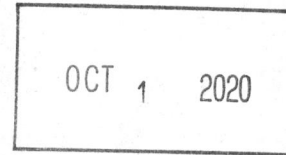


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**MINUTES OF THE REGULAR MEETING OF THE CITY OF RENSSELAER  
PLANNING COMMISSION HELD ON OCTOBER 5, 2004 IN THE SECOND FLOOR  
CONFERENCE ROOM OF CITY HALL AT 7:00 PM.**

**REGULAR MEETING:**

The regular meeting of the City of Rensselaer Planning Commission was called to order by Chairman Richard Mooney at 7:05 pm.

Roll Call was taken, and it was determined there was a quorum.

**MEMBERS PRESENT:**

Richard Mooney, Chairman; James Ahlemeyer; Ed Burns; Louis Lourinia; Michael Mancini; Louis Polsinello III; and Christine Van Vorst.

**OTHERS PRESENT:**

Andrew Barna; Susan Beers; Rudolf Berisic; Jack Casey, Counsel; Michael Cristo; Michael Dobereiner; Christopher Eastman, Assistant Planner; Ed Garrigan; Bob Hlavaty; Burt Hunter; Brenda Jiguere; Andrew Kohout; Robert Markiez; Dan Moore, Building Inspector; Michael Moore; Kim Parker; Marybeth Pettit, Planning Director; Paul O'Dell; Tim White; Marshall Winston; Daniel Zukowski; and Margaret Zukowski.

**MINUTES OF THE SEPTEMBER 7, 2004 MEETING:**

Commissioner Burns motioned for, and Commissioner Ahlemeyer seconded, approval of the minutes of the September 7, 2004 meeting of the City of Rensselaer Planning Commission as submitted.

All in favor. Motion carried

**NEW BUSINESS:**

**1. Michael Cristo, Submission of Water, Sewer, and Traffic Studies for Proposed Cottage Hill Subdivision**

Chairman Mooney announced that studies have been submitted by the developer regarding the proposed subdivision on the parcel south of Partition Street and east of Cottage Hill Street and asked if there were any questions from members of the Planning Commission.

Marybeth Pettit, Planning Director, explained that the staff of the Rensselaer Planning and Development Agency had recommended that an escrow account be created for the City to hire engineering professionals to study the site and potential impacts of the proposed development on it and the surrounding neighborhood.

Commissioner Burns motioned for the following resolution:

*“The City of Rensselaer Planning Commission hereby requests an escrow account be established by the applicant for City consultants to review the reports as well as other characteristics of the site and the proposed development. That account shall be in the amount of \$5,000. At such time the balance in the escrow account drops below \$1,000, the applicant will be asked to restore the account to \$5,000 within five business days. Upon completion of City review of the project, the balance of the escrow account shall be refunded to the applicant.”*

Commissioner Lourinia seconded. All in favor.

Motion carried.

**2. Paul O’Dell, Referral to Zoning Board of Appeals for Area Variance Request for 301 South Street**

Commissioner Lourinia asked Mr. O’Dell if the building inspector had explained that some changes should probably be made to the foundation of the proposed garage.

Mr. O’Dell said yes and they would discuss it further.

Marybeth Pettit asked Mr. O’Dell what his plans for the loft of the garage are.

Mr. O’Dell said he would use the loft for storage and the downstairs for three vehicles and a workbench. He added that he understands the concern among the commissioners about the large size of the garage, but he said both his house and the home of his neighbor to the south are taller than the proposed garage. (The peak of the gabled roof of the proposed garage is 22 feet high, and the average height between the eaves and the peak of the roof is about 15.75 feet, three and three quarters feet higher than is allowed under Rensselaer’s zoning ordinance.)

Commissioner Lourinia asked Mr. O’Dell if he would be willing, if the variance is granted, to install siding on the garage to match that of the adjacent house.

Mr. O'Dell replied that he would and that he's invested in his house and would not want an unattractive structure adjacent to it.

Commissioner Lourinia motioned for the following resolution:

*"The City of Rensselaer Planning Commission recommends the 3.75-foot height variance be granted based on this Commission's finding that the variance is not substantial and its results will not have an adverse impact on surrounding properties. The Commission also recommends the variance be granted contingent on the applicant's matching the siding and trim color and material of the exterior of the garage with the siding and trim color and material of exterior of his house."*

Commissioner Polsinello seconded. All in favor.

Motion carried.

### **3. Andy Kung, Subdivision Request for 913 Washington Avenue**

Andy Barna introduced himself as being present to represent Andy Kung.

Commissioner Mancini asked if the house at 913 Washington is a rental.

Mr. Barna replied that it is.

Ms. Pettit asked what the applicant's plans for the subdivided lot are.

Mr. Barna replied that Mr. Kung will either construct a new house and sell it or sell the subdivided lot.

Ms. Pettit explained that although the subdivision is straightforward and the new lot meets minimum lot size requirements, the New York State Department of Environmental Conservation has mandated that in any community in which there have been reported sewer back-ups, no new tie-ins to the system can be permitted (and therefore no permits for new building construction issued) that would compound the back-up problems until those problems are resolved.

Mr. Barna asked when those problems are expected to be resolved.

Ms. Pettit replied that sewer upgrades will be made over the next couple months but whether that work will entirely alleviate the sewer back-up problem remains to be seen.

Commissioner Polsinello motioned for the following resolution:

*"The City of Rensselaer Planning Commission hereby grants the requested subdivision at 913 Washington Avenue creating a new lot at 911 Washington Avenue that will measure 66 feet wide by 125 feet deep."*

Commissioner Burns seconded. All in favor except Commissioner Lourinia, who voted against the resolution.

Mr. Barna asked if the public hearing had been set.

Chairman Mooney replied that he had forgotten to open a formal public hearing to ask if anyone was present to speak for or against the subdivision.

There being no one to speak either for or against aside from Mr. Barna, Chairman Mooney closed the public hearing and asked that the motion be repeated.

Commissioner Polsinello motioned for the following resolution:

*“The City of Rensselaer Planning Commission hereby grants the requested subdivision at 913 Washington Avenue creating a new lot at 911 Washington Avenue that will measure 66 feet wide by 125 feet deep.”*

Commissioner Burns seconded. All in favor, except Commissioner Lourinia, who voted against the resolution.

Motion carried.

#### **4. Rudolf Berisic, Final Site Plan Approval for 483-487 Broadway**

Mike Dobereiner and Andrew Kohout, architects for the applicant, introduced themselves to the members of the Planning Commission.

Chairman Mooney asked why the applicant intends to place the parking lot light on the south side of the lot, closer to the adjacent residential property.

Mr. Dobereiner explained that the glare from the light would be less intensely visible to the residents of the house adjacent to the restaurant if positioned on the south side of the restaurant property and directed away from the residential property.

Christopher Eastman explained that the most recent submission contains nearly everything the Planning Commission needs to grant final site plan approval, but Hank LaBarba, the City's consulting engineer, had several comments and questions for the applicant.

Mr. Burns explained that Mr. LaBarba had recommended the applicant provide a grading plan or spot elevations; asked if the soil in the dry wells will percolate; asked if an overflow can be provided to the City sewer system; and asked what capacity storm the parking lot's drainage system could handle.

Mr. Dobereiner distributed a drainage report his engineer had provided that explained there is a .5% slope toward the rear of the property in discussion and concluded the system has the capacity to handle a 10-year storm and snow storage. The report is filed in the Planning Department file for 483-487 Broadway with the application and site plan materials.

Mr. Burns added that the Mr. LaBarba recommends an in-ground grease trap with a 1,000 gallon capacity be installed before wastewater enters the City sewer system; asked if the sewer lateral from the building needs upgrading before the building is converted to a restaurant; and requested plans that indicate the location of the sewer lateral from the building to the lines under the street.

Mr. Burns then motioned for the following resolution:

*“The City of Rensselaer Planning Commission hereby grants final site plan approval to Mr. Berisic’s proposed restaurant project at 483-487 Broadway contingent on information responding to the City’s consulting engineer’s questions and requests be provided to his satisfaction.”*

Commissioner Lournia seconded. All in favor. Motion carried.

## **5. Besicorp-Empire State Development, LLC, Subdivision Request**

Chairman Mooney called a public hearing for the subdivision request at 7:26 pm and asked if there was anyone present who wished to speak.

Susan Beers, of 35 John Street, said she’s been following the Besicorp project for nearly three years. She said she’s disheartened about it and feels that the New York State Department of Environmental Conservation should not have split up the clean up process. She said she thinks the subdivision request is an attempt to separate the contaminated parcel from the remainder of the property that Besicorp intends to lease, that the parcel will become a “no man’s land,” that no one will ever want to touch, and that the City will be faced with its clean-up, for which the City will never have the money. Ms. Beers went on to say that BASF should have kept the 80 acres as one parcel and that Besicorp is abandoning the capped landfill, which will not improve on its own and should not be sectioned off. She added that former employees of BASF have suffered health problems as a result of their exposure to contaminants and suggested that the contaminants of the landfill could end up in people’s homes. She explained that a polluted site can be capped from above but what’s underground can’t be controlled and likened the capped landfill to putting a Band Aid on cancer. Ms. Beers pointed out that the motivation of the subdivision is entirely clear and asked why Besicorp isn’t leasing the entire parcel and who will take responsibility for it.

There being no one else to speak, Chairman Mooney closed the public hearing at 7:35 pm.

Michael Moore, special counsel to the City, acknowledged that questions have been raised about “Lot 2,” the former landfill and said he spoke about it earlier in the day to an attorney with the New York State Department of Environmental Conservation. The clean up of property is subject to orders by the DEC, Mr. Moore explained, and he said he could provide a detailed report on Wednesday, October 13, when the Planning Commission and Zoning Board of Appeals will convene for a workshop with consultants to the City to discuss the Besicorp project further. He went on to say that the City could end up owning the landfill property, but that would be unlikely because the law exempts owners of property acquired in tax foreclosure from being solely liable for the clean-up of the property. He told Ms. Beers and the members of the Planning

Commission that he would have a more complete answer to that concern at the October 13 workshop meeting.

Mr. Moore went on to say that there is off-site monitoring of groundwater and gas, airborne pollution, and sediment sampling along the riverbank. He said he's received reports of that monitoring from the DEC in the last few days and will have an additional report from an environmental engineer hired by the City next week to discuss at the workshop.

Christopher Eastman, assistant planner, asked if the vote on the subdivision could be delayed until the October 13 workshop.

Mr. Moore replied that the Commissioners could vote on the subdivision at the workshop, at which time they could also make a State Environmental Quality Review declaration for the subdivision and by which time the Rensselaer Planning and Development Agency would also likely have received comments on the subdivision from the Rensselaer County Planning Department.

Commissioner Mancini asked Mr. Moore if he could give a summary of what the reports contain.

Mr. Moore said he would not know what the report by the environmental engineer the City hired contains until the report is delivered and he can read it. He suggested that Besicorp representatives who were present might comment on why the subdivision is necessary.

Robert Hlavaty, a senior project engineer for Besicorp, said that internally the former landfill is already considered a separate parcel and the former subdivision would facilitate financing for the project. He explained that the site of the former landfill would not be used for a parking lot, as previously considered, and Besicorp would not be leasing the property.

Mr. Eastman asked if the subdivision would affect the future of Lot 2.

Besicorp representatives replied that it would not.

Commissioner Polsinello motioned for the following resolution:

*"The City of Rensselaer Planning Commission hereby grants approval for the subdivision to take place, conditional on a favorable recommendation from the Rensselaer County Planning Department and conditional on receipt of the report on the legal and environmental status of Lot 2, the confirmation by the City's special counsel that the City of Rensselaer will under no circumstance be liable for the clean-up of the former landfill."*

Commissioner Lourinia asked if the Commission could wait until October 13 for the vote.

Chairman Mooney explained that there was a motion on the table.

Commissioner Van Vorst seconded Commissioner Polsinello's motion. All in favor except for Commissioners Lourinia and Mancini, who voted against the resolution. Motion carried.

**ADJOURNMENT:**

Commissioner Burns motioned for adjournment.

Commissioner Ahlemeyer seconded. All in favor. The meeting adjourned at 7:46 pm.

Respectfully submitted,

Marybeth Pettit  
Secretary to the Planning Commission