

ONEONTA, NEW YORK - JANUARY 28, 2013 - 7:00 P.M.
REGULAR MEETING ZONING AND HOUSING BOARD OF APPEALS PG. 1

PRESENT: Chair Ed May
Commissioner Robert Lawson
Commissioner Karen Geasey
Commissioner Louis Shields
Commissioner John Rafter
Commissioner Paul Robinson
Council Member Bob Brzozowski
ABSENT: Commissioner Joseph Ficano

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

CORRESPONDENCE

City Clerk Koury stated there was no correspondence.

APPROVAL OF MINUTES

MOTION, made by Commissioner Lawson and seconded by Commissioner Geasey, that the board approves the Zoning and Housing Board of Appeals minutes of the regular meeting held October 22, 2012.

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

MOTION CARRIED

PUBLIC HEARING ON REQUESTED VARIANCES

The Notice of Public Hearing on the following requests was duly published in The Daily Star on Thursday, January 17, 2013.

Eric Fleisher is request in a use variance in order to use the owner occupied single-family dwelling at 20 Walling Avenue, Oneonta, New York as a short-term rental.

NEW BUSINESS

Chair May stated the board would address the only item of new business on the agenda dealing with 20 Walling Avenue.

20 Walling Avenue: Eric Fleischer is requesting a use variance in order to use the owner-occupied single-family dwelling as a short-term rental.

The following Memorandum, dated January 14, 2013, was received from Ordinance Inspector Ferris:

“SUBJECT:	Property Address:	20 Walling Avenue
	Property Owner:	Eric Fleischer
	Tax Map #:	288.18-6-34
	Applicant:	Eric Fleischer
	Zoning District:	R-2: Moderate Density Residential District

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PROPOSAL:	<i>The applicant wishes to use this owner-occupied single-family dwelling as a short-term rental.</i>
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1. Use Variance

300-88 C (2):	<i>Use variance. On direct appeal from a determination of the City Code Enforcement Officer may grant a variance where the property owner can show that his property meets the criteria for a use variance established by the State of New York.</i>
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<i>Table(s)</i>	<i>Code Requirement(2)</i>
300-92	<i>Permitted Uses by District</i>
	<i>Short Term Rentals are not listed as a permitted use in this zoning district.”</i>

Forty-five (45) letters were sent out by the Clerk’s Office to property owners residing within 200 feet radius of the property in question and no responses were received.

Chair May asked who was present to represent the property.

Eric Fleisher, 20 Walling Avenue, Oneonta introduced himself, thanked the board for hearing his variance request, and recognized his neighbors and the other public present. He said he wanted to rent his house out in the summer. He stated he was a single father and his son stayed with him part of the time. He said he was a partner in one of the local restaurants in Oneonta and did not have a steady income. He said he wanted to supplement his income in order to ensure that he could stay in the community. He stated rather than having college kids or roommates he wanted to have the option of renting to a baseball family during the summer months.

Chair May asked if he was aware the property he had purchased was in an R- 2 Zone.

Mr. Fleisher replied he was aware of that.

Chair May asked if he was also aware the city had just completed a two and a half year effort to update the zoning code.

Mr. Fleisher responded he did somewhat.

Chair May then asked if he was also aware that in the R-1 and R-2 Districts the city did not allow the application that was being requested and that was why the board was hearing the request. A use variance is probably one of the most difficult variances to obtain from the board. In the application there was a list of things that needed to be presented to demonstrate why a use variance should be issued. Chair May then asked the board had any questions.

Commissioner Rafter said the board also had a short term rental application for 2013. He asked if there was an update on the status of short term applications for summer rentals and where that stood.

Code Enforcement Officer Chiappisi replied that the new zoning code allowed short term rentals, previously called summer rentals, as a permitted use in the RD4, MU1, MU2, and C/I zones. He stated that the Code Enforcement Office could approve an application that was for a property within the permitted zones. If the property is not in one of those zones a variance would be required. There were roughly 12 short term rentals in the city at this point. There might be more depending on how many have renewed, but there was generally a maintained average.

Commissioner Rafter asked if the application pertained to property in R-1 and R-2 zone it would come to the board and would need to request a use variance for a summer rental. If the property was in another zone the Code Enforcement Office would approve the application.

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Code Enforcement Officer Chiappisi stated yes, unless the property was grandfathered prior to the introduction of the new zoning code, in which case as long as they had maintained the short term rental the Code Enforcement Office would also approve those applications and no variance would be necessary.

Commissioner Rafter asked so if the property had a short term rental approved prior to the adoption of the new Zoning Code.

Code Enforcement Officer Chiappisi said it would continue as long as the rental was maintained yearly, the fee was paid, a certificate of compliance was current and it met code regulations.

Commissioner Rafter said so those were the lucky possessors and asked what in terms the definition of a short term rental was.

Code Enforcement Officer Chiappisi stated occupancy of residential premises for a term of no more than two weeks on two or more occasions during any 6 month period and not including so called tourist camps or tourist cabins. The regulations are found in section 300-32. If the length of the rental was less than two weeks it would not require a permit. If the rental was for more than two weeks in a six month period a variance would be required from the board.

Commissioner Rafter asked if R-2 properties would not be permitted to have a short term rental at all.

Commissioner Lawson asked if he had a home in an R-2 zone and he rented to three unrelated people for six months that would not be anything the city would regulate.

City Attorney Merzig stated no, it would only be allowed for a two week maximum per six months.

Commissioner Lawson he was not referring to a two week period. He was asking about the legality of renting to three people for a longer period of time.

Code Enforcement Officer Chiappisi said that would be fine. That would just be considered a rental property.

Chair May asked if anyone in the audience had comments they would like to share related to the variance request.

Tom Mann, 19 Walling Avenue introduced himself and said this particular block actually has about 50 percent private homes used as rental income properties. He felt the block was going the wrong way. In terms of the rental properties on the block, maintenance was lacking. The private home owners felt as they had put a lot of pride and money into their properties and when one drives down the block, the difference between the rental properties and the non-rental properties could clearly be seen. He knew it was a short term thing but right now he felt a little protective and did not want to see any more changes in terms of rental income properties on his block.

Chair May thanked him for his comments and asked if anyone else wished to address the board.

Mark Colone, 18 Walling Avenue introduced himself and stated both he and his wife were retired and had lived in their home for fifty years. They had seen their neighborhood significantly change. He stated he did not want to see it change any further. He stated that if Mr. Fleischer was going to rent it and keep control of the place that was one thing but he knew at times when people rent houses they get overwhelmed and don't care about the property or the outside appearance of the house. He said their street was full of parking. People constantly park in front of his house. He never has a chance to park in front of his own house. There were college students there, they had cars and had to park them somewhere. He said he had concerns about

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how many people he would have in the house at any one time, the outside and activities and problems with noise or music.

Chair May thanked him for his comments and asked if anyone else wished to address the board.

Gary Koutnik, 105 Center Street, introduced himself saying he was diagonally right across Center Street from the house in question. He had a student rental across from him and a summer baseball camp rental next door to him and had never once had any trouble at all with any of them. He thought the reason for that was in both cases the landlords understood they needed to commit to making sure there was no problem for the neighbors. He understood that was not always the case and his only concern was that the owner of this property understood what a tremendous job it would be to make sure people from out of town that would only stay for a week to respect the character of the neighborhood.

Chair May thanked him for his comments and asked if anyone else wished to address the board.

Armeda Colone, 18 Walling Avenue, introduced herself and said there was no parking on that street whatsoever. It was a short, busy street with a lot of traffic. The parking in front of the property in question was difficult because people came around that corner very fast and they came there to turn around. As her husband had said they were a one owner family house for fifty years and had one parking space in front of their home that they never got to use. She also had worries about garbage in the summer, the possible noise and property maintenance.

Chair May thanked her for her comments and asked if anyone else wished to address the board.

Christine Buzzanca, 10 Walling Avenue, introduced herself and asked if it was a short term lease was it only for 2013 or once granted did that mean it would be attached to the home forever.

Chair May stated that if the property was approved for a variance, it goes with the property forever as long as it was maintained consistent with the city rules and regulations.

Christine Buzzanca said that troubled her.

Chair May thanked her for her comments and asked if anyone else wished to address the board.

Mary Zummo, 8 Walling Avenue, introduced herself and asked if Mr. Fleischer intended to rent the entire home or rent rooms.

Mr. Fleischer replied he did not want to rent rooms. He wanted to live there most of the year by himself and just rent the home for one to two months in the summer to help with his bills in the winter when it was slow at his restaurant so he could maintain ownership. He understood everyone's concerns. He was obviously new to the neighborhood and knew a lot of people had been there for a long time. He didn't want to cause any disturbance or to ask any favors from anybody. He stated he had put a large sum of money into his property and wanted to be part of the community for the long haul. He had bought the property because it was important to him that he would have a home for his son and him with a yard; a place to build memories and keep their family history and antiques for future generations. He did not want to create more traffic and thought renting out his home for six to eight weeks in the summer would probably be less in the long run than two roommates everyday all year round. He said as far parking was concerned he had a two car garage; a carport that parked three plus in his driveway, so he guessed technically six cars could literally park on his property. He said he was trying to be as sincere and honest as possible. He was quiet person. He didn't have parties or tons of people over. He said he would be open to the board placing a clause on the variance approval on a yearly basis to take away the privileges to be able to rent if he neglected his property or offended his neighbors. He only wanted what would be best for the neighborhood and have some form of help to pay his bills. He said he also wanted to make it clear he had requested permission to rent for six to eight weeks in the summer not for six months.

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Mary Zummo asked if he personally intended to be in residence there all of the time even while renters would be living there as well.

Mr. Fleischer replied he intended to be in residence all of the time, if it was okay with the renters. If it was not it would be a momentary type thing for one or two weeks, and he would stay at his business partner's house in a spare room. He stated that he just wanted to be able to make sure he could pay his bills in the winter. He was not trying to pull the wool over anyone's eyes.

Chair May if anyone else had any comments they would like to address to the board on the matter.

Patty Mann, 19 Walling Avenue, introduced herself and asked if the variance was approved to rent his home six to eight weeks were there rules and regulations that placed a limitation on the number of people that would be able to reside there at one time.

Chair May responded there are but the board did not enforce those things. If a use variance was issued by the board he would be able to use his home as a short term rental following the city's rules regulations and inspections for the duration of the summer rental season.

Commissioner Rafter stated it runs with the property so if he sold the property the new owner would have that variance as well.

Chair May then asked if there were any other questions, comments or concerns from the audience.

Commissioner Geasey said she just wanted to be clear if the variance was approved it would stay with that property forever. If the property was sold the next owner would also have the variance.

Chair May stated when a variance was issued by the Zoning Board of Appeals it was an exception to the Zoning law in the city and they go with the property in perpetuity. He stated he would now close the public comments and asked if there were any final comments

Mr. Fleischer said if the board was able to grant the variance in his name only and have it reviewed yearly with the option to deny he would be more than willing to do that.

Chair May said it would be great if the board operated that way, but once a decision was made it was made. It was then memorialized in city law at that point.

Mr. Fleischer said on that note if given the chance he would not let his neighbors down. He had lived in noisy neighborhoods and would not want that to happen, and that he would keep his property to the best of his possible ability. He believes in good energy and wouldn't want bad energy on his block with his neighbors or people coming to his home.

Chair May thanked him for his comments and asked the board members if they had any questions

Council Member Bob Brzozowski asked if there were any options Mr. Fleischer had to the use variance. He also asked for a history lesson as to why the R-2 was considered so different from what the Code Enforcement Office was able to do in the other zones.

Chair May responded there was a two and a half year Zoning Task Force in this city where the zoning codes were examined very intensely. There was a great deal of care and attention to protecting the R-1 and R-2 zones primarily as single family residence areas as outlined in the city comprehensive plan. The city Zoning Code dovetails with that and these were not permitted uses in those zones.

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Council Member Bob Brzozowski said it seemed to him that puts R-1 and R-2 in a position, in some ways a weaker position than the other zones. In that the zoning board of appeals not necessarily the current one, could change something in perpetuity that would make it worse than it would if the Code Enforcement Office were to make year to year decisions.

Chair May agreed that might make some sense and Council Member Brzozowski was in a position to change that. The board was not. The board only dealt with the Zoning Code that was adopted by the Common Council as it exists currently.

Commissioner Rafter said the city requirements are the same no matter what the zone.

Council Member Bob Brzozowski asked if the variance was approved the same requirements would have to be met as far as code enforcement is concerned.

Chair May stated it would still have to meet the same requirements. The board was doing nothing that would preclude Mr. Fleischer from renting his home to a single family. What the board was addressing was that a short term rental was precluded in the R-1 and R-2 zones.

Commissioner Geasey asked if the owner was living there and a family came in would that still be a short term rental.

Chair May said the board could speculate on what they wanted all day long but the application was for a short term rental. What the board was ruling on was the application.

Commissioner Geasey said she wanted to address Ms. Mann's questions. She was asking could it be a family of fifteen or a family of five if they were related individuals and wanted to know how many people could rent in one week.

Chair May stated if the family was twenty people you would have twenty people.

Patty Mann asked if the board would hear how the neighbors that were there felt.

Chair May said that had just happened that was the whole purpose of the public hearing to have their voices heard. He then asked if there was anyone in the audience who would support a short term rental at 20 Walling Avenue.

Mr. Colone asked what the chair considered as "short term."

Commissioner Geasey clarified different families for six to eight weeks.

Chair May said yes but it is a short term rental that is being requested, to rent short term over a period of eight weeks. He might rent eight times in eight weeks or one time in eight weeks. He might rent two weeks at a time which was typical of a lot of baseball families.

Commissioner Rafter said he would like to point out that it was an assumption to say that anyone who would rent for a short term must be a baseball family.

Chair May stated he concurred with Mr. Rafter's assessment.

Commissioner Rafter stated this was really a phenomenon of Oneonta having houses that are located proximate to baseball camps that draw thousands of people over the summer. So the restriction on short term rentals previously was an application process where almost like a lottery, when there was a short term rental approved the other houses within a 200 foot radius would not be approved. It was a way to strategically place the rentals so that people wouldn't be inundated with summer rentals. He thought the zoning restrictions were on R-1 and R-2 to make those two zones especially devoted to single families. This was the intent he thought of the zoning code as it follows the comprehensive plan. In part the character of the owner is not the

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question so it has nothing to with even a vote of great confidence in the people and would probably not sway him personally when the neighborhood will not collude to have that there. When you thought about the use variance going with property for perpetuity it was not a matter of the owner.

Council Member Brzozowski asked if there would there be a need for a use variance if Mr. Fleischer continued to live in the home.

Chair May said if it was done legally and he stayed in his home and had two unrelated people living there, he would then have three unrelated people, which he could do right now without even coming before the board. He could rent his home to anyone at any time as long as it was a single family, but that would not be considered a short term rental.

Council Member Brzozowski said so he could withdraw the application.

Commissioner Geasey said she just wanted everyone to be aware that the board had to consider not just the individual application but that it would be setting a precedent.

Chair May stated the primary job of the board was to protect the integrity of the city Zoning Code. It was a new zoning code and he would not support of this application.

Commissioner Lawson said he didn't doubt the sincerity toward the community of anyone there. The fact that a variance would run in perpetuity with the property regardless of the owner, he felt as the board would be opening a door they wouldn't be able to close. He said he was hesitant to start eroding the zoning code. The city had just gotten a new zoning code and it was very specific. He said if the door was opened for one person then that was the perspective that would have to be used the next time someone appeared before the board and he could not support that.

John Rafter said he shared the notion that any sort of a use variance, if approved, would set a precedent that would make it hard to deny any future requests put forward for any zone. He felt as there was no evidence for a compelling reason. Although he did think Mr. Fleischer was a nice person, with a lot of integrity. In very short time there could be another owner the neighbors would not be sure they trusted. The vote was about that matter in the respect that this variance was not for the current owner alone.

Commissioner Shields said he thought Mr. Fleischer was nice man and was certainly an asset to the community. He said because it was a use variance and it was very difficult to meet the parameters to approve a use variance, he would have to vote against the variance.

Chair May stated he had not seen evidence presented or testimony given that indicated that the standard for a use variance had been met. He asked for a motion from one of the board members.

MOTION, made by Commissioner Lawson and seconded by Commissioner Shields, that based on the evidence presented and the testimony heard by members of the Zoning and Housing Board of Appeals at the January 20, 2013 meeting, the Board denies Mr. Fleischer's request as submitted to use the owner-occupied single-family dwelling as a short-term rental at 20 Walling Avenue (288.18-6-34).

Voting Ayes: Chair May
Commissioner Lawson
Commissioner Geasey
Commissioner Shields
Commissioner Rafter
Commissioner Robinson

Noes: None

Absent: Commissioner Joseph Ficano

MOTION CARRIED

Chair May stated that the motion had failed. The variance request was denied and thanked everyone present for their time.

Mr. Fleischer then asked if he was allowed to have two roommates at any given time throughout the year.

Chair May stated that as long as the property complied with all the inspections and requirements through the City Code Enforcement office.

Chair May stated he wanted to address a couple of things. There had recently been a lot of emails exchanged related to notice and sending letters to the neighbors in relation to tabled items. He stated. He summarized what brought this issue to the point it was currently at, and was precipitated by the variance request related to Mr. Martella's property at 10 Irving Place.

After a lengthy discussion the board determined that if an issue before the board was tabled and came back for discussion the following month, no notice to residents would be mailed. However, if the issue lapsed to a third month, notice would be sent to the neighbors

Chair May stated that the board had to elect a chair and vice chair and a motion was presented.

MOTION, made by commissioner Shields and seconded by Commissioner Rafter that Ed May be elected Chair of the Zoning and Housing Board Appeals and Paul Robinson be elected as Vice Chair for the year

Voting Ayes: Chair May
Commissioner Lawson
Commissioner Geasey
Commissioner Shields
Commissioner Rafter
Commissioner Robinson

Noes: None

Absent: Commissioner Joseph Ficano

There being no further business to come before the board, Chair May adjourned the regular meeting at approximately 8:00 p.m.

JAMES R. KOURY, City Clerk

JRK/vpw