

**ONEONTA, NEW YORK - SEPTEMBER 24, 2012 - 7:00 P.M.**

**REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 1**

**PRESENT:** Chair Ed May  
Commissioner Karen Geasey  
Commissioner John Rafter  
Commissioner Paul Robinson  
Council Member Bob Brzozowski

**ABSENT:** Commissioner Joseph Ficano  
Commissioner Robert Lawson  
Commissioner Louis Shields

Chair May called the regular meeting to order and asked the Clerk to call the roll.

**CORRESPONDENCE**

City Clerk Koury stated the following correspondence received regarding 40 Center Street would be entered into the record as written:

•The following was received from Al and Sayers A. Lutz, 36 Center Street, Oneonta, dated September 17, 2012:

*“Jim:*

*Thanks for the notice regarding the application for 40 Center Street.*

*I am unable to attend Monday’s hearing at the meeting of the Zoning and Housing Board of Appeals and am therefore submitting this note for consideration.*

*It is my opinion that the request to convert that single-family dwelling to a two-family dwelling should be denied!*

*While there are several multiple-family structures in the neighborhood, adding another would further diminish the “family” character that exists.*

*That house sits on a smaller than normal lot, which prevents any additional parking space, as required by our zoning codes.*

*The present owner should have been aware of the zoning requirements when he purchased the property.*

*Respectfully,”*

•The following was received from Ken and Sue Sherman, Cozy Avenue, Oneonta, dated September 18, 2012:

*“Zoning Board of Appeals:*

*This is in regard to the requested proposal of 40 Center St, Oneonta, NY.*

*This area of Oneonta is saturated with multifamily homes. Don't forget the former Italian Kitchen building on the corner of Church and Washington Ave. wants 4 apartments; many rentals on Bronk St. Ivy Court, Center St., Dietz St. and Myrtle Ave.*

*We do not see the need to take another family residence and turn it into a multifamily dwelling. As stated in The Daily Star on Monday Sept.17, the noise complaints for the center city are extremely high; there were 31 noise complaints the week before and the complaints came down to 17 while our police department ‘babysat’ this area. This would be another family home lost to rental property. There is already foot traffic that dribbles through at night from Center St. to Washington St. via a small alley*

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(Correspondence) continued

*connecting these streets. This can and does create problems for homeowners, especially fencing, in this area due to heavy foot traffic at night and the "I can walk anywhere I want" attitude when these `walkers' are confronted. Why continue to change the laws and regulations we already have just to redo them at the whim of some? Just enforce what is on the code books and that should help.*

*We hope this proposal will be denied.*

*Sincerely,"*

**APPROVAL OF MINUTES**

Without benefit of a motion the board approved the Zoning and Housing Board of Appeals minutes of the regular meeting held August 27, 2012, as written.

**PUBLIC HEARING ON REQUESTED VARIANCES**

The Notice of Public Hearing on the following requests was duly published in The Daily Star on Monday, September 24, 2012. Affidavit as to proof of publication is attached hereto:

*Paul Schneeberg is requesting a Short Environmental Assessment Form, a Sketch Plan Conference, a Site Plan Review, a Use Variance and an Area Variance in order to convert the 1-family dwelling located at 40 Center Street, Oneonta, New York to a 2-family dwelling.*

**NEW BUSINESS**

40 Center Street (288.17-5-06), Paul Schneeberg – Required Action: Short Environmental Assessment Form, Sketch Plan Conference, Site Plan Review and Use Variance: The owner began converting this 1-family dwelling to a 2-family dwelling without a building permit or code review. After he contacted the Code Enforcement Office, it was determined that the conversion was not permitted as per the Zoning Code. Please note that in 2006 an area variance was approved for side and rear yard setbacks in order to construct a 21' x 22' room on the 1<sup>st</sup> floor of the house.

Chair May address the item of New Business as follows:

**40 Center Street (288.17-5-06), Paul Schneeberg**

**“SUBJECT:**        *Property Address:*        40 Center Street  
                         *Property Owner(s):*        Paul Schneeberg  
                                         *Tax Map #:*                    288.17-5-06  
                         *Applicant(s):*                Paul Schneeberg  
                         *Zoning District:*            R-2: Moderate Density Residential District

**PROPOSAL:** *The owner began converting this 1-family dwelling to a 2-family dwelling without a building permit or code review. After he contacted our office, it was determined that the conversion was not permitted as per the zoning code.*

*Please note that in 2006 ate area variance was approved for side and rear yard setbacks in order to construct a 21' x 22' room on the l floor of the house.*

**1. SHORT ENVIRONMENTAL ASSESSMENT FORM (SEQR)**

*300-75 F: Compliance with SEQR. The Planning Commission shall not take final action on any site plan proposal until all SEQR requirements have been addressed in accordance with 6 NYCRR Part 617.*

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(40 Center Street – Memorandum) continued

2. SKETCH PLAN CONFERENCE

§ 300-74 E: *At the request of the applicant, a sketch plan conference may be held ... to review the basic site design concept and generally determine the information to be required on the site plan.*

3. SITE PLAN REVIEW APPLICATION

300-101 Parking Requirements by Use Footnote 2 Parking waivers may be obtained as specified in Section 300-61 of this code.

<u>TABLE</u>	<u>PERMITTED /REQUIRED</u>	<u>EXISTING /PROPOSED</u>
300-101 Parking Requirements by Use	Dwelling, 2-Family: 1.5 / dwelling unit  3 parking spaces are required	1 parking space exists

4. USE VARIANCE

<u>TABLE(S)E</u>	<u>CODE REQUIREMENT(2)</u>
300-92 Permitted Uses by District	2-family dwellings are not listed as a permitted use in this zoning district.

5. AREA VARIANCE

§300-72 C (1): *Non-conforming lots or parcels* No change shall be permitted to any non conforming lot which would have the effect of increasing the density at which the property is being used, or increasing the structure located upon such lot, if the dimensional requirements and standards, including parking, of the underlying zoning district are not met as a result thereof.

*Because 2-family dwellings are not permitted in this zone, there is no minimum lot size requirement, however:*

<u>TABLE(S)</u>	<u>CODE REQUIREMENT(S)</u>	<u>EXISTING / PROPOSED</u>
300.94 Bulk and Use Table	Minimum lot size for 1-family dwellings is 6,000 square feet.	The existing lot size for this property is 4,242 square feet.

**PLEASE NOTE**

*This property is registered as a residential rental property. At this time, there is not a valid Certificate of Substantial Compliance for this property. A current requirement schedule is attached.”*

Fifty-three (53) letters were sent out by the Clerk’s Office to property owners residing within 200 feet radius of the property in question and two responses were received and entered under correspondence.

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**(40 Center Street)** continued

Mr. Paul Schneeberg, owner/applicant of 40 Center Street, stated it was a big house and had rooms upstairs. He said he had friends at the hospital who are doctors and nurses that were here part-time and the goal was to have them stay with him while they were here part-time even though they live in other towns. He said he had been with the hospital for 7½ years and was familiar with the story. He said he needed a little help in this house and he could help those friends at the same time.

Chair May asked if Mr. Schneeberg knew the requirements he had to meet in order to use this house as a multiple family residence.

Mr. Schneeberg replied he first had to go for a building permit and get permission to go ahead if possible.

Chair May stated it was a little more complex than that. He said the first thing Mr. Schneeberg needed to understand was that this property was located in an R-2 Zone and multiple family housing was not allowed. He asked if Mr. Schneeberg was aware of that.

Mr. Schneeberg replied no.

Chair May stated this request required a use variance in order to even have standing as a two-family. He said the paperwork that was filed with the Code Office and Mr. Schneeberg was supplied with indicated that he required a use variance and to give some examples of evidence that Mr. Schneeberg could present to this board to justify the use variance. He said he had read the packet completely several times and saw no evidence presented that would warrant the board granting a use variance.

Mr. Schneeberg stated okay.

Chair May asked if the board had any questions or comments.

Hearing none the Chair asked if the board was in a position to consider a use variance for this applicant.

Hearing no comments the Chair asked if there was anyone in the audience who would like to speak in favor of this application.

Commissioner Robinson stated he thought there had to be evidence of a financial hardship that was not self-created also before the board could consider a use variance and he did not see that.

Chair May stated in the application given to the applicant were the examples for that and he found no evidence in the application and he saw no basis to issue a use variance. He said absent the use variance the application would fail.

Chair May stated he also understood that Mr. Schneeberg already started construction absent a building permit.

Mr. Schneeberg responded true.

Chair May asked all the board members if they were aware of that.

Commissioners Geasey, Rafter and Robinson responded yes.

Mr. Schneeberg stated with that being said his conscience bothered him and that was why he contacted Code Enforcement Officer Chiappisi to come in and take a look. He said he did some work and he hoped to make amends and if it happens it happens if it did not they go by the law.

**(40 Center Street)** continued

Chair May stated the city recently adopted a new Zoning Code and the board was very protective of the R-2 Zone at this stage and not allowing any further conversions to multiple family residents in the R-2 Zone. He said from his perspective Mr. Schneeberg picked a bad night to be here. He said there were only 4 board members present which constitutes a quorum and all 4 would have to vote in favor of the application for Mr. Schneeberg to receive a variance.

Mr. Schneeberg stated that could be destiny also.

Chair May stated he had not polled the other board members yet but he could say he would not support Mr. Schneeberg's variance.

Commissioner Robinson stated right on the application under use variance it says "A variance CANNOT be granted until monetary figures are provided." He said he did not see how the board could proceed.

Mr. Peter Friedman, 69 Maple Street, stated his residence was in the same zone and he was very concerned that this kind of action could be precedent-setting if authorized. He said aside from the board denying this variance he would like the board to require that all construction work that was done with the intent of converting to a two-family be removed. He said that would include but not be limited to, because he had not been in the house, the second exterior door in the front and the partial front porch enclosing the entryway, all second floor kitchen installations and construction of all walls and doors that would have been done for this conversion. He said obviously the board was aware of proving financial hardship and self-created hardship so he would not go into that. He said he would also like to see the board require that the Code Enforcement Office charge the \$250 fee for doing the work without the building permit. He said he thought it was very important that the board sends that kind of message because there were people cheating all over the city in terms of the city's zoning laws and getting away with it. He said this was not the first time Mr. Schneeberg has converted a house to a two-family without permits in violation of the Zoning Code. He said he thought if the board did not take a hard stance on this the board's message would be "do whatever you want and we'll see what we can do about it later" but he thought the board needed to take the position that "if you do whatever you want there's going to be some significant punishment." He said excuses like "I forgot" should not mean anything.

Ms. Marilyn Helterline, 69 Maple Street, stated the issue of what to do about construction that had been done without a permit came up a few months ago before the board in the case of Will Lunn's property next door to hers. She said Mr. Lunn had created a bedroom as an expansion of a non-conforming use and the board decided he could not do that but failed to require that he remove the wall and only that he remove the door. She said she walks by the house and it appeared that there was either a door or a curtain creating a closing. She said in that case it was done without a permit and he was not required to remove the work that was done and in affect Mr. Lunn turned a one-bedroom apartment into a two-bedroom apartment. She said the board's not requiring the people to undo what they did means that they get away with it.

Mr. Michael Lynch, 4<sup>th</sup> Ward Council Member, stated he represents the neighborhood where this applicant has his property. He said he rises in opposition as well. He said the board has heard him talk before about trying to do everything that could be done to protect the integrity of the new Zoning Code that was put into place. He said this was another example. He said if this request was passed more slippage would be seen and in that regard the city's Code quickly becomes meaningless. He said he would also endorse Peter Friedman's comments about the need to exercise aggressive enforcement mechanisms for people that violate the Code. He said ignorance of the law was not a defense. He said it was not a defense in any other venue that we present ourselves in and it ought not be one here either.

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**(40 Center Street)** continued

Mr. Frank O'Mara, 39 Ford Avenue, stated he agreed with what had been by the other people. He said he would add that if the board did not make Mr. Schneeberg take down what he had built without permission the board was giving him permission to do it.

Chair May stated comments noted.

Mr. David Hutchison, 2 Irving Place, stated first he would like to compliment the board. He said he had been to the last 4 or 5 Zoning and Housing Board of Appeals meetings and was really glad that the board has not given variances for parking in the front, at least in one case not give a variance to park in the back yard, not adding the additions, etc. He said he would like resonate with what Mr. Lynch, Peter Friedman and Marilyn Helterline. He said he was glad the board was striving to protect the integrity of the new zoning code. He said the board so far has pretty much in large part been following the Code and he was glad to see that.

Mr. Schneeberg stated he actually did support everything everybody said but they were all living in a different world right now. He said remember this also that just last week the governor borrowed money so the state did not go broke, Medicare was down and hospitals and nursing homes were down for lack of business and people because money was tight. He said they were all going to find the attitudes and philosophies where families and more people were going to be living in their homes with family and friends because they could not afford to go nursing homes, hospitals or apartments. He said his point here was to help support himself and help others basically at the hospital he works at with people who were here part-time to work but lived many miles away. He said in regard to code enforcement safety was the most important thing here. He said he was not renting to party people, college students and stuff like that but he was renting to people who needed rooms and were satisfied with rooms and not having anything else go into the rooms. He said that was his interest. He said he understood everything that was said but people have to realize that back in the time when they were all younger families lived together with one in each room and with the way the economy was going right now that was the way it was really going to go. He said his opinion was that safety, fire, floods, electrical and all the things in the house for the people who live in the house were most important, not the amount of people who live in the house. He said he knew there was an extreme but what was going to be happening was more people were going to be living with each other.

Chair May stated he was not going to address each and every point, there was a Zoning Code for a reason and the city did not allow multiple families in the R-2 Zone or the expansion of multiple families in the R-2 Zone. He said a family living together did not constitute multiple families because there could be any number of related individuals. He said the problem was when there were unrelated individuals. He said at this point he was going to take an unusual step and make a motion to deny the use variance with language to require removal of any indices of a 2<sup>nd</sup> apartment in the dwelling.

**MOTION**, made by Chair May and seconded by Commissioner Geasey, that based on site visits by members of the Zoning and Housing Board of Appeals and testimony heard at the September 24, 2012 meeting, the board denies the use variance requested by Paul Schneeberg for 40 Center Street (288.17-5-06) and the board requires Mr. Schneeberg to remove any indices of a 2<sup>nd</sup> apartment in the dwelling and directs the Code Enforcement Office to follow through and make sure this occurs.

- Voting Ayes:** Chair May  
Commissioner Geasey  
Commissioner Rafter  
Commissioner Robinson
- Noes:** None
- Absent:** Commissioner Ficano  
Commissioner Lawson  
Commissioner Shields

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**MOTION CARRIED**

Voting followed this discussion.

Mr. Peter Friedman, Maple Street, asked for clarification of the board's motion regarding any indices of a 2<sup>nd</sup> apartment.

Chair May replied it would be up to the Code Enforcement Office to decide what it was to put the property back to the way it was. He said Mr. Schneeberg has to remove whatever he put in to convert the property to a two-family absent a building permit. He said any fines that were necessary or appropriate will be issued at that time. He said that Code Enforcement Officer Chiappisi will attend the property and see that this all occurs.

Mr. Friedman stated he would like to speak to one of the things Mr. Schneeberg mentioned about the housing problem in the city. He said the housing problem in the city was not because the city did not allow conversions in all of the neighborhoods that need protection from conversions. He said the problem with not having enough housing in the city was because in the last 30 years the city really has not allowed new construction to be built anywhere in the city and the city really needs to support new construction.

Chair May stated he concurred.

Commissioner Robinson stated when Mr. Schneeberg talked about safety he asked if the work he had done been inspected.

Chair May stated the board did not know that and that was why it has directed the Code Enforcement Officer to follow through on this.

Code Enforcement Officer Chiappisi stated a kitchen had been started on the 2<sup>nd</sup> floor and there was a sink in place.

Chair May asked if Code Enforcement Officer Chiappisi understands what the board wants him to do here.

Code Enforcement Officer Chiappisi replied put it back.

**PETITIONERS**

Chair May asked if there were any petitioners.

Council Member Michael Lynch, 4<sup>th</sup> Ward, read the following statement dated September 24, 2012 he prepared for the board that he wished to have entered into the record.

*“Statement by Mike Lynch  
Alderman, 4<sup>th</sup> ward  
City of Oneonta  
September 24, 2012*

*It has now been 2½ months since I sent a letter to ZBA chairman Ed May regarding his conduct in approving a variance for 66 Church St. To date, I have received no response. I believe that public officials have an obligation to respond to the public they serve. Refusing to acknowledge the concerns raised by me demonstrates an arrogance and disregard for the public Mr. May serves.*

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**(Petitioners)** continued

*Mr. May continues to talk about developing the Sliver Creek property. It is unfair and improper for him to sit on a Board that provides him the opportunity to exercise a competitive advantage for his own private business interests. Mr. May is well positioned, as a member and Chair of the ZBA, to make decisions on granting and/or denying applications that benefit his own profit motives.*

*The perception certainly exists that Mr. May is in a position to make decisions that benefit his business interests over the common good of our community. One needs only to look at the results of the Zoning Commission to confirm my concerns. Mr. May was appointed to that Commission and played a central role in developing the final plan. The result: a surgically drawn line around his Silver Creek property allowing for higher density development.*

*I have no confidence in Mr. May's ability to be an impartial member of the ZBA. His continued involvement furthers the appearance and perception that he is using this post for his own personal gain.*

*It is time for Mr. May to resign his position on the Zoning and Housing Board of Appeals and pursue his private land development interests without the advantage of a position on the ZBA.”*

Chair May asked if anyone had any comments on Mr. Lynch's statement.

Mr. David Hutchison, Irving Place, stated it sounded appropriate. He said he thought many people have questioned Mr. May's role as chair of the board. He said he had not been to all the meetings but thought the perception was certainly there that Mr. Lynch has stated.

Chair May stated he was not going to spend any time defending this position. He said Mr. Hutchison's comment kind of flies in the face of the comment he made a few minutes before about how well the board was doing. He said let that be said on the record and also let it be said that the Silver Creek development that he was a member of, not the sole owner of, appears before the Planning Commission here in the city and not the Zoning and Housing Board of Appeals therefore he had no influence whatsoever as he was not a member of the Planning Commission. He said the Zoning Task Force that drew the lines for this particular area, he had abstained from any and all comment about the Silver Creek area and there were two members of the Zoning Task Force attending the meeting that could attest to that if anyone would like to ask them. He said Peter Friedman would be one of them and Mr. Overbey would be another one. He said there were a lot of factual errors in this statement and if anyone spent the time to find out they would know that or had Mr. Lynch taken the time to come to the Zoning Task Force meetings which were held here at City Hall he would have known that or had he talked to any of the other members of the Zoning Task Force he would have known that.

Chair May asked if there were any further comments.

Ms. Georgia Basadekis, a Walnut Street resident, stated she and others agreed and stood behind what Mr. Lynch stated in his letter to the board.

Commissioner Robinson stated that he long felt that for Silver Creek it would be advantageous to have multiple housing instead of single family dwellings because there would be a lot less blacktop, much less digging to put in water lines, etc. He said he personally had always thought that but that was no reflection to what Mike's letter said but it was just that he thought that was the proper thing for Silver Creek.

Chair May stated there were seven members that serve on the Planning Commission as well as seven members that serve on the Zoning and Housing Board of Appeals. He said the Chairman was a ceremonial position but he only had one vote. He said any action by this board or any other board in the city requires a majority of votes.

**(Petitioners)** continued

Commissioner Rafter stated he would agree with that. He said to attribute a great deal of power to one particular person was he thought taking one's opinions into a public forum where it did not quite belong. He said he would state that this was a multi-member commission and people take it seriously. He said as much as they were public servants they have also stepped in to be public servants and no compensation whatsoever for being here. He said these were not easy decisions to make because it involved a number of mixed feelings when a person has done something with their property. He said being in a position to say yes or no to that and trying to balance certain considerations and laws was not an easy thing. He said he knew it was a difficult thing to get people to actually come and do this work and he encouraged anyone to come and step up a bit and be in some of these suits, whether it be in the Planning Commission, Zoning or any other place. He said he knew that there were always political implications either real or attributed to these types of things but he certainly took a certain umbrage at the statement made by Mr. Lynch and taking this particular opportunity to stand or grandstand in this forum. He said that was his opinion.

Mr. O'Mara, Oneonta, stated he agreed with what Mike Lynch said because he did not understand why a builder would have a seat on any commission or committee in the city that regulates building. He said it was clearly pointing to a conflict of interest.

Chair May stated Mr. O'Mara's opinion was noted. He said they all followed the same Zoning Code and he was not appearing before this board asking for any exemptions or special treatment at any time since the beginning of Silver Creek 26 years ago. He said it has never come before this board and will never come before this board.

Council Member Brzozowski stated he disagreed with Mr. O'Mara on this. He said Mr. O'Mara and he were talking on the way in and he was mentioning how the Plumbing Board was absolutely empty for lack of members. He said as Mr. O'Mara was speaking he was thinking that was because there were no plumbers willing to serve on that board. He said he did not agree with one should not be a builder and be on a committee because if that was extended there could not be people on many committees who were in their area of expertise. He said the city would have a real problem fielding committees if that was case. He said having said that there were certainly times when people have need to recuse themselves because of a conflict of interest but he did not think simply of being of a certain occupation, landlord or a builder makes one unfit to serve on a committee.

There being no further business to come before the board, Chair May adjourned the regular meeting at approximately 7:30 p.m.

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JAMES R. KOURY, City Clerk

JRK/pab