

ONEONTA, NEW YORK - AUGUST 27, 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
Commissioner Paul Robinson
Council Member Bob Brzozowski

ABSENT: None

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

PETITIONERS

Chair May indicated there were no petitioners for items other than what was on the agenda.

CORRESPONDENCE

City Clerk Koury stated there was no correspondence.

APPROVAL OF MINUTES

MOTION, made by Commissioner Geasey and seconded by Commissioner Ficano, that the board approves the Zoning and Housing Board of Appeals minutes of the regular meeting held July 23, 2012.

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

Noes: None

Absent: None

MOTION CARRIED

ZONING BOARD OF APPEALS MEETING

PUBLIC HEARING ON REQUESTED VARIANCES

The Notice of Public Hearing on the following requests was duly published in The Daily Star on Monday, August 20, 2012. Affidavit as to proof of publication is attached hereto:

- 1. Francis Lazar has created a 2nd driveway at 21 Pine Street, Oneonta, New York. The driveway is approximately 10' X 18' and is located in the front yard on Potter Avenue. This increases the number of on-site parking spaces from one (1) to two (2). The driveway will not be covered with an impervious surface. Mr. Lazar is requesting a short environmental assessment form and an area variance.*
- 2. Russ Southard and Paul Catan added a new 349 square foot parking area to the existing 216 square foot driveway that fronts on Center Street at 2 East Street, Oneonta, New York. The existing driveway is paved, but the new parking area is not. Mr. Southard and Mr. Catan are requesting a short form environmental form and an area variance.*

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

NEW BUSINESS

1. 2 East Street (288.18-2-15), Russ Southard and Paul Catan – Required Action: Short Environmental Assessment Form (SEQR) and Area Variance:
2. 21 Pine Street (288.18-5-32), Francis Lazar – Required Action: Short Environmental Assessment Form (SEQR) and Area Variance:

Chair May addressed the items of new business as follows:

1. 2 East Street (288.18-2-15), Russ Southard and Paul Catan – Required Action: Short Environmental Assessment Form (SEQR) and Area Variance:

The following Memorandum, dated August 9, 2012, was received from Ordinance Inspector Ferris:

“**SUBJECT:** *PROPERTY ADDRESS:* 2 East Street
 PROPERTY OWNER(S): Russ Southard & Paul Catan
 TAX MAP #: 288.18-2-15
 APPLICANT(S): Russ Southard
 ZONING DISTRICT: R-2
 # OF DWELLING UNITS: 5

PROPOSAL: *The applicant added a new 349 square foot parking area to the existing 216 square foot driveway that fronts on Center Street. The existing driveway is paved, but the new parking area is not.*

1. *SHORT ENVIRONMENTAL ASSESSMENT FORM (SEQR)*

2. *AREA VARIANCE(S)*

300-7 J: *The provision of new off-street parking for existing uses is prohibited.*

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.*

PLEASE NOTE: *This property is registered as a residential rental property. There is currently a valid Certificate of Substantial Compliance for this property. A current requirement schedule is attached.”*

Fifty-nine (59) 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. Russ Southard, 7 Scrambling Avenue, Oneonta, stated that about 4 years they had purchased this property that was a student rental. He said on the East Street side there was a large curb cut but when the city redid the street the city asked them if they needed and wanted it and they said no and the city filled it in. He said the question was that on Center Street there was an existing driveway that had an old slate curb that has deteriorated to nothing. He said since they owned the driveway some of them pull in there and park next to the paved driveway. He said a year and a half ago in a real wet spring it got muddy and kept getting the sidewalk muddy. He said he put some crusher run in the there and smoothed it out so the students could park on it and not make a mess. He said it was brought to his attention that he needed a variance to do that. He said as soon as he heard that he applied for a variance. He said nothing grows there and there was a stump there from a large tree that got diseased and had to be taken down, which he did within the last year. He said he was planning to have the stump removed.

Chair May stated that Mr. Southard was asking for an area variance and he had a property that had two front yards.

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(2 East Street) continued

Mr. Southard stated he was asking for an area variance. He said he recently learned that he had two front yards with owning this corner property. He said the main entrance to the house was on 2 East Street.

Commissioner Robinson stated that maybe if he left the stump it might keep the students from pulling over and parking further in. He said the gravel looked a lot better than the mud did.

Mr. Southard stated he would define it with some treated posts and a rail.

Commissioner Ficano stated he would follow-up on Commissioner Robinson's comment about preventing cars from pulling over onto the rest of the lawn would be a great idea.

Mr. Southard stated if approval was the outcome of this meeting he would give definition there and it lends itself to it. He said he could put up the posts even with the stump there.

Ms. Roseann Pirone, 13 Otsego Street, stated she attended the meeting for something else on the agenda but thought the two things were very similar. She said she was speaking on behalf of what she sees beginning to happen on her street where a driveway is put in designed to accommodate one car and last year four cars were parking in this driveway. She said not only were the cars on the lawn but they were also blocking the sidewalk causing people to walk in the street. She questioned if owners of corner properties should be allowed to increase the amount of front yard parking because students creep onto the lawn and create their own parking and the board wanted to make it look nicer and give them more parking. She said she had a real concern about that. She said if it happens on East Street or Pine Street it will begin to happen on Otsego Street. She said there were 3 houses on Otsego Street that were pushing for front yard parking and 2 have come before this board.

Mr. Paul Jensen, 31 East Street, stated his wife and he over the past year or so have become especially sensitive to the decay and decline of properties in Center City and especially in their immediate area. He said several of which were on this first block of East Street, one of which was the one in question. He said last winter he began noting cases of parking on lawns and that sort of thing and emailing the Code Enforcement Office with attachment photos, some of which were of this property and this particular spot of this property. He said last winter the photos showed the gravel, mud and the eroded curb. He said apparently there was a regulation that stated that one could not keep, store or park a motor vehicle on any portion of a front yard or corner lot side yard facing a street or any property and that was what the variance request was for. He asked why grant this variance and was it because the owner did it already. He said he did not think that was a good idea. He said someone should ask permission before doing it. He said the other factor was what the other argument was in favor of doing it. He said he had been to 2 out of the 3 previous board meetings and one of the factors that seemed to be emphasized as an argument in favor of a variance was possible financial hardship. He said the section of the form that seeks support of that was left blank here.

Chair May stated that was not required for an area variance. He said financial hardship was required for a use variance.

Mr. Jensen stated the only argument was to the effect that potential renters ask about off-street parking but nowhere did the form say they had been unable to rent because there was not enough off-street parking. He said he was not sure that would be a good argument or not but it was not being made. He said he did not see any reason to grant this other than to put a rubber stamp on something that has already been done against the Code. He said he did not see any advantage other than the convenience of the individual owning it. He said the disadvantage was the further incremental deterioration of one more property of many in the city. He said he would urge first that this request be denied and second that in the process of denying it be stated that the surface should be returned to a lawn state rather than a gravel state and that the curb be reconstructed.

(2 East Street) continued

Mr. Peter Friedman, Maple Street, read the following:

"Don't approve parking in the front yard at 2 East St. because:

- 1. 2 East St is a large multifamily building on a small lot. Adding off street parking to this lot exacerbates the problems associated with multifamily buildings on small parcels; especially the increase in the intensity of use of the lot; the loss of green space.*
- 2. There have not been more than one or two instances, if any, of front yard parking being approved in residential zones in the last 20-30 years.*
- 3. No increase in the intensity of use of a grandfathered use such as this is permitted without a showing by the applicant of a unique financial hardship, unique to this property. No such proof has been shown because none exists.*
- 4. Please don't set a precedent by approving this. There are 100-150 similar properties in our residential zones that could apply for the same variance.*
- 5. This proposal for front yard parking will devalue the neighborhood property values. It will have a negative effect on the visual streetscape of Center St.*
- 6. On the application submitted by Mr. Southard he stated as the "economic injury" he would incur if he were denied that "prospective tenants always inquire about off-street parking." I believe that the difficulty he may have in finding tenants for this property or raising the rent is due far more to the general shabbiness of the property and not the lack of off-street parking. This is one of the shabbiest buildings in the area. Instead of asking for this personal benefit from the city, at the expense of the quality of the neighborhood, nearby property values, and the community, rental owners should landscape their front yards, and fix up their buildings so they are more attractive. The city's residential neighborhoods should not be allowed to be used as a welfare program for rental property owners. The rest of the residents of the city can't afford it.*
- 7. Mr. Southard stated on his application as to why the character or quality of the neighborhood would not change if his application were approved that both properties that border it are multifamily structures. His response is true but it does not answer the question. He is not asking for permission to convert the bldg to a multiple dwelling; it already is one. He is asking for permission to have parking in the front yard. Neither of the two properties that border 2 East St. have parking in the front yard. And by the way both are far better maintained properties than 2 East.*
- 8. Not only is it very important for you to deny this application, but it is also important that you require the immediate removal of the parking area and the enforcement, by the owner, of the prohibition against parking in the front yard. You would think an elected official and a bank executive would have enough sense to be sure that they are in full compliance with the law of the city, and to not put the code office in the difficult position of having to enforce the law against someone who has control of city employee salaries and department budget. The zba should do the right thing here and make it clear to the community that this city does not tolerate such breaches of common sense ethical principles by its elected officials."*

Ms. Marilyn Helterline, Maple Street, stated she would like to agree with everything that Peter said. She said Mr. Southard said he needed this because potential tenants asked about off-street parking and he could get more rent if he had off-street parking. She said she would suggest that he buy a property that has off-street parking, which might cost him more. She said he bought a property without off-street parking and that was what he has.

Mr. David Hutchison, 2 Irving Place, stated he would like to second everything that had been said. He said it seemed to him that this was an encroachment, the new Code that was recently passed was there and he did not see any justification to changing it to allow people to start parking in their front yard. He said it seemed a bit crazy. He said around his house he was getting a couple new buyers who moved in last year and he was afraid they would be putting a request for the same before the

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(2 East Street) continued

board and if this was granted to Mr. Southard he did not know why it would not be granted to anyone else.

Chair May stated that each application was unique and stands on its own merits.

A petitioner questioned if the Chair was saying that precedence of past decisions did not effect decisions the board makes in the future and that she could not come in and say “you have ruled in this way the last three times and I would expect consistency.”

Chair May responded the petitioner would find that a difficult argument to make. He said the board looks at each case individually on the facts and merits of that case. He said the board may come to a similar conclusion or may come to a totally different conclusion. He said once it was there it was on the record and the reasons for the board’s conclusions were on the record.

Mr. Southard stated he would be the first to acknowledge that ignorance was no excuse to the law. He said he did not realize what he had done and when he was notified he did file for the variance. He apologized to the board that things had to get so personal and said 1) his brother-in-law was not a bank executive, 2) calling the property shabby – he said they put a lot into it and had not done the outside yet but they were local landlords and they were upgrading those properties. He said the outsides will be done soon possibly. He said he did not like the tone when they were taking some pride in the properties and the outside was the last because they first had to make them safe inside for the kids. He said he was sorry that this had to get to a personal level. He said they would be upgraded the outsides of the properties when it permits but they had a lot of bills, taxes, etc that goes along with owning properties.

Chair May suggested that Mr. Southard not get offended with what was said and that it was not really a personal attack one way or the other although it may have appeared that way to him. He said if there were any violations against the property they would be presented in forms that the board would see and the board saw no outstanding violations on the property.

Mr. Friedman stated something was said that was not true. He said Mr. Southard did not apply as soon as he was notified that it was illegal. He said the Code Enforcement Office sent a letter to his partner on December 19, 2011 and this was now August.

Chair May asked Code Enforcement Officer Chiappisi if he considered Mr. Southard’s response timely.

Code Enforcement Officer Chiappisi replied he would have to go back and review the record. He said he knew that once he brought it to his personal attention he came to the office.

Ms. Elizabeth Powell, 18 Maple Street, stated she was also there for another topic of discussion but they were similar in some respects. She said this deals with the taking of a portion of a lawn and turning it into a parking area. She said she appreciated that the board takes every case that comes before them on the merits of that individual case and she was hoping the board would not rule in any particular case strictly based on precedence or a lack there of. She did say there were also several houses in the area she currently lives in where they have had to deal with people parking on front lawns until they bring it to the city’s attention. She sometimes they stop and sometimes they do not or stop for awhile and start again. She said she was concerned about precedence and the lack of green space whether it was permeable or not. She said the fact that people were requesting more and more the ability to turn lawns into parking so the people who live in these homes that people bought knowing that there was either no on site parking or limited on site parking and then down the road come to the Zoning Board and says “now I am having a tenant who continues to do this even if I tell him don’t do it they continue to do it and it always looks a mess so I think if you let

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(2 East Street) continued

me put a permanent parking place in there it will look better, they'll be happy and people will be happy and everything will be fine." She said that was sort of rewarding somebody and the tenants who were not following the law and she was really concerned about that spreading through the whole Center City. She said she was looking to the board to watch out for the residents and the homes of people in these neighborhoods who were not in it for the money, were not renting and lived there with families. She said they did not want to be surrounded by a lot of houses with front yards black topped or graveled. She said they needed the board's help.

Council Member Brzozowski questioned if there was presently parking in the garage.

Mr. Southard responded no. He said there was parking in the existing driveway that was only 9', enough for one car.

Council Member Brzozowski asked about how many cars could park in this proposed lot.

Mr. Southard responded for the last year and a half there had been 3 because it was wide enough.

Commissioner Geasey questioned how many could park on the second front on East.

Mr. Southard responded none.

Chair May stated at this point he would close the public comment period and the board would go into its deliberative process.

Commissioner Ficano asked about how long the property had been owned by the applicant.

Mr. Southard replied about 4 years.

Commissioner Ficano stated he listened to the comments but part of his concern was leaning toward maybe this was a smart move because Center Street did not have parking, East Street was a mess and very dangerous with parking on both sides but he thought this had been used as a driveway for a long time.

Chair May stated it had been used for parking for a protracted period of time.

Commissioner Robinson stated it had been about 2 years since the cars started parking there and it got all muddy and messy.

Commissioner Ficano stated that intersection was very busy especially during school rush and then there would be maybe 3 cars reversing into traffic and that added to the congestion and danger. He said he was now leaning toward that this was not a good idea.

Chair May stated he thought the other thing the board had to think of was that somebody at some point in time gave someone permission to build that house in the location they built it and the condition in which it was built. He said the current owner bought a problem and that was why the current owner was seeking some sort of relief for the problem.

Code Enforcement Officer Chiappisi stated he did not think this was germane to this topic but maybe it was and would bring it up. He said it states in Code for the off-street parking/loading regulations, 300-61, "*The right to continue legitimate nonconforming front yard parking areas in all residential zones existing at the time of the adoption of this section, which parking areas have not previously been approved through the zoning variance procedure, shall expire on December 31, 2027, with the exception of those properties that have neither a driveway nor the unbuilt property width to create a driveway. Application may be made to the Zoning Board of Appeals for relief from the date of expiration of rights, and no variance application fee will be charged for such applications*"

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(2 East Street) continued

Code Enforcement Officer Chiappisi stated the right to continue nonconforming front yard parking for all houses in the city will be eliminated on December 31, 2027 unless everyone who has nonconforming front yard parking comes before this board and seeks a variance. He said this will grant this in perpetuity when other people who have not changed their lots could potentially lose their right to do that.

Commissioner Geasey asked about how long this had been a rental property beyond the 4 years for this owner.

Mr. Southard replied it had been a store and had been a rental for a long time.

Commissioner Geasey stated it was given to be a rental with one parking spot for 5 dwelling units.

Code Enforcement Officer Chiappisi stated it depended on the number of bedrooms per unit. He said if a unit had 2 or more bedrooms he believed it was 1.2 parking spaces for a 2 unit and one parking space for a single unit.

Commissioner Geasey stated she was concerned about the whole front yard issue and setting a precedent.

Chair May stated the history here was the board determines what was the front yard because on a corner lot there were 2 front yards so one could be determined to be a front yard and one a side yard and go from there.

Commissioner Lawson stated he was on the fence with it. He said he had been on the board a long time and the board traditionally rejected front yard parking at everything he had been at but this was unique because it was corner lot. He said he was trying to recall when the board had dealt with a corner lot before because he did think it was an additional hardship and it could also be argued it was a self-created hardship.

Commissioner Robinson stated when he walks by there it looks a lot better than it used to. He said the city always wanted student cars off the street and off-street parking as much as possible. He said what the Code Enforcement Officer read about nonconforming applying to make it conforming was in existence prior to the new Code being adopted so personally he did not have a problem with this.

Commissioner Rafter stated he did think it was a two-front yard property. He said people driving their cars up onto the property in prior years was not the same as extending this. He suggested not doing this.

Commissioner Shields stated he disliked the 28' of whatever it was now and what it may become and some sort of parking. He asked Mr. Southard if he was planning to remove the stump and if so then put a permanent barrier in the location of the stump.

Mr. Southard replied eventually it would be taken out of there, it was an eyesore. He said he would put one post out near the sidewalk and one or two more with 6x6s to define the area.

Commissioner Shields stated he wanted to clarify that.

Chair May stated he did not think it was a bad idea to require fencing in the area of the stump to prohibit the kids from parking wherever they could fit a car.

Commissioner Shields stated disliked that but on the other hand he was concerning about getting cars off the street. He asked what sort of surface it would be.

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(2 East Street) continued

Mr. Southard replied just the way it was and if anything he could put a little more crusher run in.

Commissioner Shields asked Mr. Southard about the plans for the barrier where the stump was.

Mr. Southard replied he would put 6x6s in the ground and put like a 2x10 to define it.

Commissioner Shields questioned if that would limit people from parking on the other side of the proposed parking area.

Mr. Southard responded yes. He said the end of the house comes out there and it was fairly narrow there.

Council Member Brzozowski asked what the size was of a typical parking space.

Chair May replied 9'x18'.

Council Member Brzozowski stated this would be a small lot.

Chair May stated it just does it at 27' to allow 3 legal parking spaces. He said the board constantly fights this conundrum of no one wants parking, no wants front yard parking, no one wants on-street parking and no one wants a parking lot. He said he was at a lost to find a solution.

Commissioner Shields questioned what the garage was used for now.

Mr. Southard responded it was used for storage and the tenant's trash.

Commissioner Ficano stated that he thought the friction was that maybe some were not fully embracing the off-street parking part of the Code and trying to alleviate parking on the streets by having off-street parking for multi-family dwellings as was referenced earlier. He said there were two competing directives. He said with that said he was still against this because he thought it was a dangerous situation with 3 cars trying to get out of that driveway.

Chair May stated it seems that Commissioners Ficano and Rafter were opposed to it and Commissioners Geasey and Lawson indicated they were opposed.

Commissioner Robinson stated he would abstain.

Commissioner Shields stated he would probably vote for it just to get the cars off the street, parking there was not a new thing and this was not a precedent setter.

Commissioner Robinson stated that was really his feeling too.

Chair May stated he did not see it as a precedent setter either.

Commissioner Geasey stated if the application was denied she questioned if there was further action applied to remove the gravel that was already put there.

Chair May stated that the board could make that request part of the motion to deny the application and the Code Enforcement Office would follow through.

Chair May recognized the Clerk to lead the board through the Short Environmental Assessment Review.

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(2 East Street) continued

Chair May stated that review resulted in a negative declaration.

Hearing no further comments the Chair entertained a motion and a second to approve the Short Environmental Assessment Form and area variance to approve this application.

MOTION, made by Commissioner Robinson and seconded by Commissioner Shields, that based on site visits by members of the Zoning and Housing Board of Appeals and testimony heard at the August 27, 2012 meeting, the board grants approval to the request by Russ Southard for the 2 East Street (288.18-2-15) property of an area variance for the new 349 square foot parking area to the existing 216 square foot driveway that fronts on Center Street and makes a Negative Declaration on the Short Environmental Assessment Form.

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

MOTION DENIED

Chair May stated that the motion did not pass causing the applicant's request to fail. He said the applicant had an option to file an Article 78 against the board's decision.

Mr. Southard thanked the board for discussing it and bringing up all the concerns. He said he appreciated the process that allowed the residents to speak.

2. 21 Pine Street (288.18-5-32), Francis Lazar – Required Action: Short Environmental Assessment Form (SEQR) and Area Variance:

The following Memorandum, dated August 8, 2012, was received from Ordinance Inspector Ferris:

“SUBJECT: *PROPERTY ADDRESS: 21 Pine Street*
 PROPERTY OWNER(S): Francis Lazar
 TAX MAP #: 288.18-5-32
 APPLICANT(S): Francis Lazar
 ZONING DISTRICT: R-2: Moderate Density Residential District
OF DWELLING UNITS: 5

PROPOSAL: *The applicant has created a 2nd driveway at this property. This driveway is approximately 10' X 18' and is located in the front yard on Potter Avenue. This increases the number of on-site parking spaces from one (1) to two (2). This driveway will not be covered with an impervious surface.*

1. *SHORT ENVIRONMENTAL ASSESSMENT FORM (SEQR)*

2. *AREA VARIANCE(S)*

300-7 J: *The provision of new off-street parking for existing uses is prohibited.*

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(21 Pine Street – Memorandum) continued

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.

PLEASE NOTE: This property is registered as a residential rental property. There is currently a valid Certificate of Substantial Compliance for this property. A current requirement schedule is attached.”

Sixty-five (65 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. Frank Lazar, 102 Garden House Road, Hurleyville, NY stated he was the owner of the 21 Pine Street property and there were 5 apartments there. He said he had a firefighter who lived on premises and he used to park in the front of the house. He said he had put out some crushed stone there for the tenant to use as a parking pad and the inspectors came and told him that was illegal. He said he then asked for a variance to create this parking space in front of the second entrance of the house.

Chair May questioned if Mr. Lazar was talking about the parking that appeared to have been on Potter Avenue.

Mr. Lazar stated it was on Potter Avenue to the front and side of the house. He said he had attached some documentation showing that.

Chair May stated this gives Mr. Lazar an opportunity to explain further to what he submitted in writing as to what he would like to do.

Mr. Lazar stated he would like to legalize this spot that had some stone there. He said since Potter Avenue was reconstructed he wanted to have a lowered curb there to access it. He said his argument was that there would be one car off the streets of Oneonta as well as it would accommodate one of his tenants who was a firefighter for the City of Oneonta and to have his car handy for his emergency calls. He said he did not think this parking space interferes in any way with anybody. He said it was not an eyesore and it was nobody’s business basically in his opinion. He said across the street was the only neighbor that was a rental house that had a double-garage and 3 parking spaces right there. He said he did not see the neighbor having any objection to the sight of a car being parked in front in a driveway so to speak. He said in the wintertime Potter Avenue was not a street where anybody could park anyway and for the firefighter to go look for a parking space someplace else when he gets home at night was a little difficult plus the restrictions when it snows. He said he thought it would be very beneficial for everybody to have this parking space available for him.

Commissioner Ficano stated that a new curb was put in when the city redid Potter Avenue.

Mr. Lazar stated he tried to inform the building department. He said this process had been going on 3 to 4 months before the construction began but unfortunately he missed one board meeting and then he asked them if they could hold back on the construction of the curb in order to accommodate him since this was all pending. He said unfortunately it was done. He said if the board approved his variance he would probably have to come up with funds to redo it.

Commissioner Ficano questioned if Mr. Lazar had been informed already by the city that if the variance was to occur he would have to pay for that lowered curb.

Mr. Lazar replied so to speak but was not officially informed.

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(21 Pine Street) continued

Commissioner Ficano stated before the replacement curb was put in he questioned if the tenant was pulling over the old curb.

Mr. Lazar responded that there was no curb so to speak, it was really in bad shape before the replacement.

Commissioner Ficano stated it looked like the existing driveway on Pine Street was a single entrance to a two-car garage and widens toward the house. He said he would say there were 2 sites for off-street parking.

Chair May stated there was adequate spacing there for 3 cars.

Mr. Lazar stated that 3 cars could squeeze in there but the problem was the entrance was for only one car. He said in the case of the firefighter tenant when he needs to pull his car out it was not practical to wake the others up to get their cars out of the way. He said it was a little tough to get tenants to cooperate with each other.

A petitioner stated she did not know how long this firefighter tenant had been living there and she questioned what kind of lease he had, i.e. a 10-year lease and did he plan to live there for those 10 years. She said she lived on a street where there were students and multi-family houses and people come and go before even knowing their names. She said sometimes they might live there for a year but that was pretty unusual particularly if it was student housing. She said she understands that firefighting was important and it was necessary for that young man to get to where he works quickly but 6 months from now he might not be living in the dwelling and that front yard parking space would still be there.

Chair May stated that the tenant's job was not really a criteria the board considers.

Mr. Dave Rissberger, 8 Normal Avenue, stated he thought if this young man was really looking for an apartment with parking he should have done that to begin with. He said he would also say this was another corner lot like the one that was just discussed with 2 front lawns. He said he disagreed with the Chair about precedent because every court of the law looks at precedent and every case was different. He said he would worry that this would set a precedent. He said in the past this board for the most part had voted against parking on 2 front lawns and if it started now to allow it he thought it would open up a whole can of worms.

Chair May stated he would like to correct Mr. Rissberger and said that the board had determined what was a front lawn and what was a side lawn and have in the past allowed parking on the side, not in 2 fronts. He said there was always that conundrum to get them off the street and it was nothing they did with any regularity and noting he really recommended doing.

Mr. Rissberger stated the last thing he wanted to say was about getting parking off the street. He said they all talked about it and he and the Chair had talked about it but his thought was that if they move the parking off the street it was like moving sand because it would allow kids who normally did not bring their car because there was no parking bring their cars. He said he thought providing a parking space off the street here and another one over there was not going to make a difference.

Chair May stated he concurred.

A petitioner stated that the house next door to hers on Potter was a rental with 2 apartments. She said she lived there her entire life when that house was a family home and then when it was converted into where the person who owned it lived upstairs and rented downstairs. She said when

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the owner passed away the people who own it now have both the upstairs and downstairs rented. She said there was no off-street parking and has never been any for that house. She said when she complained about the overgrown grass at that house the owner said he would like to get rid of the grass and pave in front of the house to have no more problems. She said that was what worried her because every time something like this happens someone else thinks because it was done for them that maybe it would be done for them.

Chair May stated in this particular case the board had two of them back to back and he could highlight some of the differences one might see. He said in the case of Mr. Southard's property before this one there had been people driving over what did not exist to be a curb for a long time. He said in Mr. Lazar's case with Potter Avenue the city had established the curb line and sidewalk where it was originally and where any curb cuts were expected were replaced and where they were not they were not replaced. He said it was pretty obvious in Mr. Lazar's particular case.

Ms. Marilyn Helterline stated she lived on Maple Street and one individual purchased 2 houses across the street from her in the last year. She said in one case there were at least 3 students and there was grandfathered front yard parking.

Chair May asked what house was that.

Ms. Helterline replied 66 Maple Street. She said she was concerned that he might want to pave the whole front yard. She said this person also bought the corner lot at Irving and Maple and that had one small driveway and 3 apartments and she was sure the issue of "my tenants would like more parking" was going to come up and she really did not want to look at a parking lot across the street from her.

Chair May stated as one could see that the sense of the board was that there was not a lot of will here to create front yard parking.

Mr. Friedman, Maple Street, stated it was pretty scary to them because there was not that strong will. He said it was a 4/3 vote on the East Street application. He said he thought the issue of precedence was being glossed over because the board historically wants to approve everything that comes up. He said throughout Center City there were 40-50 corner properties with high density multiple dwellings and little to no parking. He said there was no basis in any of the factors the board discussed about 2 East Street or about this one that distinguishes those from these. He said if the board grants these the board would be forced to grant those others who will be sued for being arbitrary. He said the board had to assume that there was some precedent when making decisions because the board was really jeopardizing the whole city.

Mr. Hutchison, Irving Place, stated he would like to thank the board for their concern and taking these matters seriously but the city did have a new Code and front yard parking was a negative in the old one as it is in the new one. He said he really thought it was critical to keep their nose to the grindstone and he did not think it was necessary for a landlord to have to provide parking 3 steps from a house.

Mr. Lazar stated he wanted it known that it was not that he wanted to create anything for the tenant but 1) it was a car off a street in Oneonta, 2) it was a favor to someone who served the city and 3) they were not living there to accommodate the neighbor because he had his property and understands there was a Code and that Code allows the board to consider requests. He said he did not think they had to listen to professional complainers who come here with a problem. He said there had never been a problem on that street and now they had a problem with the parking space. He said he did not understand this. He said if it was an eyesore or an obstruction he would understand but he did not see why some needed to come here and argue against accommodating a human being, a resident of Oneonta to have a convenience on his own property.

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(21 Pine Street) continued

Chair May stated the board understood Mr. Lazar's position and appreciated his comments.

Chair May stated he would close the public commentary and move to the deliberations.

Commissioner Ficano stated he was not for this.

Commissioner Robinson stated he would not like to see a new curb and sidewalk disposed of. He said he had to state one thing for the record and correct something said earlier by Peter Friedman. He said Mr. Friedman may have left the board's last meeting early but he did believe the Chair was totally opposed to 6 Forest Avenue being a 2-unit apartment building.

Hearing no further comments Chair May stated he would put a motion on the table, which he rarely did, to deny this application.

MOTION, made by Chair May and seconded by Commissioner Ficano, that based on site visits by members of the Zoning and Housing Board of Appeals and testimony heard at the August 27, 2012 meeting, the board denies the application from Francis Lazar to create a 2nd driveway in the front yard (Potter Avenue) of the 21 Pine Street (288.18-5-32) property.

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

Noes: None

Absent: None

MOTION CARRIED

Chair May stated Mr. Lazar's application for front yard parking had been denied by the board.

There was a brief discussion on the 2 requests that had been discussed.

There being no further business to come before the Zoning Board of Appeals, Chair May adjourned that regular meeting and opened the Housing Board of Appeals meeting with the same membership, as follows:

HOUSING BOARD OF APPEALS MEETING

NEW BUSINESS

1. 155-165 Main Street (300.31-1-07): Ian Wood – Bresee's Redevelopment: Applicant seeks relief from the Housing Code which states all buildings must have two exits. The existing four-story Bresee Building has one exit from all floors except the basement and first floors.
2. 1 Dietz Street (300.31-1-09): Ian Wood – Bresee's Redevelopment: Applicant seeks relief from the Housing Code which states all buildings must have two exits. The existing three-story Bresee/Dietz Building does not have two exits from the third floor or the uninhabited basement.

Chair May addressed the items of new business for the Housing Board of Appeals as follows:

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(New Business) continued

Mr. Chip Klugo stated he will formally be the new owner of Bresee's Redevelopment project. He said Johnson Schmidt Associates would give a PowerPoint presentation on the Chapter 13 variance for the project.

Chair May stated the board would listen to the presentation but he understands from the Code Enforcement Office that this was only submitted this afternoon and the Code Enforcement Officer has not had a chance to review it therefore the board did not know if this was acceptable or not and the board was not in a position to review it in an open meeting.

Mr. Klugo asked Johnson Schmidt Associates to elaborate on what dialogue took place with Code Enforcement Officer Chiappisi.

Mr. David Anderson, Project Manager of Johnson Schmidt Associates stated they submitted the application by the deadline and there had been submission of supporting information since.

Chair May asked about when the summation of the Chapter 13 Compliance Alternatives presented to the Code Enforcement Office.

Mr. Anderson responded today.

Chair May asked Code Enforcement Officer Chiappisi if he had a chance to review that.

Code Enforcement Officer Chiappisi replied he had not.

Chair May stated it was back to where he started. He said the board had a submission that the Code Enforcement Office has yet to review and the applicant was asking for an exemption from the City of Oneonta Code without proven yet that they would get that from the State. He said the City's Code was not particularly onerous and very similar to that of the State Code. He said he believed this board would support any findings that the State's board supports. He said with that said the board did not know if the applicant's application was in compliance or not because the Code Enforcement Office has not been able to review or respond.

Code Enforcement Officer Chiappisi stated he needed time to review the numbers and documentation that were submitted. He asked the Chair if he could give an overview to the board.

Chair May responded absolutely.

Code Enforcement Officer Chiappisi explained that the City Code says multiple dwellings and apartment buildings more than three stories in height require two means of egress from every floor. He said that was put into place many years ago probably prior to the State Code. He said the State has since recognized that and more importantly now has what was called the Existing Building Code. He said what was involved with this property was called a change in occupancy, which was the taking of an old building and changing its use. He said Bresee's was a mercantile use selling merchandise out of it and it was not residential. He said whenever there was a change in use generally speaking one goes to the Existing Building Code. He said once a use is changed there were all these compliance requirements in the Existing Building Code chapters 2 through 10 but then Chapter 13, which was an entirely new chapter says some of these old buildings were built to last and suggested taking the opportunity to look at each individual building and assess the fire safety, means of egress and the general overall safety of the building to see if a mechanism could be created by which the local code officials could approve these changes in use without having to jump through a lot of hoops. He said the analysis section gets reviewed on how the units were separated, if it was sprinklered, alarms, stairwells etc to see if it meets the compliance requirements of the chapter, which was what he was given today. He said if it meets those compliance requirements it could exempt the applicant from the State requirements. He said it was very hard to prove and the last time someone tried to do this the engineer threw up his hands and said he would put a sprinkler in.

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(155-165 Main Street & 1 Dietz Street) continued

PROPOSAL: *The applicant wishes to appeal the following requirement(s) of the Code of the City of Oneonta.*

<u>CODE SECTION(S)</u>	<u>PERMITTED / REQUIRED</u>
158-17 C (2)	<i>In multiple dwellings three stories or more in height, there shall be provided from each story at least two exits accessible to each dwelling unit, hotel unit, lodging unit or dormitory unit. The primary exit shall be an interior public hall, stairway, lobby, vestibule or any combination thereof. The secondary exit shall be another interior public hall, stairway, lobby or vestibule, or any combination thereof, or a fire escape."</i>

The following was received from Ian Wood, Intern Architect, Johnson-Schmidt & Associates, Architects, 15 East Market Street #202, Corning, NY 14830, dated July 24, 2012:

"Re: 155-161 Main St. Bresee's Building Code Variance Request

Dear Ms. Lee Ferris,

We are writing to seek relief from the local City of Oneonta Code, which states all buildings must have two exits, no exceptions. The existing four story Bresee's building has one exit from all floors except the basement and first floors.

An enclosed two hour fire stair will be added to meet this requirement, but only up to the third floor. the building itself steps back in the rear, so the building is 8900 sf on the first floor and becomes 1700 sf on the fourth floor. Since we also have an elevator connecting the fourth floor, the extension of the fire stair will add an immense cost for a single apartment and remove valuable floor space that could otherwise be rented.

The existing stair (from the fourth floor) is at least 42" in clear width and new fire stair entrance is only a few feet away from the bottom of this existing stair. A sprinkler system and fire alarm system will be installed throughout, and the corridor walls will be one hour rated rather than half hour rated.

After completing a code review for the above property, the following are portions of code important enough to the safety and habitability of this project to list.

Change of Occupancy:

- 1. Automatic sprinkler system required throughout building.*
- 2. Automatic fire detection & alarm/detection systems required throughout building.*
- 3. Means of egress lighting required throughout*
- 4. Two exits are required per story.*
- 5. Corridors must be 1/2 hour rated.
A. Will be 1 hr rated.*
- 6. One enclosed exit stair required.*
- 7. Some windows will need sprinkler head water curtains to meet opening requirements, as they are too close to adjacent building openings.*
- 8. Must have one accessible building entrance.*
- 9. Must have one accessible route from an accessible building entrance to primary functions.*
- 10. Must have accessible parking.*
- 11. 25% of dwelling units must be ADA adaptable.*

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(155-165 Main Street & 1 Dietz Street) continued

Historic Building Code:

1. Existing door openings and corridor and stairway widths less than those specified elsewhere in this code may be approved, provided there is sufficient width and height for a person to pass through.

New Building Code:

1. 707.14 enclosed elevator lobbies are not required where the building is equipped with an automatic sprinkler system.
2. 906.3 portable fire extinguishers required throughout.
3. 707.4: 2 hour shaft enclosure required (fire stair & elevator).
4. 1017.2:44 inch min width corridors.
5. 1020.1 vertical exit enclosure must be 2 hours when connecting four or more stories and at least 1 hour when connecting less.
6. 3004 hoistway vent required”

2. 1 Dietz Street (300.31-1-09): Ian Wood – Bresee’s Redevelopment:

The following Memorandum, dated August 13, 2012, was received from Ordinance Inspector Ferris:

“**SUBJECT:** **PROPERTY ADDRESS:** 1 Dietz Street
 PROPERTY OWNER(S): Otsego County Development Corporation
 TAX MAP #: 300-31-1-09
 APPLICANT(S): Ian Wood
 ZONING DISTRICT: MU-1: Downtown Mixed-Use District
 # OF DWELLING UNITS: 5

PROPOSAL: The applicant wishes to appeal the following requirement(s) of the Code of the City of Oneonta.

<u>CODE SECTION(S)</u>	<u>PERMITTED / REQUIRED</u>
158-17 C (2)	<i>In multiple dwellings three stories or more in height, there shall be provided from each story at least two exits accessible to each dwelling unit, hotel unit, lodging unit or dormitory unit. The primary exit shall be an interior public hall, stairway, lobby, vestibule or any combination thereof. The secondary exit shall be another interior public hall, stairway, lobby or vestibule, or any combination thereof, or a fire escape.”</i>

The following was received from Ian Wood, Intern Architect, Johnson-Schmidt & Associates, Architects, 15 East Market Street #202, Corning, NY 14830, date July 24, 2012:

“Re: 1 Dietz St. Building Code Variance Request

Dear Ms. Lee Ferris,

We are writing to seek relief from the local City of Oneonta Code, which states all buildings must have two exits, no exceptions. The existing three story Dietz building does not have two exits from the third floor or the uninhabited basement.

To create a safe environment for residential occupants we would like to use Chapter Seven Alterations Level Two of the New York State existing Building Code, single exit buildings with no sprinkler. Due to an allowable travel distance of 50'-0" we will rate the stair enclosure and corridor with a two hour

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(155-165 Main Street & 1 Dietz Street) continued

assembly and use the protection of said assembly as a vertical exit for the second and third floors, a horizontal exit for the first floor, and an area of refuge on the second floor.

After completing a code review for the above property, the solution we propose is:

Alterations Level 2:

- 1. Single exit building with no sprinklers (per table 705.3.1.1)*
 - A. R-2 permitted occupancy.*
 - B. Less than 5 dwelling units and 3,500 sf per story.*
 - 1. Will have 2 dwelling units and 1800 sf.*
 - C. Exit access travel distance 50 ft max.*
 - 1. Corridors & stairwell will be 2 hour rated and used as an area of refuge as well as a vertical/horizontal exit.*
 - D. One emergency escape and rescue opening within each dwelling unit.*
 - E. Shaft and vertical exit enclosures fire resistance shall be 1 hour.*
 - 1. Will provide two hour enclosure.*
 - F. No vertical exit or hoist way venting need be provided.*
 - G. All walls between occupancies must be at least ½ hour.*
 - 1. Will provide 1 hr separation.*
 - H. Fire dampers required.*
 - I. Manual fire alarm system required.*
 - J. Automatic heat detection may need to be provided.*
 - K. Smoke alarms must be installed throughout.*
 - L. Automatic smoke detection required in shared access corridors.*

Other Pertaining Building Code:

Change of Occupancy:

- 1. Protected openings not required in buildings of Group R occupancy that do not exceed three stories in height and that are not located less than 3 feet from property line. Only about four openings will need sprinkler head or fire shutter protection.*
- 2. We do not need to account for ADA accessibility because we do not have an elevator.*
- 3. We do not need to account for ADA accessibility because we do not have an existing accessible entrance.*

Historic Building Code:

- 1. Existing door openings and corridor and stairway widths less than those specified elsewhere in this Code may be approved, provided there is sufficient width and height for a person to pass through.”*

Commissioner Geasey questioned what the applicant was showing the board was an alternative way that would be just as safe for a student who could be her child living on the 4th floor to get out in a fire as safely if there were the two that the City Code was asking them to have.

Mr. Anderson responded yes.

Commissioner Geasey questioned if the board had the ability to approve some of it and not all of it.

Chair May responded the board had the ability to do anything it wanted to. He said his recommendation would be that if the applicant could meet the State Code, which Chapter 13 compliance was part of the State Code and had adequate information the board would allow them to proceed. He said in the absence of hiring a professional engineer to go through this and explain in detail how this works he did not think the board was in a good position to make a decision but he thought Code Enforcement Officer Chiappisi was and that the applicant had to supply certified

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(155-165 Main Street & 1 Dietz Street) continued

information for Code Enforcement Officer Chiappisi to review to see if the applicant comes up with a passing score.

Commissioner Geasey asked if the City Engineer had anything to do with this.

Code Enforcement Officer Chiappisi replied he was available upon request.

Chair May stated from his individual perspective if the applicant could succeed in the Chapter 13 Compliance Alternative it ought to be good enough.

Council Member Brzozowski questioned if that meant there would be no need for the applicant to return to the board later.

Chair May responded that was correct. He said he thought the board could entrust the Code Enforcement Officer with that charge and not require the applicant to come back. He said he was sure the applicant was willing to go ahead with their presentation and teach the board as much about it as they can at this time.

Ms. Elise Johnson-Schmidt, Architect, narrated the PowerPoint presentation on the redevelopment project of the Bresee's building, the applications and the Chapter 13 Compliance Alternatives to the board. Ms. Johnson-Schmidt and Mr. Anderson answered questions.

The board held a brief discussion on the matter and heard some comments.

MOTION, made by Chair May and seconded by Commissioner Robinson, that based on testimony heard and discussion by the board regarding the appeals of the requirements of the Code of the City of Oneonta made by Ian Wood on behalf of the Bresee's Redevelopment Project during the Housing Board of Appeals portion of the Zoning and Housing Board of Appeals meeting held on August 27, 2012, the board will exempt 155-165 Main Street and 1 Dietz Street from the City of Oneonta Zoning or Housing Code as they apply and the board will rely on the determination of the Code Enforcement Officer on the applicant's State Chapter 13 Compliance Alternatives.

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

Noes: None

Absent: None

MOTION CARRIED

There being no further business to come before the Housing Board of Appeals, Chair May adjourned the regular meeting at approximately 9:00 p.m.

JAMES R. KOURY, City Clerk

JRK/pab