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**MINUTES OF THE REGULAR MEETING OF THE RENSSELAER CITY  
PLANNING COMMISSION HELD ON AUGUST 07, 2001 IN THE SECOND  
FLOOR CONFERENCE ROOM AT 7:00 P.M.**

**MEMBERS PRESENT:** Michael Merges, Chairman; Kenneth Downes, Vice-Chairman; Philip B. Smith; Philip Erlich; and Gordon Reynolds.

**MEMBERS EXCUSED:** Daniel Sanchez and Kathleen Dunn Ramon.

**OTHERS PRESENT:** Christian Connally; Sandy Fahrenkopf; Michael Mancini; Leonard Johnson; Michael C. Mensching; Ferne L. Dutkin; Ruth Kittle; Margie Hadley; Kathleen Atkins; Karen Gallagher; Joseph Liccardi, Deputy Corporation Counsel; and Charles Valenti, Director.

Michael Merges, Chairperson, called the meeting to order at 7:05 P.M. with a quorum present.

**MINUTES OF PREVIOUS MEETING:**

The first item on the agenda was the consideration of the minutes of the June 25, 2001 Special Meeting. Mr. Merges asked if there were any changes or additions to the minutes. There were none.

Philip Erlich made a motion to approve the minutes as published and Gordon Reynolds seconded the motion which passed unanimously.

Chairman Merges stated that the first item on the agenda was the consideration of an appeal for an area variance to construct an addition at 121 Third Avenue, submitted by Ms. Teresa Allison. He then introduced into the record the pertinent facts of the appeal, as well as the recommendation of the Rensselaer Planning and Development Agency:

**Allison, 121 Third Avenue, area variance recommendation**

Ms. Theresa Allison proposes to construct a porch at 121 Third Avenue. The proposed addition will be located in an R2 Residential Zoning District, and will have a minimum side yard of 2 feet and a total side yard of five feet.

According to the Zoning Schedule of Area and Bulk Regulations (Article III of the Zoning Ordinance of the City of Rensselaer) for a one or two family dwelling the minimum side yard should be 8 feet and the total side yard should be 20 feet.

The appeal under consideration is for an area variance. For an area variance to be legally granted pursuant to Article X of the General City Law, the following issues must be considered:

1. The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;
2. 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 area variance;
3. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
4. Whether the requested area variance is substantial;
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
6. Whether the alleged difficulty was self-created.

It is not felt that the granting of the variance would be detrimental to the public health, safety and welfare. It is also not felt that the proposed variance would alter the character of the neighborhood or be a detriment to nearby properties. The RPDA does not believe that the benefit sought by the applicant could be achieved by some method feasible for the applicant to pursue. Although the requested variance is substantial, it is felt that the variance is justified, considering existing conditions (i.e. size of the lot). We feel that the proposed variance would not have an adverse effect on the physical or environmental conditions in the neighborhood, or that the difficulty was self-created. Therefore, the RPDA recommends approval of the area variance as per plans submitted.

Mr. Merges noted that Ms. Allison was not yet present at the meeting and stated that the matter would be considered later in the meeting.

Mr. Merges stated that the next order of business before the Planning Commission concerned the reopening of the Third Street Theater as a Community Theater. He noted that this involved an appeal for a use variance and an appeal for an area variance. He then introduced into the record the pertinent facts of the appeals:

### **Wainschaf, 1573 Third Street, use variance recommendation**

Wainschaf Associates, representing Keith Pichard, owner, proposes to reopen the Third Street Theater at 1573 Third Street. The theater will be located in a R2 Residential Zoning District.

According to Article VIII Section D of the City Zoning Law the Third Street Theater nonconforming use status has expired, due to the discontinuance of the use for a period of one year. Therefore, the only uses allowed for that property are those allowed in an R2 Zoning District.

According to the Zoning Schedule for Use Regulations of the City of Rensselaer (Article III of the Zoning Ordinance) in an R2 Residential District one and two family dwellings are allowed, as well as public parks, playgrounds, and recreational areas. There are certain permitted accessory and special uses allowed. However, a theater is not listed among the permitted, accessory, or special uses.

The appeal under consideration is for a use variance. For a use variance to be legally granted pursuant to Article X of the General City Law, the Unnecessary Hardship Test must be analyzed:

1. Must show that one is deprived of all economic return under the existing zoning law. Applicant must demonstrate unnecessary hardship by submitting “dollars and cents” proof and they cannot yield reasonable return for any permitted use under the zoning regulations for the particular district where the property is located.
2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood; and
3. If granted, the use variance will not alter the character of the neighborhood;
4. The alleged hardship is not self-created.

### **Wainschaf, 1573 Third Street, area variance recommendation**

Wainschaf Associates, representing Keith Pichard, owner, proposes to reduce the off street parking requirements for the 3<sup>rd</sup> Street Theater at 1573 Third Street. The theater will be located in a R2 Residential Zoning District. The required parking is 1 space per 3 seats according to Article IV, Section B, Off-Street Parking and Loading Requirements. There is no off-street parking on the site of the theater.

The appeal under consideration is for an area variance. For an area variance to be legally granted pursuant to Article X of the General City Law, the following issues must be considered:

1. The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;
2. 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 area variance;
3. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

4. Whether the requested area variance is substantial;
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
6. Whether the alleged difficulty was self-created.

The Spotlight Players Community Theater, Inc. next made a presentation and introduced members of their Board: Ferne L. Dutkin, Kathy Hans, Michael C. Mensching, Ruth Kittle, and Margie Hadley. The members of the Theater Group presented a folder containing the Community Theater's history. Ms. Dutkin explained that the Spotlight Players Community Theater Group has been in existence for twenty-two (22) years, since 1979, producing plays and educational workshops. They have used the East Greenbush Schools Continuing Educational Program.

Ms. Dutkin went on to explain that the group is now looking for a home. The owner of the Third Street Theater is interested in donating the building to the group. She said that her season is limited to one (1) to two (2) shows per year. She said that the proposed facility would be a limited use facility.

Ms. Dutkin remarked that her Board talked with the neighbors on both sides. She pointed out that the Roman Catholic Diocese of Albany did not approve the use of St. Joseph's parking lot for her group's use due to liability reasons.

Mr. Valenti stated that the Spotlight Players must secure a permanent easement to provide emergency egress.

Mr. Downes asked if deliveries will be made in the front of the building. Ms. Dutkin responded in the affirmative.

Mr. Phil Smith asked about construction on street and if the Building Department had checked the building. Mr. Valenti said the building had not been checked as yet. He indicated that it is anticipated that Third Street will be reconstructed next year.

Mr. Valenti explained that the building in question is in an R2 Residential District. It has been abandoned for more than a year and according to the Zoning Ordinance the use must revert to a use that is allowed in that zone. Hence, there is the need for a variance.

Mr. Smith asked what time shows would begin. Ms. Dutkin stated that they would begin at 8:00 P.M., except for matinees.

Mr. Joseph Liccardi stressed that the Spotlight Players should secure a permanent easement for the emergency egress.

After further discussion, Mr. Philip Erlich made a motion, seconded by Gordon Reynolds for the following resolution:

*The Rensselaer City Planning Commission hereby recommends granting of a use variance for the use of 1573 Third Street as a theater since the applicant has fulfilled the requirements for the granting of a use variance. However, the recommendation is based upon the condition that the applicant secure a permanent easement for emergency egress.*

The motion carried unanimously.

Mr. Philip Smith made a motion, seconded by Kenneth Downes for the following resolution:

*The Rensselaer City Planning Commission hereby recommends the granting of an area variance for parking to use 1573 Third Street as a theater.*

The motion carried unanimously.

Chairman Merges stated that the next matter before the Commission involved an appeal for an area variance to build a shed at 3 Iowa Avenue. He introduced into the record the pertinent facts of the appeal, as well as, the recommendations of the Rensselaer Planning and Development Agency:

**Fahrenkopf, 3 Iowa Avenue, area variance recommendation**

Mr. Fahrenkopf proposes to build a 10'x12' shed in the rear of his yard and 3.5' from the side yard property line at 3 Iowa Avenue. The property is located in a R1 Single Family Zoning District.

According to Article III, Section F of the Zoning Ordinance of the City of Rensselaer, no accessory structure shall be located within 5' of the side or rear property line.

The appeal under consideration is for an area variance. For an area variance to be legally granted pursuant to Article X of the General City Law, the following issues must be considered:

1. The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;
2. 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 area variance;
3. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
4. Whether the requested area variance is substantial;
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
6. Whether the alleged difficulty was self-created.

It is not felt that the granting of the variance would be detrimental to the public health, safety and welfare. It is also not felt that the proposed variance would alter the character of the neighborhood or be a detriment to nearby properties. The RPDA does not believe that the benefit sought by the applicant could be achieved by some method feasible for the applicant to pursue. Although the requested variance is substantial, it is felt that the variance is justified, considering existing conditions (i.e. size of the lot). We feel that the proposed variance would not have an adverse effect on the physical or environmental conditions in the neighborhood, or that the difficulty was self-created. Therefore, the RPDA recommends approval of the area variance as per plans submitted.

The members of the Commission discussed the proposal with Mr. Fahrenkopf and with a neighbor.

Mr. Philip Smith made a motion, seconded by Philip Erlich, for the following resolution:

*The Rensselaer City Planning Commission hereby recommends a positive recommendation to the Zoning Board of Appeals for an area variance based on information submitted by the Rensselaer Planning and Development Agency.*

All voted in favor of the motion, except Mr. Downes who abstained. Thus the motion was carried by a majority vote.

Mr. Merges remarked that the next item for the Commission's consideration was an application for a Certificate of Appropriateness for the exterior rehabilitation of 8 Riverside Avenue. The pertinent facts are below:

**Mancini, 8 Riverside Avenue, Certificate of Appropriateness**

Mr. Michael Mancini and Geri Purcell propose to replace the porch at 8 Riverside Avenue. The property is located within a HR Historic Residential Zoning District.

According to Article IV, Section H, for improvements made on any property within the HR or HC Zoning District a Certificate of Appropriateness must be reviewed and issued by the Planning Commission before a building permit can be received.

Mr. Merges asked if there were any major changes. Michael Mancini stated that the porch would resemble the existing porch but it would meet all applicable codes.

Mr. Valenti stated he reviewed the proposal and felt that it would be compatible with the Historic District.

Mr. Philip Smith made a motion, seconded by Mr. Kenneth Downes for the following resolution:

*The Rensselaer City Planning Commission hereby grants a Certificate of Appropriateness to replace the porch at 8 Riverside Avenue as per plans submitted.*

The motion was passed unanimously.

Chairman Merges announced that the next matter before the Commission was an application for a Certificate of Appropriateness for the exterior rehabilitation of 15 Aiken Avenue. The pertinent facts are below:

**Montgomery, 15 Aiken Avenue, Certificate of Appropriateness**

Mr. Jerome Montgomery proposes to replace the porch at 15 Aiken Avenue. The property is located within a HR Historic Residential Zoning District.

According to Article IV, Section H, for improvements made on any property within the HR or HC Zoning District a Certificate of Appropriateness must be reviewed and issued by the Planning Commission before a building permit can be received.

The members of the Commission discussed the matter among themselves. It was noted that the owner of the property was considering a change in his proposal. Therefore, Mr. Philip Erlich made a motion, seconded by Philip Smith to table the Certificate of Appropriateness for a porch at 15 Aiken Avenue until the September 4, 2001 meeting.

The motion was carried unanimously.

**Allison, 121 Third Avenue, area variance recommendation**

Mr. Merges returned to the second item on the agenda, an application for an area variance to construct an addition at 121 Third Avenue, submitted by Ms. Teresa Allison. The Commission reviewed the documentation submitted by the applicant. Then Mr. Gordon Reynolds made a motion, seconded by Mr. Kenneth Downes for the following resolution:

*The Rensselaer City Planning Commission hereby recommends approval of the area variance to the Rensselaer Zoning Board of Appeals in accordance with the recommendation of the Rensselaer Planning and Development Agency and as per plans submitted.*

The motion was carried without a negative vote.

**OTHER BUSINESS:**

**Secretary's Report**

Mr. Charles Valenti reported that the Forbes Avenue Boat Launch Project is progressing. The contract has been signed. Construction will begin soon and a completion date of October 2001 is anticipated.

The Second Avenue Sewer Project is in the design phase.

The Third Street/Third Avenue Project is progressing well. The City is awaiting a Letter of Authorization from the New York State Department of Transportation. As soon as the City receives the letter, bids for the project will be let.

In regard to the Waterfront Revitalization Project, the City and the New York State Department of State are reviewing five (5) proposals.

The design of the Clearwater Dock is being prepared by the Laberge Group.

**ADJOURNMENT**

Since there was no other business before the Commission, Gordon Reynolds motioned that the meeting be adjourned and Kenneth Downes seconded the motion which passed unanimously. The meeting was adjourned at 8:03 P.M.

Respectfully submitted,

Charles G. Valenti  
Secretary  
CGV:rs