

**Official Meeting Minutes  
City of Niagara Falls Planning Board  
October 20<sup>th</sup>, 2021**

A regular meeting of the City of Niagara Falls Planning Board was held on Wednesday October 20<sup>th</sup> 2021 at 6:00PM in Council Chambers, City Hall, 745 Main Street, Niagara Falls, NY.

**CALL TO ORDER & ROLL CALL:**

**BOARD MEMBERS PRESENT:**

Chairperson Tony Palmer  
Joseph Giaquinto  
Joyce Williams  
Joseph Sarkees  
Timothy Polka  
Charles MacDougall  
Shurron Cowart

**STAFF PRESENT:**

Eric Cooper, Director of Planning  
Grace Celik, Planner 2/HPS  
Tom DeBoy, Corporation Counsel

**BOARD MEMBERS EXCUSED:**

Michael Murphy  
Robert Burns

**ATTENDEES:**

Councilperson Frank Soda  
Daniel Crowther  
Wesley Walker  
Councilperson John Spanbauer  
Jockline Pryor

**PLEDGE OF ALLEGIANCE:**

**APPROVAL OF AGENDA — FOR THIS MEETING:**

A motion to approve the Agenda was made by MR. POLKA and seconded by MS. COWART

Motion: UNANIMOUSLY APPROVED

**APPROVAL OF MINUTES:**

1. Meeting held on September 22<sup>nd</sup>, 2021

Motion to approve the draft minutes for the meeting dated September 22<sup>nd</sup>, 2021 was made MR. GIAQUINTO and seconded by MR. MACDOUGALL

Motion: UNANIMOUSLY APPROVED

**ACTION ITEMS:**

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1. Level Two Site Plan Review: TM Montante for USA Niagara, owner of properties at 500, 512, and 518 3rd St and 503 Main Street, Niagara Falls, NY, is seeking approval for proposed building renovation and reuse and development of accessory parking lot

Daniel Crowther, a representative for TM Montante, explained the proposal. 500 Third Street would be reused into a conference & event center and office space. 512 Third Street would be reused into a restaurant. 503 Main Street will become a parking lot for 500 and 512 Third Street. Area between 500 and 512 would be used as outdoor seating for 512 Third Street.

MR. POLKA asked about the curb cuts on 503 Third Street. MR. CROWTHER said the curb cuts would not be removed as there were plans to build a fence between the sidewalk and the proposed parking lot. MR. COOPER stated that Engineering had looked at the building plans and made no comment about the curb cuts. CHAIRPERSON PALMER asked if the traffic would be going one way from Main Street to Ferry Avenue and MR. CROWTHER said yes. MR. SARKEES discussed the concrete wall behind 512 Third Street that he believed to be connected to the original Aqueduct of the Hydraulic Canal. COUNCILMAN SODA, in the audience, commented that the canal was filled in the 1960s. MR. CROWTHER explained that there were no current plans on how to handle the concrete wall and it would be addressed in the permitting package.

Motion to recommend approval for the proposed building renovation, reuse and development of accessory parking lot to the applicant, subject to the following conditions, made by MR. GIAQUINTO and seconded by MR. POLKA.

**CONDITIONS:**

1. Environmental Assessment (SEQR): The Planning Board hereby accepts and adopts the findings of the SEQR review, finalized and dated 10/20/2021.
2. Site Plan: This approval is granted based upon the Site Plans provided to the Department of Planning titled "Niagara Hudson Building" prepared by Carmina Wood Morris dated 09/22/2021 last revised on 09/22/2021, received by the Department of Planning on 10/01/2021. Substantial deviation from this plan shall render this approval null and void.
3. Compliance: Comply with all applicable State and local building, safety, and health codes. Deviation from or non-compliance with any conditions of this Site Plan approval, shall render this approval null and void
4. Expiry Date: Applicant shall act to implement and substantially complete the proposed action, as approved, within 18 months from the date of approval. Failure to substantially complete the proposed action shall render this Site Plan Approval null and void unless an extension is granted.
5. Signage: This decision makes no determination on signage. Any signage must be applied for and approved as part of a separate application. Signage shall comply with Chapter 1309 of the Zoning Ordinance.
6. Landscaping: The perimeter landscape buffer along a sidewalk or pedestrian way shall consist of planting materials and/or structural features to create a minimum four (4) foot high visual relief

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screen in the form of a hedge, fence, planter box, berm, dividers, shrubbery, or trees, or a combination thereof. All landscaping to form such visual relief shall create a two-foot-tall minimum screening at planting. Applicant shall provide a detailed landscape plan meeting all requirements of Chapter 1322 in the Zoning Ordinance prior to the issuance of building permit.

7. Lighting: All exterior site lighting, including wall packs, shall be angled downward only and away from adjacent properties. All fixtures and luminaries shall be of a full cut design and shall be of a type that does not exceed a 90° cutoff angle. Any light standard shall not exceed 25' in height. Lighting details shall be provided prior to issuance of building permit.
8. Bond: No certificate of occupancy shall be issued until all improvements shown on an approved site plan are installed including, but not limited to, parking areas, landscaping, fencing and exterior lighting, and all related conditions imposed by the Planning Board are met, or a sufficient performance guarantee has been posted in accordance with Section 1301.10 of the City's Codified Zoning Ordinance. The applicant shall provide evidence that all site work has been completed satisfactorily in order to seek reimbursement for the work covered by the performance guarantee.
9. Abandonment: Site Plan approval is granted conditionally upon Abandonment of the interceding alley being finalized and with utility easements being provided. Failure to complete the abandonment process will nullify the Site Plan approval. Applicant shall provide a copy of the abandonment approval and a copy of the recorded easements, including liber and page numbers, to the Planning Department prior to the issuance of building permit.
10. Drainage: Proposed storm drainage system shall be approved by Niagara Falls Water Board and copy of such approval shall be provided to the Planning Department prior to issuance of building permit.
11. Refuse Screening: Refuse containers or disposal areas shall be screened from view by placement of solid wood fence or masonry wall at least as tall as the refuse containers, but no less than five (5) feet in height. Applicant proposes alternative use of chain link fence with fence screen.
12. Access Agreement: Applicant shall provide a legal agreement to reflect the division of the outdoor patio space between 500 3rd St and 512 3rd St. Applicant shall provide a copy of the approval to the Planning Department prior to building permit issuance.
13. Utilities: Any location changes in electrical connection(s) are subject to approval from National Grid. If changes are proposed building permits shall not be issued until approval from National Grid proves no changes in locality of electrical connection(s). Applicant shall provide a copy of such approval to the Planning Department prior to the issuance of building permit.
14. Parking Agreement: The right to use the off-site parking must be evidenced by a deed, lease, easement, or similar written instrument establishing such use, for the duration of the use. Applicant shall provide a copy of the agreement to the Planning Department prior to building permit issuance.

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15. NYS DEC: Any fill soil or petroleum-impacted soil excavated from the Site must be managed in compliance with NYSDEC solid waste regulations (6 NYCRR Part 360). Applicant shall provide a copy of DEC correspondence and approval to the Planning Department prior to the issuance of building permit.
16. NY SHPO: The applicant shall initiate consultation consult with NYS State Historic Preservation Office (SHPO) to review potential impacts to archeological and historic resources for all four parcels. Applicant shall comply with all of NYS SHPO's review requests and requirements, and shall provide copies of all correspondence, including impact letters, to the Planning Department prior to issuance of the building permit.

**POLLED VOTE:**

MR. BURNS	Absent
MR. GIAQUINTO	Yes
MR. MACDOUGALL	Yes
MR. MURPHY	Excused
MR. POLKA	Yes
MR. SARKEES	Yes
MS. WILLIAMS	Yes
CHAIRMAN PALMER	Yes

Motion: Unanimously Approved

**OLD BUSINESS:**

**1. Chapter 1302.4.2 (D) of the City Zoning Ordinance**

At the Planning Board meeting on September 22<sup>nd</sup>, the board approved a motion to send a letter to Corporation Counsel requesting outside legal counsel as the board felt they were not receiving support from Corporation Counsel. The board felt that there was a conflict of interest since Corporation Counsel represented both the Planning Board and the City Council on the issue of the Amendment of Zoning Ordinance Chapter 1302.4.2.

Thomas DeBoy, a representative from the Corporation Counsel Department, explained that in the future, Corporation Counsel should receive a copy of the Planning Board meeting agenda and/or a memo to see if their presence is needed at the meetings.

MR. DEBOY handed out a memo from Christopher Mazur stating that the Planning Board's request for outside legal counsel was denied due to Corporation Counsel finding no conflict of interest between representing both City Council and the Planning Board.

CHAIRPERSON PALMER asked how much MR. DEBOY know about SEQR. MR. DEBOY said he had some experience with SEQR in the past but had no recent contact with SEQR reviews or requirements. CHAIRPERSON PALMER stated that it would be difficult to put in a memo what type of questions and concerns they or the applicant would have concerning SEQR.

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CHAIRPERSON PALMER asked if Corporation Counsel had received the Planning Board's letter after the meeting on July 14<sup>th</sup>. MR. DEBOY said he had no information on that. CHAIRPERSON PALMER then asked the same question to COUNCILPERSONS SODA and SPANBAUER, in the audience, and both stated they did not receive a letter. CHAIRPERSON PALMER explained how that was a problem and it looked bad on the Planning Board. MS. WILLIAMS asked who CHAIRPERSON PALMER sent the letter to. CHAIRPERSON PALMER said he had instructed MR. COOPER to draft up the letter. MR. COOPER said he drafted the letter, CHAIRPERSON PALMER signed it but MR. MAZUR told MR. COOPER to not send it out to the Planning Board members or City Council members due to lack of proper procedure. CHAIRPERSON PALMER was not made aware of the incorrect procedure by Corporation Counsel but was made aware by MR. COOPER.

CHAIRPERSON PALMER reiterated that a situation like that is why the Planning Board requested outside legal counsel. MS. WILLIAMS asked what could the Planning Board do going forward. MR. DEBOY explained that officially the letter was never sent to the City Council. MR. DEBOY explained that there was a problem with the letter itself. CHAIRPERSON PALMER asked of COUNCILPERSON SODA if anyone on the City Council received the letter. COUNCILPERSON SODA stated that he was shown the letter on a cellphone from another council member. CHAIRPERSON PALMER stated he did not send out the letter himself, as that was not the proper way of communicating to the City Council. CHAIRPERSON PALMER stated he followed the appropriate rules and the City Council did not receive the letter, therefore, somewhere along the way someone stopped the letter.

CHAIRPERSON PALMER asked MR. DEBOY how much MR. MAZUR knew about zoning ordinances. MR. DEBOY said he has read the zoning ordinance. ~~could not answer~~ CHAIRPERSON PALMER ask MR. DEBOY -if there was a section in the zoning ordinance that stated during the amendment process that the Planning Board had to notify City Council of a denial. MR. DEBOY stated that he could not answer that question without doing research on the issue. CHAIRPERSON PALMER stated to MR. DEBOY that section 1302 of the zoning ordinance states when an item comes before the Planning Board, and the Planning Board denies the item then the Planning Board has to submit in writing to the petitioner. CHAIRPERSON PALMER stated he did so and wrote the letter for the petitioner, the City Council, and they did not receive the letter.

~~that~~ MR. POLKA stated that it would have been nice to know what issue MR. MAZUR found with the letter as to why it couldn't be sent out so any future mistakes could be avoided. MR. DEBOY wondered if the reason why the letter could not be sent to City Council was due to the lack of a Public Hearing. CHAIRPERSON PALMER said that according to SEQOR a zoning ordinance amendment is a Type 1 Action. MR. COOPER said he ~~didn't believe~~ ~~wasn't sure~~ if it was a Type 1 Action. MR. COOPER ~~believed it was not a~~ ~~stated that is was not a~~ Type 1 Action because it was not the initial adoption of a municipalities zoning ordinance and it did not change the allowable uses of the district.

CHAIRPERSON PALMER citing section 1302.4 stating that no amendment to the zoning ordinance should be adopted without Planning Board recommendation, except by unanimous vote by the City Council. Continuing by stated that the change the City Council was making was to allow for a majority vote instead of a unanimous vote. COUNCILPERSON SODA ~~confirmed~~ CHAIRPERSON PALMER's statement that the change was to allow for a majority vote instead of a unanimous vote in City Council to adopt a zoning amendment to the zoning ordinance without Planning Board's approval.

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COUNCILPERSON SODA stated that the Planning Board required a SEQR and he was not able to complete the form because the majority of the form referred to a project local. COUNCILPERSON SODA continued stating that he only filled out the first couple sections and was unable to complete and submit the form. MR. COOPER responded saying that for legislative actions you would only need to fill out first couple sections of the SEQR form. CHAIRPERSON PALMER stated that the City Council did not feel a SEQR was necessary. MR. DEBOY asked CHAIRPERSON PALMER if that idea was relayed to him through MR. MAZUR. CHAIRPERSON PALMER responded yes. MR. DEBOY stated that he was skeptical that any amendment to the zoning ordinance related to governance and procedure would require a SEQR Type 1 Review. MR. DEBOY continued stating that he believed that is where the mistake may have been made, in believing that an amendment to the zoning ordinance as it relates to governance and procedure would require a SEQR review.

MR. DEBOY asked why the action was removed from the agenda. CHAIRPERSON PALMER responded that it was removed from the agenda because the lead agency was not clear. MR. DEBOY asked if the lead agency was related to the SEQR review. CHAIRPERSON PALMER responded yes. MR. DEBOY replied stating that the SEQR review was unnecessary. CHAIRPERSON PALMER stated to MR. DEBOY that in addition to the lead agency, the letter of intent in the application was not clear on how it met the goals of the comprehensive plan. CHAIRPERSON PALMER stated that all of the information regarding the lacking application materials was in that letter. CHAIRPERSON PALMER stated that the Planning Board followed the appropriate procedures and the City Council still did not receive the letter.

CHAIRPERSON PALMER asks how did MR. MAZUR act appropriately if he did not send the letter to City Council. CHAIRPERSON PALMER states that City Council is denying them outside counsel. COUNCILPERSON SODA responds that the City Council cannot pay for additional outside legal services. CHAIRPERSON PALMER states that how is the Planning Board supposed to receive legal counsel if Corporate Counsel doesn't answer their questions or come to the Planning Board meetings. Therefore, CHAIRPERSON PALMER stated that the Planning Board needs to have someone who is familiar with the zoning ordinance to provide legal advice. COUNCILMAN SODA replied saying that City Council is not able to provide outside legal counsel. CHAIRPERSON PALMER replied saying that Corporation Counsel could still offer the needed legal counsel.

MR. DEBOY stated that he can provide such needed legal counsel, but going forward when the Planning Board members need guidance on a particular issue relay that to MR. MAZUR. MR. DEBOY stated that MR. MAZUR or himselfe will reply by the Planning Board meeting date, and if they are unable to answer in time they will try to attend the Planning Board meeting. MR. DEBOY stated that due to the lack of staff it is not practical to expect the law department to attend every meeting.

There was further discussion between CHAIRPERSON PALMER, MR. COOPER, MR. DEBOY and COUNCILPERSON SODA about the zoning ordinances and how they would be changed.

CHAIRPERSON PALMER wanted to clarify which part of the zoning ordinance was being changed. CHAIRPERSON PALMER stated according to Section 1302.4, no change could not be changed without Planning Board recommendation.

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There was more back and forth discussion between CHAIRPERSON PALMER and MR. DEBOY concerning the letter.

CHAIRPERSON PALMER stated that Corporation Counsel doesn't show up to meetings or answers any questions and therefore the Planning Board needs outside counsel with experience with zoning ordinances to assist when needed. MR. DEBOY stated again that an agenda and any legal questions should be sent to Corporation Counsel prior to any Planning Board meetings so that the questions can be answered. If they could not be answered, Corporation Counsel would attempt to attend the meetings. MR. DEBOY stated that due to the shortage of staff, it was not practical for Corporation Counsel to attend every meeting that City Hall has.

CHAIRPERSON PALMER wondered aloud how the people of Niagara Falls would react if they were told that their projects have to be put on hold because they have to wait for direction from Corporation Counsel. MR. DEBOY reiterated that due to staffing Corporation Counsel could only answer questions so fast and that they were stretched thin.

MS. COWART asked if either MR. DEBOY OR MR. MAZUR were able to attend any Planning Board or Zoning Board of Appeals meetings. MR. DEBOY stated that he had attended two since starting in 2017 but he had assisted the Zoning Board of Appeals with their legal issues and other departments.

COUNCILPERSON SPANBAUER spoke from the audience and said that if there had been a problem with the letter, it should had been addressed immediately. Jockeline Pryor, from the audience, wanted to know whose phone screen COUNCILPERSON SODA had seen the letter on. MS. WILLIAMS re-

confirmed that CHAIRPERSON PALMER had sent the letter sent to Corporation Counsel on August 6<sup>th</sup>. COUNCILPERSON SODA confirmed that City Council held a meeting about the zoning ordinance on September 15<sup>th</sup> and he re-confirmed that he had seen the letter on another councilperson's phone screen. MS. WILLIAMS confirmed that the Planning Board members had received the letter on September 1<sup>st</sup>.

**NEW BUSINESS:**

**PLANNING REPORT / COMMUNICATIONS:**

1. One Region Forward Learning Series Training – October 12<sup>th</sup>, 2021 at 6:00PM to 7:30PM
2. Bridge District – Downtown Revitalization Initiative

MR. COOPER confirmed that the State of New York had approved ten projects from the plan submitted to them in late 2020. CHAIRPERSON PALMER wanted to know the status of said projects. MR. COOPER stated that there was nothing new to report but would keep the Planning Board updated.

**ADJOURNMENT:**