hadn't measured it, but felt that it was a little less than one hundred feet (100 ft.). Mr. Hoy noted that this regulator station was just an overgrown meter set that most people will have at their houses and there were many located around the City. He stated that many were in pits and they were in the process of getting them all above ground. Comm. Stoll noted that this would be similar to the one located by the Food Bag. Mr. Hoy agreed. He also noted that they couldn't move this station to someplace different because of the piping configuration and that it had to stay in the general area of the current pit. He noted that NYSEG's long term goal was to get rid of as many of these stations as possible, because they were slowly trying to bring medium pressure gas closer to the center of the City, thereby eliminating the need for some of these regulator stations.

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

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Place	Aye	Comm. Stoll	Aye

RESOLVED THAT THE SPECIAL USE PERMIT – 131-141 HOMER AVE. – (NYSEG)(PO) – SPECIAL USE PERMIT – RELOCATION OF REGULATOR STATION BE PLACED ON THE TABLE FOR DELIBERATION.

The criteria for a Special Use Permit were reviewed.

1. That the lot area is sufficient, appropriate and adequate for the use and the reasonable anticipated operation and expansion thereof. Yes
2. That the proposed use will not prevent the orderly and reasonable use of adjacent properties. Yes
3. That the site is particularly suitable for the location of the proposed use in the community. It's a parking lot and safer and easier to get to.
4. That the characteristics of the proposed use are not such that it's proposed location would be unsuitably near to a church, school, public park or other similar uses. It's not.
5. That the access facilities are adequate for the estimated traffic from public streets or highways, so as to assure the public safety and to avoid traffic congestion, and further that the vehicular entrances and exits shall be clearly visible from the street and not be within fifty (50) feet. Yes, but irrelevant in this case. Mr. Hoy noted that they would get in there about once a month unless there was an issue.

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Place	Aye	Comm. Stoll	Aye

RESOLVED THAT THE SPECIAL USE PERMIT – 131-141 HOMER AVE. – (NYSEG)(PO) – SPECIAL USE PERMIT – RELOCATION OF REGULATOR STATION BE APPROVED.

Item No. 4 – 126 Elm St. – (Stauber)(GI) – Use Variance – Mini Storage & Parking

Gary Stauber explained that he had a back lot behind his shop on Elm Street that was about two hundred feet (200 ft.) by two hundred feet (200 ft.) and it's always had a gravel driveway back there from when it was a coal yard. He wants to start construction of some small storage units. He presented scale drawings of his site plan and noted that he has applied for a variance for a gravel drive and a building setback variance by the UPS building. He noted that the back of the steel building owned by UPS comes

right up to his property line and he's looking for a variance so he can build three (3) feet off of his fence over there. He explained that there was a seven (7) foot fence surrounding the perimeter of his property and he wants to stay three (3) feet off of that.

Comm. Funk noted that looking at the approved site plan, he asked if there was any way to move that proposed building located by the UPS building and rotate it so that it was perpendicular to the other one.

Mr. Stauber noted that if he was to do that, he would have to get a variance for that. He noted that there was nothing back there and it was commercial property, but for greenspace purposes and snow storage, it would be a lot easier for him to go straight through. Comm. Funk asked why he would need a variance for back there. Zoning Officer Weber stated that it had been a lot coverage issue as well as a snow storage issue. Mr. Stauber stated that was his original plan, but the Planning Commission made him redo everything. Zoning Officer Weber noted that the Planning Commission had worked hard to come up with the best scenario for this project.

Mr. Stauber noted that there were no houses to the rear of his property. Zoning Officer Weber stated that all of the adjoining property owners had been notified. Comm. Funk expressed concern regarding major run off issues. Zoning Officer Weber noted that the Planning Commission had gone over this plan in great detail. Comm. Stoll asked if he still planned to put in the drywell. Mr. Stauber stated that he would and he also had already regraded the property to improve the drainage.

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

Chair Hickey asked for clarification regarding the phased in construction of this project. Zoning Officer Weber stated that construction would have to begin within six (6) months with regards to the Planning Commission's approval of the site plan, but there was no time regulation regarding the lapsing of variances, but the Zoning Board did have the ability to place conditions.

Zoning Office Weber was asked whether a use variance as well as an area variance should be reviewed.

Zoning Officer Weber explained that Mr. Stauber was asking for two (2) things; asking for the building to be closer to the side property line and the other issue was the gravel versus the asphalt drive. He stated that the Zoning Board had to look at the criteria for each of them and act on them separately or they could act on them in conjunction. He further explained that they could look at a use variance for the asphalt drive and an area variance for the building setback.

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

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

Chair Hickey
Comm. Place

Aye Comm. Funk
Aye Comm. Stoll

Aye
Aye

RESOLVED THAT THE USE VARIANCE – 126 ELM ST. – (STAUBER)(GI) – USE VARIANCE – MINI STORAGE & PARKING – GRAVEL DRIVEWAY AREA - BE PLACED ON THE TABLE FOR REVIEW AND THAT THE AREA VARIANCE -126 ELM ST. – (STAUBER)(GI) – AREA VARIANCE – MINI STORAGE & PARKING – SIDE YARD SETBACK BE PLACED ON THE TABLE FOR REVIEW.

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. Competent evidence has been presented by the applicant. It was explained very well that if the applicant had to pave, he'd have a substantial lack of return.
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). UPS has a gravel yard and surrounding properties are similar.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood. No, will not alter.
4. The alleged hardship has not been self-created. Yes, self-created, but not changing the overall use and is pre-existing. It's always had a gravel driveway and is grandfathered, so to speak.

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

Chair Hickey
Comm. Place

Aye Comm. Funk
Aye Comm. Stoll

Aye
Aye

RESOLVED THAT THE USE VARIANCE – 126 ELM ST. – (STAUBER)(GI) – USE VARIANCE – MINI STORAGE & PARKING – GRAVEL DRIVEWAY AREA, IN TERMS OF SQUARE FOOTAGE AS SHOWN ON THE PLAN, BE APPROVED.

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. Yes, he can locate the buildings differently on the property. Yes.

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. Yes, there will be some run off from roof, but it will be minor.
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, but this is general industrial so an alternative industrial use is appropriate.

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Place	Aye	Comm. Stoll	Aye

RESOLVED THAT THE AREA VARIANCE - 126 ELM ST. – (STAUBER)(GI) – AREA VARIANCE – MINI STORAGE & PARKING – SIDE YARD SETBACK BE APPROVED.

Item No. 5 – 9 ½ Lansing Ave. – (Riccardi)(R1) – Use Variance – Addition of Employee

Atty. Ronald Walsh explained that in speaking with Zoning Officer Weber this afternoon that some deficiencies in the plan as submitted were noted. He explained that this property borders on the Town of Cortlandville which ordinarily would require referral to County Planning for their input back to this Board and to attempt to address any deficiencies that they noted to the plan. He asked that this application be adjourned to the next Zoning Board meeting, but he would be happy to discuss the merits of the application tonight.

Comm. Funk stated that he would like to see a revised plan and he would like to see due diligence done by having the applicants go out to obtain the neighbor’s signatures. He also would like to see if they plan to put a parking lot back there.

Atty. Walsh explained that there have always been two (2) chairs at this business. He stated that it was by appointment only and that there’s never more than two (2) and occasionally three (3) cars parked there if there’s a bit of an overlap with customers. He explained that there was plenty of parking on the street and he asked the Board to consider waiving that requirement for off street parking. He wanted to make it clear, that this application is not for an employee, but an independent person who spells off the owner and handles the overflow from time to time.

Comm. Place expressed concern regarding storage in the back yard. Atty. Walsh stated that the back yard was located in the Town of Cortlandville, but is in the process of being cleaned up with an arrangement made with the Town of Cortlandville. Mr.

Riccardi noted that the items stored in the rear yard were heavy equipment used in his plumbing business.

Atty. Walsh noted that they will ask the Board to consider waiving the requirement for on site parking as there has been no issue with parking since the original use variance was granted. He noted that an original temporary use variance had been granted in 1994 and that the use does not transfer with ownership and his client would be happy with the continuation of that arrangement.

Comm. Funk felt this item should be tabled while it is submitted for review to Cortland County Planning.

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Place	Aye	Comm. Stoll	Aye

RESOLVED THAT THE USE VARIANCE - 9 ½ LANSING AVE. – (RICCARDI)(R1) – USE VARIANCE – ADDITION OF EMPLOYEE BE TABLED AND THAT THE APPLICATION BE FORWARDED TO CORTLAND COUNTY PLANNING FOR REVIEW.

Chair Hickey noted that Deputy City Clerk Cheryl Massmann had received written communications regarding this application and she directed that the written communications be held until the application is reviewed at the September meeting. Zoning Officer Weber noted that these written communications were public information and could be shared with the applicant or their representative at any time.

Item No. 6 – 15 Sands St. – (Wainwright/Casullo)(R1) – Interpretation of Zoning Officer’s Determination

Atty. Francis Casullo explained that he represents Mark Wainwright and his father, Jack Wainwright. He explained that Mark Wainwright is going to transfer his properties in Cortland due to some recent circumstances. He stated that Mark is under contract to transfer four (4) properties soon. He explained that what has happened with the 15 Sands Street property is that Jack Wainwright bought the property in 1986 and at the time of purchase it was a three (3) unit. Atty. Casullo stated that Mr. Wainwright has paid taxes on the property assessment and the multi-unit inspections for almost thirty (30) years as a three (3) unit.

Atty. Casullo noted that in 2002, there was an intra-family transfer of this property into a trust and at that point, it appears that there may have been some notation that the property was a two (2) unit and no one caught it or paid attention to it because of the nature of the transaction. He further explained that in 2005 the property was again subject to an intra-family transfer and this time his law office received a CZO indicating that it was a two (2) family, which was not noticed and that was provided to the bank.

Atty. Casullo explained that in May 2012, when the property was going to be refinanced, it was learned that there was this issue between the two (2) and the three (3) unit on this property. He noted that once again, they didn't think too much of it thinking that they would deal with it later and quite frankly, the bank didn't care as long as they had a valid CZO on file. Atty. Casullo stated that in June 2012 for personal reasons affecting Mark Wainwright it became apparent that Mark would no longer be able to manage or maintain these properties and they entered into a purchase agreement that they are under contract with and they are hoping to close within the next week or so. He noted that the Sands Street property is the smallest of all of the properties involved in this sale. He explained that the individual who is under contract to purchase all of the properties and the Wainwright's are here asking for an interpretation that the Sands property was a three (3) unit and that a mistake was made in either 2002 or 2005. Atty. Casullo stated that he has FOILED the property file and also spoken with Assessor David Briggs and received a letter which states that he, himself, inspected 15 Sands as a three (3) unit in 2005. He also noted that from his FOIL inspection it's clear it's always been a three (3) unit from at least the mid to early 1990's. Atty. Casullo explained that he thought a mistake had been made and it should have been caught. He stated that at this point it would be very helpful to get this right. He explained that Mr. Wainwright has paid the taxes on the assessment and paid the inspections on this property as a three (3) unit from 1986 through 2012 and that is why they are here.

Comm. Place asked if Mr. Wainwright was swearing that this property was a three (3) unit since 1986 when he purchased it. Mr. Mark Wainwright stated that it was a three (3) unit, consisting of a Radio/TV shop in the back part and two (2) dwelling units. Mark Wainwright explained that in the 1950's and 60's, Mrs. Oaks owned it and they had it as a two (2) family with a business in the back and it was a three (3) unit when it was built and he never changed the structure at all.

Comm. Place asked Zoning Officer Weber when the zoning went into effect that said that this was a two (2) family only. Zoning Officer Weber stated that he didn't know. Comm. Place asked if the TV shop was in the rear when it was purchased by Mr. Wainwright. Mr. Wainwright stated that he purchased it as a three (3) family. Comm. Place stated that if it was a three (3) family when he bought it that legally it was grandfathered in. Chair Hickey noted that would only be the case if it was a legal use at that time. (Asst. Chief Knickerbocker went to get a copy of an old Zoning map from the 1970's.) Atty. Casullo stated that if it was an illegal use, Mr. Wainwright was inspected for a three (3) unit for all of these years. Comm. Place noted that a property gets grandfathered if it has been used that way continuously, unless it's lapsed; but you state in your affidavit that it was a three (3) dwelling unit property and you've continually kept it as three (3) dwelling units.

Zoning Officer Weber stated that grandfathering was for legal uses, so if it was converted illegally, it would not be grandfathered in. Atty. Casullo stated that he put that in Mr. Wainwright's affidavit. Zoning Officer Weber explained that if what happened was that the owner's who had it as a two (2) family and a repair shop, never got the proper

approvals necessary at the time to make it three (3) units, then it would not be a legal occupancy, but that was not known.

Atty. Casullo noted that he put in Jack Wainwright's affidavit that at the time of the purchase of this property that the property was a three (3) unit dwelling structure. Asst. Chief Knickerbocker arrived with the old Zoning map. Comm. Place noted that 15 Sands Street was an R1 in 1977.

Chair Hickey asked if an area variance was found in the files for that conversion. Zoning Officer Weber stated that none was found in the file.

Comm. Funk asked if either Mr. Wainwrights had been present at the inspections. Mr. Jack Wainwright stated that he was present at every inspection. Comm. Funk asked if the inspector ever brought this issue up. Mr. Wainwright stated that at one point, if you had a one (1) family or a two (2) family, you didn't get inspected. He noted that only three (3) or more unit properties got inspected. Asst. Chief Knickerbocker stated that back in 1984 or '85 when he first personally began inspecting this property, they were looking for multiple dwellings at the time and this property made the list as a multiple dwelling. Chair Hickey asked when the additional level of requirements began. Asst. Chief Knickerbocker stated that the inspections began when a property moved from a two (2) to a three (3). Chair Hickey noted that it was clear that the City was treating this as a three (3) family.

Comm. Place asked if they had the abstract on the property. Atty. Casullo stated that the abstract would only show who owned it and how they transferred it. He also noted that the deed wouldn't necessarily say anything, either. Asst. Chief Knickerbocker asked if the Wainwright's had ever lived at that property. Mark Wainwright stated that he had lived there while attending college, so it was owner occupied with two (2) additional rental units. Comm. Place noted that might have contributed to the confusion. Mark Wainwright stated that he had lived in the third unit in the back for three (3) years from 1985 to 1988 and then moved to one (1) of the three (3) bedroom units in the front for four (4) years until he moved.

Atty. Casullo stated that he doesn't believe that the abstract has the types of units. He explained that what he thought had happened was that in 2002 when Mr. Wainwright transferred this property into the trust, the gains affidavit and the equalization and assessment form was filled out the improper property class code was put in the paperwork and no one cared or caught it.

Chair Hickey looked at the Code back then and it was noted that if this had been a two (2) unit and they had wanted to convert it, a variance would've needed to have been applied for, even back then. Atty. Casullo noted that in 2002 it was claimed that there was a sell date, even when there wasn't a sale. It was just an intra-family transfer going into the trust. He noted that under property class, they put in two (2) family residential and he thinks somebody put it in under the wrong property class. He showed that under the most recent, it says that it's a three (3) family residential at the top. He stated that

he wasn't doing this deal in 2002, but he suspected that's what happened. He stated that it's always been a three (3).

Comm. Funk asked if the Zoning Board of Appeals decided that this property should be a three (3) unit and to override the Zoning Officer's interpretation, would a new CZO be issued. Zoning Officer Weber explained that if the Board decided that it should be classified as a three (3) family, the ZBA will overrule his interpretation that it is a two (2) and that it is a three (3) then they would apply for a new CZO as a three (3) family. He stated that given that his interpretation was overturned by the Board, under your direction, he would be obligated to sign the CZO.

Chair Hickey asked if his interpretation was overturned, would there be any broader implications or would this be specific to this property and these particular individuals. Zoning Officer Weber stated that interpretations are not specific to a certain property. He noted that he didn't know how this would impact anything else. He explained that in this case, they weren't being asked so much for an interpretation, but for a review of a decision. Zoning Officer Weber referred to the Book of Ordinances to explain that he reached a decision and this is an appeal to a decision. Chair Hickey noted that the decision he made was on the grounds of evidence he had seen. Zoning Officer Weber stated that the Board could potentially be setting a precedent for anyone else who would want come before you in regards to appealing a decision made by the Zoning Officer in regards to the legal occupancy of that building and you're looking what has been given to you as evidence and making a determination and that constitutes a body of evidence sufficient to overturn what is in the file. He noted that what was in the file was a Certificate of Occupancy as a two (2) family and you're now saying what is being presented to you is sufficient evidence to classify it as something else.

Comm. Place asked Zoning Officer Weber if he had all this evidence before him at the time he made his decision. Zoning Officer Weber stated that he did.

Atty. Casullo responded that the problem he had was that if someone makes an administrative error, which he clearly believes this was in that it was misclassified, that the property file contains far more evidence that the property is a three (3) unit than evidence that the property is a two (2) unit. He explained that if the Board went a step further and took what the Assessor's Office said, the Assessor wrote a letter stating that he inspected in personally as a three (3) unit. Atty. Casullo stated that for years someone in this room inspected that property as a three (3). He noted that the Wainwright's have paid taxes on that property at a three (3) and they've had to do work at a three (3) and to hold them that they can only have a two (2) based upon a CZO that he submits was done in error and wasn't caught, would lead to the conclusion that you can never correct a mistake.

Zoning Officer Weber stated that the question was asked as to whether this decision to be made by the Zoning Board tonight could have an impact on any other decision. He stated that what he wanted to be clear on, was once a decision is made that this is a three (3) family, is that anybody else can come with the same evidence that's being

presented tonight and based upon that decision, that could be used in the future by someone else based on the evidence and this Board would almost be obligated to do it again and that was the point he was trying to make.

Chair Hickey noted that the Board would have to weigh the evidence presented. Zoning Officer Weber agreed. Atty. Casullo noted that was why this was called the Board of Zoning Appeals as any decision the Zoning Board makes, sets a precedent. Atty. Casullo stated that the Wainwrights and he wouldn't be here tonight, if they didn't feel that the property file had more evidence that this was a three (3) unit than a two (2).

Chair Hickey asked this question because prior to this, this Board had been asked for an interpretation of a definition. Zoning Officer Weber stated that was why he was inclined to say that this was more of a decision than an interpretation. He stated that it was not an interpretation of the Zoning Ordinance, but simply a decision. Atty. Casullo agreed.

Atty. Casullo read from a multiple residence inspection verification form handed to him by Director of Administration and Finance Mack Cook where Mark, Jack Wainwright, 15 Sands Street, Cortland, NY, indicating number of stories in the building was two (2) and the number of individual dwelling units was three (3) and this is dated Aug. 13, 1996 and signed by Code Enforcement Officer Knickerbocker.

Comm. Stoll stated that his personal feeling was that as long as it was inspected by City administration and our City Code Office, that it was a three (3) unit. Comm. Funk stated that his concern was that they might be setting a precedent when a City official was not able to go into a building to verify the number of units and forces the City's hand to allow them to have more or less units; however they can fit, based on evidence they feel is in the file. He noted that but in this case, other than the CZO, the evidence presented here was pretty substantial that this was a three (3) unit and that a City inspector actually went inside to verify. He noted that he didn't see anything that indicated that this had been vacant for an extended period of time or anything to indicate why this might have changed from a three (3) unit to a two (2) unit other than the CZO.

Chair Hickey asked how the taxes were figured on a multiple dwelling unit property. Zoning Officer Weber stated that the assessor is not concerned with the legal use of the property; he is simply taxing it based upon what he determines its use to be. Director of Administration and Finance Cook stated that properties are assessed based upon current market value or what you would sell it for. He further explained that when you get into three (3) families, they're based upon the economic value or income potential or what it's grossing.

Chair Hickey noted that the Wainwrights had been paying the higher tax rate, then clearly the City was interpreting this as being a three (3) family and there is a difference between what a three (3) family and a two (2) family would've been. Dir. of Admin. & Finance Cook agreed that was correct. He noted that the taxpayer pays a higher tax rate in the treatment of this as a three (3) family. He noted that Mr. Wainwright relied on

this to his detriment over a period of time, in both taxes and inspections and we might have a conversation downstairs about a refund.

Comm. Place stated that what was significant for her was that it had been used continuously as a three (3) unit building for many, many years prior to when Mr. Wainwright bought it and he bought it as a three (3) unit house, so therefore it was a three (3) unit house.

Chair Hickey noted that the Board was hearing that it was bought as a three (3) family, but there was a limited amount of evidence to that fact, but if the City has been treating it as a three (3) dwelling unit building all along, then it's is more compelling. Comm. Place noted that it could've been that the City was incorrect in that.

Comm. Stoll noted that in that case, it was a clerical error. Comm. Place noted that it was very evident that since the store went out of business, the building has been a three (3) unit building. Atty. Casullo noted it has been a three (3) unit building since Mark Wainwright went to school in the 1980's. Comm. Place stated that it was important for the ZBA to note something in their decision.

Atty. Casullo felt that it was important for them to note that based upon the testimony provided, that if the Board is going to say this is a three (3) unit that it doesn't mean that every time that someone comes up and asks for a re-determination that they don't have to submit sufficient evidence for their request and that it will be on a case by case basis.

Dir. of Admin. & Finance Cook noted that in this case the Zoning Board can find that the City has estopped on this. Atty. Casullo explained that tonight's decision will not set precedent because each property owner would have to submit sufficient evidence and other applicants would have to come and show you that sufficient evidence, as we have.

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

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Place	Aye	Comm. Stoll	Aye

RESOLVED THAT THE INTERPRETATION OF ZONING OFFICER'S DETERMINATION – 15 SANDS ST. – (WAINWRIGHT/CASULLO)(R1) – INTERPRETATION OF ZONING OFFICER'S DETERMINATION BE PLACED ON THE TABLE FOR DELIBERATION.

On the motion of Comm. Place, seconded by Comm. Stoll, voted and carried to overrule the Zoning Officer's decision that this is a two (2) family and re-instate the property's three (3) family status based on history of property file.

