

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

July 12, 21

**The City of Cortland Planning, Zoning & Building Commission met on Monday, July 12, 2021 at 7:00 P.M. at the City Administration Building, 400 N. High Street, Cortland, Ohio. In attendance were the following board members: Chairman Curt Moll, Sally Lane, Don Bell and Don Fatobene. Also present were Mayor Deidre Petrosky, Service Director Kim Blasco, Law Director Patrick Wilson and the following individuals:**

**Councilman Kevin Piros  
Councilman Scott Rowley  
Councilwoman Kathy Fleischer  
Councilman Don Moore  
John Rossi  
Richard McClain  
Approximately 30 Residents**

Chairman Curt Moll calls the meeting to order and asks for a roll call.

**Roll Call: Brian Hodor, absent; Sally Lane, here; Curt Moll, here; Don Bell, here; Don Fatobene, here.**

**Curt Moll:** Our first item of business after the roll call is a motion to approve **Commission Minutes from the June 14, 2021 meeting.** Can I have a motion please?

**Don Fatobene** made a motion, seconded by **Don Bell.**

**Curt Moll:** Are there any discussions, corrections to the minutes? Can I have a roll call please.

**Roll Call: Don Fatobene, yes; Sally Lane, yes; Curt Moll, yes; Don Bell, yes. MOTION APPROVED.**

**Curt Moll:** Seeing how there is no old business, we will go right to new business. The first item on our agenda is our consideration of the complaint filed by Attorney John Rossi regarding the construction of a home at 147 St. Andrews in the City, **17-21.** To give a little background on this, the owner of the property submitted a zoning permit application in November of 2020. At that time, the Service Director, in her capacity as the City's Zoning Administrator, reviewed it and consulted with others in the City including myself, about this request. The Zoning Administrator deemed the application to be in order and granted it on November 25, 2020. Thereafter the owner proceeded to obtain a building permit from Trumbull County. Upon the pre-fabricated home being delivered to the home site, this complaint was filed. I would now like to hear from Attorney John Rossi if he's here.

**John Rossi:** Yes Sir. Incidentally, I'm here as a citizen. The complaint was signed by myself, Richard McClain and Barbara McClain on capacity as citizens. A couple of preliminary matters; thank you for entertaining the complaint tonight in this forum. We have several steps under the ordinance to file a complaint. My complaint was submitted to the Zoning Administrator, which I believe is you Sir.

**Curt Moll:** No, it's Kim.

**John Rossi:** Kim. So, Kim would have probably made an initial determination on the complaint. That's the first step?

**Patrick Wilson:** No, the complaint is actually to her decision granting the permit. That was done so long ago. We accepted your complaint on good faith to review Kim's

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

July 12, 21

decision. So what the Board is doing tonight is reviewing Kim's decision to issue that zoning permit back in November.

**John Rossi:** Thank you. So procedurally we are at the Planning and Zoning Commission and after this, it is on to the Board of Appeals if necessary.

**Patrick Wilson:** That is correct.

**John Rossi:** Will an opinion be issued tonight after the hearing.

**Patrick Wilson:** Yes. Curt, as Chairman of the Board, will entertain a motion to accept your complaint or reject your complaint. The Board will vote on it if they think that they have enough information. I assume they could table it if they felt like they needed more information. We will see how it plays out but we anticipate the Board voting on a decision one way or another tonight. That will serve as your basis to go forward to the Zoning Appeals or not.

**John Rossi:** Thank you. Issue number 2; the documents in the City of Cortland look like they were awarded to an individual named Michael Stevens who did not seem to be acting in a capacity on behalf of the LLC that ultimately acquired the property. Is that accurate and are the documents from the city binding on him without any kind of LLC agency acknowledgment?

**Patrick Wilson:** We are taking the position that the documents submitted to the city were acted upon by the Zoning Administrator without objection from anybody and they are binding as to the owners of this property which is an LLC registered with The Ohio Secretary of State.

**John Rossi:** But it is correct; we don't know in what capacity Mr. Stevens would have been would have been acting.

**Patrick Wilson:** We don't but agents submit applications all the time on behalf of owners.

**Don Fatobene:** Michael is an owner.

**John Rossi:** He's the individual owner?

**Don Fatobene:** Not an individual owner, he's part of the partnership.

**John Rossi:** Okay, that was not expressed on the application, I just needed clarification. Finally, the third procedural item is; after the complaint was filed and in trying to prevent any type of economic damage to the builder since it was going to be three weeks before it was heard, Mr. McClain followed the complaint with a written request to stop work order or injunction. I'm curious as to what the status of that request was as it seems that the construction has continued despite the request.

**Patrick Wilson:** You are talking about a court order for an injunction that the city hasn't taken any steps in that regard.

**John Rossi:** The city can issue a stop work order and I'm curious as to whether it was actually considered, contemplated, issued or rejected.

**Patrick Wilson:** Sure it was. The Zoning Administrator had already made her decision back in November and once additional facts were learned, didn't see any reason to reverse her original decision.

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

July 12, 21

**John Rossi:** So that was declined or rejected by the city?

**Patrick Wilson:** Yeah, it's been declined, yes. You and the McClains were free to go to court and get an injunction to stop the construction as well and I don't believe... I checked the docket, as of today and nobody did that.

**John Rossi:** That is correct, and the city has the opportunity to put the stop work order on to mitigate any economic damage. I'm just curious, and that was declined. Thank you, you have made that clear. So does that mean that you have made up your minds already?

**Patrick Wilson:** No.

**John Rossi:** Your mind made up? (Looking at the Board members)

**Patrick Wilson:** The chairman of the board invited you to present your case. If you'd like to present it, proceed. If not, we'll vote on what's before the Board.

**John Rossi:** I'm curious as to whether you are open minded.

**Don Fatobene:** I guess that I'd like to know a little more about the complaint; what the actual complaint is.

**John Rossi:** Sure, and that's the substance of why we are here tonight. Many of the folks in here have brought up all sorts of issues; business verses people, business verses citizens, fairness for those who have constructed property in a different way or so they believe. I'm not going to get into all of those issues tonight Don. What I am going to get into is the complaint because the complaint is really a matter of law and the application of our Ordinances in Cortland. So, let's discuss that; the application of the ordinances at 147 St. Andrews. The units delivered do not fit squarely into the definition for manufactured mobile home or modular home. Sympathetic to the mayor's grappling of this issue as she was saying at the council meeting we were at. In her words it was confusing, and it is confusing. It is confusing to all of us. We have definitions that are perhaps outdated. Maybe Council can take a look at that down the line but ultimately, we have two definitions and one set of structures. If you look at each definition, and you can look at the definitions explicitly, I'm talking about Ordinance 1113.02. The units delivered had elements of a manufactured and mobile home and elements of the modular home. Manufactured/mobile; came on wheels, it has a tongue and chassis including the HVAC, plumbing and electrical and installed on a foundation. Modular Home, the original two units delivered were expanded to three or four, some self-supporting, some non-self-supporting and assembled on a foundation. So, I agree with the mayor that perhaps we flush this out behind the scenes, that there is confusion. It's not clear which definition this thing falls into and I'm sympathetic with the struggle to figure this out. However, it does make a difference because it's a mobile or manufactured home. Those shall be permitted under Ordinance 1117.04 only in a designated mobile home park district which this street is not. Conversely a modular home has a more open-ended approach, considered single family homes that can be located in most or all residential districts throughout the city. This makes the definition of manufactured or mobile home more restrictive. Again, by all accounts, talking to the mayor, Council, leading to the record; we are operating in the gray. We don't know which it is, as it carries elements of both. The question is, what are we going to do about this? Do we look at the aesthetics? Do we make comparisons to other structures in the city? No, not under the code. The tie breaker is embodied in 1141.01 PROVISIONS DECLARED TO BE MINIMUM REQUIREMENTS. The provisions of this Zoning Ordinance shall be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this Zoning Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive, or that imposing the higher standards shall govern.

In this case the higher, more restrictive standard is to consider this a manufactured, mobile home. This is and should have been categorized that way and the LLC should have been compelled at the time of filing, or to some degree, now, to obtain a variance to proceed with open, public scrutiny. Instead, the complaint asserts that the structure represents an ongoing zoning ordinance violation that must be addressed by the city. Specifically, it's removal from the property was requested as the complaint was filed shortly after delivery. However, it was at that time thought the complaint would be quickly heard in this forum. When it became clear that it was going to be a three week process, the stop work order was requested to prevent economic harm to the builder as construction continues so that this can be properly heard from both sides of the equation. The city will have to wrestle with this issue; economic harm verses ordinance enforcement as the passage of time has allowed this progress to continue. Tonight we are seeking that written opinion, the opinion of Council, excuse me, this body, however it is issued; with the question if we don't enforce our rules, why do we have them? And that is our punchline this evening. It's a legal issue, an enforcement issue. Thank you.

**Don Fatobene:** Let me say one thing to start. One of the things that differentiates a manufactured home from a stick built modular home is how it's titled. A manufactured house is actually titled like a car title. Those have to pass certain regulations, certain guidelines, they have a HUD plate on them. If you take that home and set it on a piece of property, even if it's a permanent foundation, if you don't go and surrender the title to the County and have the County deed that as real property and convert it to real estate... That's what is considered a manufactured home. This property is not that. There are no HUD plates, there are no HUD tags, no title almost like a car title, this is considered a full stick-built home.

(Many residents disagreeing at once)

Those are the guidelines of what a manufactured home is, not *my* guidelines. I've actually brought Freddie Mac's guidelines talking about what a manufactured home is. I was going to make copies of this but it says – to photocopy this breaks federal law. So, I can pass this around, I've highlighted a couple of items, I've underlined a couple of items where they give the definition of what a manufactured home is. At the very end it talks about other types of factory-built homes. On the mortgage lending side, and how the bank regulators consider these; there are no differences on a site-built stick home compared to... There *are* differences in the lending guidelines and things like that on what is considered a manufactured home. When an appraiser goes out on a manufactured home, they have to actually compare that against other manufactured homes. There are no restrictions on this type of home that is being put in.

**John Rossi:** Don, thank you, that is appreciated and it is insightful however, did the city adopt those definitions?

**Don Fatobene:** No, no. This is the first time that I have brought these. Truthfully, this is the first time that this home in particular has come in front of this Board. Before that it went in front of Kim and it was determined that this home met the guidelines. Here is going to be my question, when you start asking about the zoning changes, this is considered a stick-built home whether this home was constructed on-site or off-site. An off-site built home is considered a better built home at this point.

(Many residents laughing, disagreeing)

It really is. I walked through the home tonight, I'm just telling you how these are considered. I'm not talking about this specific home. You are going to have to see that finished product I think. They have explained to me what it is going to look like, what the plans are...

**Resident:** Is it a half of a garage there?

**Don Fatobene:** A two and a half car garage is going in there.

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

July 12, 21

(Many residents disagreeing at once, Chairman uses gavel to try to quiet the crowd.)

**Don Fatobene:** They are not done putting that up.

**John Rossi:** Let's also respect the commission please.

**Patrick Wilson:** What we are going to avoid tonight is a debate.

**Don Fatobene:** Right, I was just explaining what the plans were for the house.

**Curt Moll:** Right, do we have any other questions for the members of the board?

**Mayor Petrosky:** May I make a clarification?

**Curt Moll:** Yes, please.

**Mayor Petrosky:** I disagree with how you portrayed my statements Attorney Rossi. You asserted that this is a manufactured home or mobile home. When you put the definition in your complaint, you left out a substantive part which says that the manufactured or mobile home is built on a permanent chassis. That is included in the definition. This is clearly, by our definition, not a manufactured or a mobile home. That's where the confusion is. Is it a modular home, is it a prefabricated home?

**Don Fatobene:** They are all prefabricated homes. One is a modular and one is a manufactured home.

**Mayor Petrosky:** There are all kinds of definitions out there; that's where the confusion comes in, that's where we need to update the code. As to is whether this a manufactured home or is this a mobile home...

**Curt Moll:** It's not.

**Mayor Petrosky:** According to the definitions, the entire definition in our ordinance, it is not.

**John Rossi:** So, was the determination made that it is a modular home then?

**Mayor Petrosky:** There is no determination at this point.

**John Rossi:** No one has determined whether it is a manufactured home, also known as a mobile home under the definition 1113.02 subsection 62 or a modular home under subsection 66. That is the distinction you have to make as a commission, that is *the* distinction and that is why there is confusion. You have to make that distinction.

**Don Fatobene:** Being that this came with no HUD plates and no title, that is what determines whether this is a manufactured home.

**John Rossi:** Your definitions in 1113.02..

**Don Fatobene:** Okay, I'm just saying what this particular home is, how it is. That is legally how that's defined.

**John Rossi:** As a citizen I am seeing a business do something strange and I'm looking up the ordinances. I've lived in Cortland for 15 years, it's a great place. This was our former mayor, this is the current mayor, it's a wonderful place to call home, but if you see something strange and you look at the ordinance, that's all you have to go off of. That distinction between manufactured and modular actually makes a difference. Under our

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

July 12, 21

ordinances, the most restrictive definition under the ordinance carries the day. That definition says that if it's a manufactured home, which is an aka mobile home, under that very definition you cited, then it can only be placed in a designated mobile home park. Again, I didn't make these rules up but I am reading them and bringing it to your attention as a citizen. If you want to take that and think about it you are welcome to but I think that there is a duty to the citizens to consider the definition and the zoning paradigm that has been established in this city. It doesn't sound like anyone has gone through those steps.

**Curt Moll:** What steps we went through when it was determined was that it was a stick-built home built in a factory. Which means the same exact construction techniques that are used in a stick-built home. On a frame, in square, in a controlled environment situation. It's happening all over.

**John Rossi:** Sir, that is appreciated and the mayor educated us on that the last time. However, that stick-built... those regs do not appear anywhere in the city ordinance, it's not in the zoning ordinance. It doesn't say that. It comes down to two choices; manufactured verses modular. If you made the determination that it was modular, then you had something to move forward on. If you didn't make that determination then we have a short coming, we have a gap.

**Don Fatobene:** I'd have to think that when Kim got the plans, she gave the approval, she made that determination; that this was a modular home and not a manufactured home. Is that correct?

**Kim Blasco:** Correct.

**John Rossi:** I think...

**Patrick Wilson:** Make any argument you,d like, they are still going to get to vote.

**John Rossi:** Yeah, thanks Pat. So, that's the first I've heard of this and the mayor is expressing that there was no appreciation for the distinction until you put Kim on the spot. By the way, Kim has been on the spot the whole and I appreciate what she's done because she did this during the pandemic when things were really challenging. It's not Kim and it's not you but it's all of us as a group asking you to look at this ordinance and please make sure that you are following the steps that you have laid out. The procedures are yours, we are drawing your attention to it, I am drawing your attention to it. You have to contemplate this and if you need to change the definitions later on, there is ample opportunity to do that but when this was built and right now; you have modular vs. manufactured, it's in the gray and you go with the more restrictive.

**Mayor Petrosky:** There is also sectional, where does that fit in?

**Curt Moll:** We've had one similar construction in the city. Instead of two parts it was done in four parts or five, I can't remember how many modules there were. It was done approximately ten years ago and it looks like any stick-built home in town. Interior finish, everything... (interrupted)

**Resident:** Can I ask a question?

**John Rossi:** Thank you. Again, I'm not arguing aesthetics, that's for someone else to talk about.

**Curt Moll:** I'm just saying that we've had a precedent for this kind of construction technique being used in the city and being interpreted in this way by the zoning administrator.

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

July 12, 21

**John Rossi:** If the proper steps were taken at that time and it was in fact modular, then that's fine. If you have a precedent built on someone trying to figure out aesthetics, that's not fine. In fact, that's a violation of the zoning ordinance.

**Curt Moll:** No, it wasn't done that way. It was done based on the way it was built., whether it met code. The building department in the county takes care of that for us. We don't have a building department so they really are the ones responsible for enforcing the building code. They seemed to have no problem with it at all.

**John Rossi:** Thank you for that, I'm not sure if there was any objection to it at that time, what the timeline was on that approval process or how it was actually processed period. It's not before us tonight. Again, if we as a city didn't take the steps to assure that it was modular instead of manufactured, then it was permitted incorrectly.

**Curt Moll:** I'd like to, at this time...(interrupted)

**Resident:** Can I ask a question?

**Patrick Wilson:** No, the complaint it coming through Attorney Rossi and he is representing the complaints.

**Resident:** Okay, come here Attorney Rossi.

**John Rossi:** I've presented my assertion on this and I think that it's a matter of our law.

**Curt Moll:** I would like to hear from Kim at this time with any comments that she may have.

**Kim Blasco:** I've been out on the site a number of times, I've watched the progress, I've done measurements myself and they are in compliance with all setbacks. Everything they said that they would meet, and they have. They are in compliance with zoning.

**Curt Moll:** Anything further from the board? At this time I would like to entertain a motion from any member on the board to accept the complaint filed by Attorney Rossi declaring the house at 147 St. Andrews in violation of city zoning ordinances and recommend to the zoning administrator to order the removal of the same.

17-21 was moved for by **Don Fatobene** and seconded by **Don Bell**.

**Curt Moll:** Any further discussion? Can we have a roll call please?

**Roll Call:** Sally Lane, no; Don Fatobene, no; Curt Moll, no; Don Bell, no. **MOTION FAILED.**

**Curt Moll:** With that your request is denied, the complaint is denied. I would like to state that you certainly have the ability to appeal that to the Zoning Appeals and then, further on to court.

**John Rossi:** Thank you for your time and interaction this evening. There is a lot going on and I appreciate it.

**Resident:** Now can I ask a question?

PLANNING, ZONING & BUILDING COMMISSION

CITY HALL

July 12, 21

**Patrick Wilson:** No, there is another item on the agenda. This is different than a Council meeting. Council invites the public in to make comments and ask questions. This is a board hearing where they set the agenda.

(Approximately 30 Residents exit meeting)

**Curt Moll:** The next item on the agenda is **18-21 Set Public Hearing-** The purpose of this hearing is to consider a variance request at 142 N. High St. to allow the encroachment of up to 4 feet from the 10 foot side set back requirement. Hearing to be set for August 9<sup>th</sup>, 2021 at 6:50 p.m. Can I have a motion please.

A motion for **18-21** was made by **Don Bell** and seconded by **Sally Lane**.

**Curt Moll:** Any discussion on this? Can we have a roll call please.

**Roll Call:** Curt Moll, yes; Don Bell, yes; Sally Lane, yes; Don Fatobene, yes.  
**MOTION APPROVED.**

**Curt Moll:** Can I have a motion for adjournment?

Adjournment moved for by **Don Fatobene** and seconded by **Don Bell**.

**Roll Call:** Curt Moll, yes; Don Fatobene, yes; Sally Lane, yes; Don Bell, yes.  
**MOTION APPROVED.**

**Meeting Adjourned: 7:28 pm**

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary