

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

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

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

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

CORRESPONDENCE

City Clerk Koury indicated that there was no correspondence.

APPROVAL OF MINUTES

Without benefit of a motion the board approved the Zoning and Housing Board of Appeals minutes of the regular meeting held September 24, 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, October 15, 2012. Affidavit as to proof of publication is attached hereto:

- 1. Joseph Ruffino Sr. is requesting a Short Environmental Assessment Form (SEQR), a sketch Plan Conference and an area variance for the parking area he created at 24 River Street, Oneonta, New York. The parking area is approximately 16' X 24' and is located in the front yard. Two (2) parking spaces are required for single-family dwellings.*
- 2. Michael Ranieri is requesting a Short Environmental Assessment Form (SEQR), a Site Plan Review, and a use variance in order to create parking lots at 176 East Street, 178 East Street and East Street, Oneonta, New York. There will be 40 parking spaces at 178 East Street and 32 parking spaces at 176 East Street. The size of the project is approximately .58349 acres. The projected total impervious surface for this project is approximately 23,886 square feet.*
- 3. Brody Smith is requesting a code interpretation by the Zoning Board of Appeals. The attached garage at 10 Irving Place, Oneonta, New York has been converted into two (2) bedrooms and the 3rd floor attic into one (1) bedroom without first obtaining a building permit from the Code Enforcement Office. In addition, the occupancy of this property is limited to three (3) unrelated individuals but is being occupied by more.*

The following Press Release was sent by the City Clerk to the media on October 19, 2012. Proof of said notification is attached hereto:

PRESS RELEASE

Please be advised that Mr. Michael Ranieri has asked that his parking lot proposal for 176-178 East Street before the Zoning Board be tabled. Therefore, the issue will not be on the agenda for the meeting scheduled for Monday, October 22nd at 7:00 p.m. The revised agenda is attached.

NEW BUSINESS

1. 24 River Street (300.09-1-56), Joseph Ruffino, Sr. – Required Action: Short Environmental Assessment Form, Sketch Plan Conference and Area Variance: The applicant has created a parking area at this property. This parking area is approximately 16' x 24' and is located in the front yard. Please note that two (2) parking spaces are required for single-family dwelling.

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 2

(New Business) continued

2. 10 Irving Place (288.18-1-94), Brody Smith – Required Action: Code Interpretation: The applicant is requesting a code interpretation of the Zoning Board of Appeals. The attached garage has been converted into two (2) bedrooms and the 3rd floor attic into one (1) bedroom without first obtaining a building permit from the Code Enforcement Office. In addition, the occupancy of this property is limited to three (3) unrelated individuals but is being occupied by more.

Chair May addressed the items of new business as follows:

24 River Street (300.09-1-56), Joseph Ruffino, Sr.

The following Memorandum, dated October 9, 2012, was received from Code Enforcement Officer Chiappisi:

“**SUBJECT:** **PROPERTY ADDRESS:** 24 River Street
 PROPERTY OWNER(S): Joseph Ruffino Sr
 TAX MAP #: 300.09-1-56
 APPLICANT(S): Joseph Ruffino Sr
 ZONING DISTRICT: MU-2: Gateway Mixed-Use District
 # OF DWELLING UNITS: 1

PROPOSAL: *The applicant has created a parking area at this property. This parking area is approximately 16' X 24' and is located in the front yard. Please note that two (2) parking spaces are required for single-family dwellings.*

1. *SHORT ENVIRONMENTAL ASSESSMENT FORM (SEQR)*

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. *AREA VARIANCE*

300-61 C (1): *Parking areas set back from lot lines and streets. In all districts, no part of any parking area, other than driveways for ingress and egress, shall be located closer to a . . . sidewalk than ten feet.*

300-61 C (5) (a): *No person shall keep, store, or park any motor vehicle, whether operable or inoperable, on any portion of a front yard or corner lot side yard facing a street of any property . . . which may or may not consist of an impervious surface material.*

300-61 C (5) (b): *No owner, tenant, manager or occupant of property used as a residence shall allow any person to keep, store, or park any motor vehicle, whether operable or inoperable, on any portion of a front yard or corner lot side yard facing a street, except on driveways, which may or may not consist of an impervious surface material.*

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.”*

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 3

(24 River Street) continued

Thirty-four (34) 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.

Mr. Jim Tomaino stated he was representing the 24 River Street for his father-in-law Joe Ruffino. He said there were already two parking spaces for this property and Mr. Ruffino put some stone down and needed to come before the board for a decision saying it was okay to park there. He said for a single-family residence two parking spaces were needed, there has never been any parking on this particular property and they created them now.

Chair May asked about the driveway in between the two houses.

Mr. Tomaino stated it was a shared driveway. He said the shared driveway was in the deed that has access to the back door to that property. He said his father-in-law purchased that property about three years ago and at that time they were able to utilize the full driveway but since then the City of Oneonta has changed direction of Meckley Avenue where it was only a one-way. He said the orientation of the driveway did not provide them to use that driveway from Meckley Avenue because one would have to drive down Meckley Avenue and reverse back into the driveway to use it. He said in other municipalities if this type of thing were to happen the city would come through and reorient the driveway to make it useable but that did not happen here and they had to go ahead and make it work.

Chair May asked if there was any possibility of parking in the rear of the structure.

Mr. Tomaino replied it would make it virtually impossible to utilize that property because cars now were large and the turning radius would not provide for that to be done. He said this was a depressed property that his father-in-law purchased 3 years ago that was owned by Zack Rentals. He said they were in the process the last couple years and took a structure down in the back and had a single family living there presently of a gentlemen with 2 young children. He said it used to be utilized as a college rental and then it was a legal summer rental. He said they have brought the property up to code and there were a few issues but they were ready to continue to rock and roll.

Chair May stated what this request was really up against was the new Zoning Code recently enacted because it prohibits in almost all cases front yard parking so much so that there was a deadline date set for the removal of all front yard parking in the city.

Commissioner Shields stated it seemed to him that the entire yard was not being taken.

Mr. Tomaino stated that was correct.

Commissioner Shields stated the portion being taken seemed to be tucked away behind bushes.

Mr. Tomaino stated that was correct. He said if one looks at the character of the neighborhood almost every single property on River Street starting with Stewart's to the end at 14 River Street that had one single space in the front and almost takes up the entire front yard. He said in looking at the Zoning Code the fact was that when these properties were decided and created in the City of Oneonta it did not provide for large cars. He said he could appreciate Chair May's point of the Zoning Code but in this circumstance it was not going to work and apply to this particular property. He said what they would like to see was a change in that issue so this property becomes more marketable to people who were single family and become single family owners. He said their hope was that the man living there may want to purchase the property.

Commissioner Ficano stated when pulling into the driveway from River Street one could still get out onto Meckley Avenue and only take a left. He said he did not fully understand why it was so much less useable now.

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 4

(24 River Street) continued

Mr. Tomaino stated because now they cannot come down Meckley Avenue and turn into the driveway. He said when they purchased the property Meckley Avenue was not a one-way and it was changed about 2 years ago. He said they talked to Senior Engineering Technician Hawver about needing to do something about it when he came and told them the city was changing it to one-way and the one-way was put in anyway so the homeless shelter people could basically pull up and park on the right side of the road on Depew Street. He said the one-way now causes problems with this property's driveway and makes it unusable except for backing into it after backing up on a one-way street. He said you cannot pull into the driveway. He said for turning that street was only about 14' wide.

Chair May stated coming down the shared driveway from the back of the property he asked what prevented one from creating parking behind the property and turning around there and pulling back out the shared driveway to River Street.

Mr. Tomaino stated that probably could be done but the radius was very hard there was well. He said it would create such an issue of parking back there that no one would be able to utilize that driveway at all if there was car half-way out. He said he would invite anyone on the board to come down and try it.

Commissioner Geasey questioned if another option was pulling in from River Street into the driveway and back into River Street but was that what the applicant was trying to avoid.

Mr. Tomaino responded no. He said there were 2 houses with a shared driveway at 28 and 24 River Street and it would basically make the property useless and impossible to do anything with the property. He said because it was a shared driveway was a problem.

Mr. David Hutchison, Irving Place, stated a couple hundred feet away from this property on Mary Street there was parking on both sides of the street. He said that may not be desirable but the owner of the other property may come before the board with this same request and then there would be 3 or 4 properties in a row with front yard parking with a variance that goes with the property forever. He said creating front yard parking was not the greatest thing.

Mr. Tomaino stated after a certain date the city had a snow ordinance and did not allow parking on Mary Street. He said he thought the whole goal was to not have people parking on the streets and have more single family residences and asked where these people were supposed to park. He said the board had to look at that as well.

Chair May stated that was what the board was in the process of doing.

Mr. Tomaino stated two more points were that when this property was purchased the one-way street was not in effect until the city came later and changed it and, secondly where did they want these people to park, which was where it ultimately comes down to. He said the fact that there was a 16' x 25' parking area that was less than a third of that total front end area on this property. He said it was the same like and kind of other properties presently on River Street, in fact this was less than several of the properties on River Street. He asked that the board make democracy happen.

Chair May stated the board's goal was to enforce and support the new Zoning Code to the best of their ability and to issue relief when there were no other options available. He said in this case his opinion was that he thought the applicant could create parking in the back yard. He said he would like to get a sense of the board on the matter.

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 5

(24 River Street) continued

Commissioner Rafter stated he agreed that there was the possibility of creating back yard parking. He said in that particular area there were a number of parking lots that come right up to the edge of the street and he was not opposed to this being permitted.

Commissioner Shields stated under the circumstances he was not opposed either. He said he thought it was a pretty good strategy in spite of the new Zoning Code. He said it was unfortunate that the city decided to make it more difficult for the applicant and the property he owned. He said the cars could go out back but that created more congestion for both houses.

Commissioner Geasey stated she was opposed. She said the board cannot make exceptions especially if there were some options.

Commissioner Lawson stated he thought the back yard parking was the best way to go. He said he would be opposed to a variance. He said there were too many properties in the city that had similar issues and he thought the board had been pretty consistent.

Commissioner Ficano stated he was also opposed for the reasons already stated but also he thought there was something in addition to what was just said and that looking at Meckley Avenue and that entryway from the driveway to the street was worth taking a look at. He said maybe the city could play a role and return some of the parking to this driveway when it was a two-way street.

Chair May stated that the board was in no position to control what the city may or may not do. He said the board needed to make a decision on the facts presented and testimony heard.

Council Member Brzozowski stated he wondered if the board would look more kindly at a single parking space than 2 and why 2 was necessary for a single family.

Mr. Ruffino stated that everybody had 2 or 3 cars.

Mr. Tomaino stated that the CarQuest property comes right up next door to the property. He questioned if the board was saying that other property that was commercial and about a hundred cars could park there but 2 cars could not park 2' farther. He said that did not make any sense.

Chair May stated the board was not saying that at all. He said those conditions existed as did Mr. Ruffino's house.

Commissioner Geasey questioned if there was any ability for Mr. Ruffino to ask the neighboring property owner J & D Printers for a spot on their property.

Mr. Tomaino responded that he thought what the commissioner was asking was quite ridiculous. He said one does not just go and ask people that and one needed to utilize the property they pay taxes on.

Hearing no further comments the Chair entertained a motion on the matter.

MOTION, made by Commissioner Shields 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 October 22, 2012 meeting, the board accepts Mr. Ruffino request as submitted to create a parking area 16' x 24' in the front yard at 24 River Street (300.09-1-56).

Voting Ayes: Chair May
Commissioner Shields
Commissioner Rafter
Noes: Commissioner Ficano

(Voting) continued

Commissioner Lawson
Commissioner Geasey
Absent: Commissioner Robinson

MOTION DENIED

Chair May stated that the motion was denied.

Mr. Ruffino questioned if the board wanted him to put grass in there and asked the board to tell him what they wanted him to do. He suggested that the city fix the situation of the one-way and than he could come into the driveway from Meckley Avenue. He expressed his dissatisfaction to the board about their decision.

10 Irving Place (288.18-1-94), Brody Smith

“SUBJECT:	PROPERTY ADDRESS:	10 Irving Place
	PROPERTY OWNER(S):	Robert Martella
	TAX MAP #:	288.18-1-94
	APPLICANT(S):	Brody Smith
	ZONING DISTRICT:	R-2: Moderate Density Residential District
	# OF DWELLING UNITS:	1

PROPOSAL: *The applicant is requesting a code interpretation by the Zoning Board of Appeals. The attached garage has been converted into two (2) bedrooms and the 3rd floor attic into one (1) bedroom without first obtaining a building permit from the Code Enforcement Office. In addition, the occupancy of this property is limited to three (3) unrelated individuals but is being occupied by more.*

300-88 C (1): Interpretation. On direct appeal from a determination of the City Code Enforcement Officer, the Zoning Board of Appeals may hear and decide questions where it is alleged there is an error in any order, requirement, decision or determination made by the City Engineer involving the interpretation of the zoning ordinance.

As of this date, no documentation supporting the applicant’s claims has been submitted to the Code Enforcement Office for review.

According to the Assessor’s Office, this property has three (3) bedrooms and an attached garage. The records also show that there are two (2) stories and the attic is not finished. According to the records in the Code Enforcement Office, this property was never registered as a residential rental property when Saint Mary’s Church, therefore any use of the property for rental was not legal no matter how many people lived there. In addition, no building permit applications were submitted or approved to convert the attached garage or the attic into bedrooms.

When Ralph Munoz purchased this property in 2005 a property transfer letter was sent to him requesting that the owner complete the enclosed property use certification form and submit it to the Code Enforcement Office. This form was never submitted and a letter was also sent to him ordering him to discontinue the use of the property as a rental property when the Code Enforcement Office discovered that it was being used as such. Therefore, any use of the property for rental was not legal no matter how many people lived there. In addition, no building permit applications were submitted or approved to convert the attached garage or the attic into bedrooms. The real estate listing for the sale of this property by Ralph Munoz shows that there were three (3) bedrooms and there is a picture of the attached garage. The listing also shows that there are two (2) stories and the attic is not finished.

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 7

(10 Irving Place) continued

When Robert Martella purchased the property in 2009, he submitted a property use certification form in March. That form indicated that the property was being used as a rental and that the number of stories being occupied as habitable space was two (2). The question on that form asking if the attic was being used as living space was not checked. In question requesting the number of unrelated individuals residing in that dwelling unit was a check mark in the #1 box not a number of people. Another property use certification form was submitted in November 2009. That form indicated that the property was being used as a rental and that the number of stories being occupied as habitable space was three (3). The question on that form asking if the attic was being used as living space was checked. In question requesting the number of unrelated individuals residing in that dwelling unit was a check mark in the #6 box not a number of people. When the property was inspected by the Code Enforcement Office on 11/08/2010, the conversion of the attached garage into two (2) bedrooms without a building permit was cited. That report also ordered the occupancy to be reduced to three (3) unrelated individuals. A building permit application was submitted for the conversion of the attached garage into two (2) bedrooms. The application was denied because not all of the documentation required to do a full zoning and building code review was submitted to the Code Enforcement Office. When the property was inspected by the Code Enforcement Office on 08/23/2011 and 04/17/2012, the conversion of the attached garage and over occupancy was cited again. The use of the 3rd floor as a bedroom/habitable space was also cited on the 04/17/2012 inspection report and again on the 06/11/2012 inspection report.

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.”*

Chair May asked who was representing this property.

Mr. Brody Smith stated he was an attorney and also the property owner Mr. Robert Martella.

Chair May asked what they would like to accomplish.

Mr. Smith stated they were before the board to request an interpretation. He said he would like to hand out some documents to the board that were for reference purposes.

The Chair stated that would be fine.

Commissioner Ficano questioned what was hoped to be accomplished this evening and if the board was going to issue an interpretation.

Chair May stated that the board was going to listen, see how the board feels and then come to a conclusion one way or another.

Mr. Smith stated page 1 of his document was a letter that was submitting to Codes on June 8, 2012 and that letter also included their application. He said the letter asked for an interpretation of Code §300-15 as it existed in 2009, not as it exists now. He said the reason for this was that Mr. Martella purchased the property prior to that time and then the Code was eventually changed a couple years later but the issue here was a prior existing use. He said if there was a prior existing use of a property and then the Code changes changing the zoning of that property that prior existing use was allowed to continue so long as it meets certain requirements. He said they were asking for an interpretation of this property for non-families meaning 3 or more unrelated people should be allowed to continue as a prior existing use. He said at the time Mr. Martella purchased the property and began using the property it was an RD-5, which was High Density Residential. He said that included multi-family apartments and boarding houses.

Chair May asked Code Enforcement Officer Chiappisi if that was correct about that the RD-5

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 8

(10 Irving Place) continued

because his understanding that was an RD-3 Zone.

Code Enforcement Officer Chiappisi replied his understanding was that it was an RD-3 as well.

Chair May asked Mr. Smith where he came up with RD-5.

Mr. Smith replied from the map and he could provide the map from 2009.

Ordinance Inspector Ferris stated she would go to the office and double check on that.

Mr. Smith stated at that time Mr. Martella owned the property he used it as a student rental meaning more than 3 unrelated persons. He said looking at page 8, their second letter to Codes where they sort of sharpened the issue a little bit because initially there was some pushback saying that it was being treated almost like a variance application asking to submit drawings and things like that. He said the letter they out reaffirmed what it was they were trying to do. He said they wanted an interpretation and that they were not looking for a variance but notwithstanding they submitted the drawings requested. He said those were pages 10, 11 and 12 and those were scaled drawings of the house, page 13 was a property inspection report saying that the work done in the house was also a separate issue. He said there was a garage conversion that was up to Code except for one thing that needed to be changed. He said one of the windows was large enough but it was double hung and for fire safety it cannot be double hung. He said that window needed to be changed to swing out.

Chair May asked if Mr. Smith's client obtain a building permit at anytime for the work and modification to this property.

Mr. Smith replied page 28 showed he applied for one and then there was a letter sent by the city asking for additional drawings. He said page 30 shows Mr. Martella submitted more drawings in January and again submits more drawings of the attic space on page 31. He said but no Mr. Martella did not get the permit and thought Mr. Martella thought he complied because he put in an application, more information was requested, he gave more information and then did not hear from the Code Office for 6 months. He said Mr. Martella was wrong to do it but he proceeded.

Chair May questioned if Mr. Martella felt it was okay to move forward then.

Mr. Smith responded Mr. Martella was wrong and he was ticketed and he paid his fine. He said that was not before the board. He said what they were asking for was an interpretation of the prior existing use question but he gave all that so the board had the full factual background. He said obviously if Mr. Martella knew what he knows now he would not have done that work. He said whether or not that work was up to Code was a separate issue. He said the issue here was that they were looking for an interpretation of the prior existing use question.

Chair May stated he understands Mr. Smith's desire for narrowing the focus. He said hopefully Mr. Smith could equally understand the board's position taking a broader focus about applications filed not followed through with and work done, it sets a tone.

Mr. Smith responded he understood. He said what was done was certain additional work was requested by the city after the ticket was issued earlier this year and Mr. Martella went through and modified a barrier in the parking lot, hardwired smoke detectors and there was a list of a lot of things he corrected. He said the board also understands from their point of view that there was a bit of problem where Mr. Martella was asked to make all these changes, which he did assuming that the interpretation would go his way and did things before he got the interpretation. He said it was a moot point to improve this new space which the city required him to do and fined him before answering the question which really should be the first question, which was what he was asking the board now.

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 9

(10 Irving Place) continued

Chair May stated he understood Mr. Smith was saying that Mr. Martella put in an application for a permit, it was not responded to in a timely fashion, Mr. Smith's client proceeded with the work, the city then proceeded to inspect said work and issued tickets and violations for what was or was not done. He asked if that was a fair summation.

Mr. Smith replied what he was here to talk about was the ticket issued for having more than 3 or more people and the Stipulation entered in Judge Bernier's court was provided on pages 16, 17 and 18 and it directed them to come to this board to receive an interpretation that they were asking for. He said they were trying to follow the Stipulation that was entered in the court and trying to follow the steps in good faith. He said the judge found Mr. Martella to be in violation of certain aspects of the Code and fined him for him and then he had to go through and work with Code Enforcement Office to fix those things but that was not what they were here for. He said what they were here for was the second part of that Stipulation where the judge did not know and suggested they go and ask the Zoning Board.

Chair May stated the board just received some additional information from the Code Enforcement Office that indicated that area was in fact an RD-4 and not an RD-3, so they were both wrong.

City Attorney Merzig stated he had something to do with the Stipulation since he was one of the signatories in the situation and he would note in #6 that it says "...*Mr. Martella agrees to submit an application to the City of Oneonta Zoning Board of Appeals for an interpretation/variance...*" He said Mr. Smith was emphasizing 50 percent of what the Stipulation said.

Chair May stated he thought he made that clear earlier when he said that Mr. Smith was trying to narrowly focus it when the board was thinking the broader approach. He thanked City Attorney Merzig for pointing that out.

City Attorney Merzig stated this was an incorporated Stipulation that was negotiated between the parties.

Chair May questioned if it would be the City Attorney's position that they were one in the same.

City Attorney Merzig responded yes, it did not say interpretation "or" variance and the presumption that there was a necessity for a variance.

Mr. Smith stated he did not think that was what the court meant.

City Attorney Merzig stated he drafted the document, Mr. Smith did not.

Mr. Smith stated that was exactly right.

City Attorney Merzig questioned if when interpretation/variance was put in Mr. Smith never had any intention of making an application for a variance.

Mr. Smith responded interpretation or variance.

City Attorney Merzig stated it did not say that.

Mr. Smith stated whatever the board feels appropriate and they were asking for the board's guidance.

City Attorney Merzig stated what concerned him very much was that the Stipulation requires that within 20 days there be application for an interpretation/variance so if that was not what Mr. Smith

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 10

(10 Irving Place) continued

has done it appeared to him on the face of it that Mr. Smith has not complied with the Stipulation for which there were consequences. He said if Mr. Smith's position was that he was not applying for a variance then perhaps he needed to address that in some other form.

Mr. Smith stated he disagreed but he was willing to broaden the application to an interpretation or a variance. He said he did not think it made a difference.

Ordinance Inspector Ferris stated yes it did.

Chair May stated for clarification he questioned if it was being said that Mr. Smith was looking for an interpretation of whether this falls under the prior Zoning Code or the current Zoning Code and then he was looking for a variance from the current Zoning Code if the board determines that it falls under the current Zoning Code.

Mr. Smith stated he thought this board had the power to do either. He said he thought the board could interpret it to be a prior existing use in which case no variance was required or he thought the board could also come to a conclusion that it was not a prior existing use and grant a variance or grant the use.

Chair May stated that was his understanding.

Mr. Smith stated that was his presentation. He said he thought it was pretty clear. He said they also provided in the packet the decision from Judge Bernier dealing with prior existing uses and similar but different facts obviously where there were more than 3 unrelated persons continuing the use of the property and then the law changes and that should be allowed to continue as a prior existing use.

The board held a brief discussion on what the area was zoned previously and the current zone.

Mr. Smith stated he was pretty sure it was an RD-5. He said he obtained a Zoning map and checked it where they had a good feel for where the property was and knew that it was different against the street. He said he was pretty careful with that and checked it.

Code Enforcement Officer Chiappisi stated he took exception with one of Mr. Smith's statements. He said the property was purchased on or about October 19, 2009 by Mr. Martella. He said sometimes after that date the garage was converted to 2 bedrooms. He said Code Enforcement determined this when it was up for a rental and went in for an inspection. He said doing some research after the inspector was done they discovered a photograph of when the property was purchased showing this to be a garage clearly. He said the Real Estate agent listing says "Parking – Attached Garage, 1 Bathroom, 3 Bedrooms." He said the inspection on November 8, 2010 triggered the request for a building permit application and engineered drawings of the site. He said to say the application was submitted and never acted upon was just incorrect. He said the application was submitted after the work was complete. He said Mr. Smith would have one believe that was applied for but he assumed he had it and went ahead and did the work. He said the other issues with this was that the city had local laws requiring licensed plumbers, licensed HVAC people and licensed electricians and he has yet to receive the names of the people who did this work. He said he did not know their qualifications. He said he also had his doubts whether the work meets the New York State Energy Code because garages were traditional framed by 2x4s and you just cannot fit R-19 into a wall. He said there were other alternatives and spray foam insulation will give the required R-value for a case like that. He said he had no proof or anything from an engineer or anyone stating what was done on this building. He said to this date he did not know whether everything was up to Code. He said a fire safety inspection performed on the property was part of the inspection process and was based upon the property meeting the city's local Housing Code and the Fire Code and they addressed the issues that were found but again he still had no engineer drawings for this property to

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 11

(10 Irving Place) continued

work with. He said he did not know who did the work. He said he had a lot of issues with the statements Mr. Smith.

Mr. Smith stated if he may respond he directs the board to page 15 that was the electrical inspection that showed it was up to Code in terms of the electricals and on pages 13 and 14 was the property inspection report performed by John Taylor and besides that window issue was up to Code.

Code Enforcement Officer Chiappisi asked if there was rough-in inspection performed on the property at the time the work was completed.

Mr. Smith replied he would have to defer to his client because he was not sure.

Mr. Martella stated no there was not. He said the structure has not changed.

Code Enforcement Officer Chiappisi stated generally the initial the inspection on a conversion like this would require a rough-in, a green sticker on the box.

Mr. Martella stated Code Enforcement Officer Chiappisi said to him what he said now about him getting somebody to come in and draw the plans but in fact Code Enforcement Officer Chiappisi was the one who told him to draw up the plans and said it would comply if it was drawn to scale.

Code Enforcement Officer Chiappisi stated he had requested an engineer's drawing he believed based upon the drawings he received from Mr. Martella being inadequate.

Mr. Martella stated not from him otherwise he would have done it.

Chair May asked Code Enforcement Officer Chiappisi to take a look at the Zoning map with Mr. Smith and see if he could confirm for the board what zone that property was in.

Discussion by the board was paused in order for Code Enforcement Officer Chiappisi and Mr. Smith to review the map.

Mr. Smith stated he had a map that he printed out from 2009 that had different color schemes than this map. He said he really did not know how to resolve this question. He said he could go back and do further research and come back next month.

Code Enforcement Officer Chiappisi stated the former Code Enforcement Officer in the audience may be able to enlighten the board on this. He said the map he had was the one in his office when he was hired and that was what he based zoning on.

Mr. Smith stated his map was different.

Chair May stated it was fortunate the Code Enforcement Officer Peter Friedman was in the house.

Mr. Peter Friedman, Maple Street, (former Code Enforcement Officer), stated this property has been zoned R-4 probably from 1975 until the recent code change in the spring of 2011. He said that map he thought clearly showed that.

Chair May asked Mr. Friedman to please point that zone out on the map.

Mr. Friedman complied and described on the map that R-4 was the bottom under of the "G" under Irving that was in that lot the grey-green area that was R-4 from 1975 to 4/2011. He said his only question and asked Ordinance Inspector Ferris the other day was it R-4 or R-2 because he thought it might have been on a zone further to the east but it was clearly R-4.

ONEONTA, NEW YORK - OCTOBER 22, 2012 - 7:00 P.M.

REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 12

(10 Irving Place) continued

Chair May thanked Mr. Friedman for his help. He asked Mr. Smith if they could agree that it was R-4.

Mr. Smith replied like he said in 2009 he went onto the city's website and printed out the Zoning Map and it says RD-5. He said he could go back in his file and do some more research on the subject.

Chair May asked Mr. Smith if that would help his case in his mind because he did not want him to be disadvantaged in any way. He said he was trying to get an agreement and asked if Mr. Smith could agree that it was R-4.

Mr. Smith replied no sir based on his research. He said he would go back and check and report back if he was wrong.

Chair May stated maybe what the board ought to do then was allow Mr. Smith the time necessary to do that and allow him time to come back to the board next month.

Mr. Smith thanked the Chair.

Chair May asked if there was any objection from the board to table Mr. Smith's matter to the board's November meeting.

Hearing no objection the Chair moved the following.

MOTION, made by Chair May and seconded by Commissioner Ficano, that the board tables the request from Mr. Smith for 10 Irving Place to the board's November 26, 2012 to allow Mr. Smith to research his information and report back to the board.

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

MOTION CARRIED

The board held a brief discussion on the Zoning Code in regard to the parking statute for back yard and front yard parking and general parking regulations.

Council Member Brzozowski questioned if Mr. Smith was required to come back to the board next month, November and could not come back in 3 months.

Chair May stated that the matter was tabled and Mr. Smith was expected back next month. He questioned if that was not clear to everyone in the room. He said board met the 4th Monday of each month and the next meeting would be November 26th.

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/pab