

ONEONTA, NEW YORK - JULY 23, 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 Paul Robinson
Council Member Bob Brzozowski

ABSENT: Commissioner John Rafter

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

PETITIONERS

Chair May asked if there was anyone who wished to speak to the board on any issue not listed on the agenda.

Mr. Jeffrey Copeland stated he would like to voice a complaint about a matter that was settled at the June meeting that was tabled from the May meeting related to 66 Church Street. He said a lot of people from that neighborhood came to the May meeting and voiced strong objections. He said a vote was being taken of going against the application and when the lawyer of the applicant saw it was going against him he asked to table it. He said personally he did not know what that meant and it looked to him that the board was voting down the proposal. He said the board tabled the motion. He said he asked his Alderman if he would be notified about when this would be taken up again and was told yes. He said the Alderman may have been mistaken and he was not blaming him. He said he understood the Alderman was not at the June meeting. He said he did not understand, nothing was changed in the application, the board was voting against it and many people in the neighborhood had expressed their feelings. He said nobody was for that application except the applicant. He said at the following meeting he did not know the matter was going to be taken up. He said he really did not know what tabling meant but he felt the public's welfare was not considered by the board. He said the board members were appointed by the Mayor and he understands it was a quasi judicial board and in a sense it could override laws passed by the elected officials. He said he thought the board should be much more cautious about trying to apply laws so that they benefit the citizens. He said it did not seem anything like a court because there was no appeal.

Chair May stated there was an appeal process called an Article 78.

Mr. Copeland asked if he had to get a lawyer.

Chair May replied he would probably need a lawyer to file the appeal.

Mr. Copeland stated it would cost him money to appeal this.

Ms. Stephanie Brunetta stated she lived at 177 East Street, the corner of East Street and Bugbee Road. She said she had been here before when a project was brought up in February and a variance with conditions was granted to the applicant to construct a parking facility in an area that was zoned High Density Residential which also borders town property which was zoned for Low Density Residential and Agricultural Use.

Chair May asked Ms. Brunetta if she was aware that project was going to be on the board's agenda for the August meeting.

Ms. Brunetta replied she was not aware that was on the agenda for next month. She said she was at the meeting because the project had moved forward. She said construction and work had been going on at that site. She said skipping ahead from February at that meeting when a conditional variance

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was granted to April she received a letter from her Councilman Larry Malone that assured her that a revised set of plans would need to be sent to Code Enforcement and that this would be brought again to this board and that the chair had agreed that there would be a public forum and it would be addressed.

Chair May stated that was occurring next month.

Ms. Brunetta stated she was not aware that it was occurring next month. She said she was in attendance because she had images of things that have been going on at the site since that February meeting that document what has been going on particularly in the past week, which was before the meeting. She said tremendous amounts of fill have been added to the site, they have been leveled and heavy excavation equipment has been there. She said the residents there have had enough. She said this needs to be clearly settled. She said the board needs to look at this very carefully and it needs to deny the request for the variance on the basis of the fact that it changes the integrity of the neighborhood, this was obviously not a case of financial hardship because the developer has had a tremendous amount of resources to the work he has done in the past two weeks and there could be potential for environmental concerns and the board needs to enforce the current zoning law. She said it was her understanding that the City of Oneonta has spent a considerable amount of time and effort rezoning the city and the residents need the board to enforce the current zoning. She said that was what she and the others were asking the board to do.

Chair May asked Ms. Brunetta if she knew what the law was there.

Ms. Brunetta replied she understands that it was zoned for High Density Residential and that a parking lot was not an appropriate use for that property, which was why the petitioner had to seek a variance to allow for a parking facility to be built without a residence in place.

Chair May stated that was reasonably close. He said what the owner was doing right now was moving dirt around on his property and he can move dirt around his property as could Ms. Brunetta, as could he and as could anyone else. He said the owner was not using it as a parking facility because he did not have permission.

Ms. Brunetta stated she would like to give the board pictures to keep showing there were vehicles there.

Commissioner Robinson questioned if the owner had a building permit.

Ms. Brunetta stated there was currently no permit for any kind of construction or any kind of leveling going on there. She said that was their understanding as residents from the calls they had made. She said they had been referred to the NYS Department of Environmental Conservation by city officials and have called them and the permits the owner holds with the DEC are for projects that were proposed in 2005 and revised in 2008. She said from the residents perspective things were not in line and they needed the board to just uphold the current zoning laws.

Ms. Brunetta stated she would also like to give the board petitions from over 70 residents from both the city and the town in opposition because this impacts the property values and the integrity of the neighborhood.

Mr. John Hegeman stated he lived on the corner at 64 Woodside where Bugbee turns.

Chair May asked if that was the street where a barricade was placed.

Mr. Hegeman replied yes. He said on that corner he has met many of the college students coming down when they drove into his yard. He said it was a joke in a way but this was serious problem if

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there had not been some arrangement made for the college to take over this property. He said it made no sense for this property as a parking lot because who would want to park out on the end of town. He said he did not understand why because they were going to end up with buses going up and down, children and college students walking up and down the street if they park there. He said there had to be some reason as to why this was approved and it did not make any sense.

Someone spoke out and said it was not approved.

Mr. Hegeman stated he was serious about people driving into his yard and there were police reports to show that. He said it was not a joke. He said it was a bad thorn.

Mr. Paul Shelton stated he lived at 66 Woodside Avenue. He said he opposed the parking lot on East Street. He said if one turns off of East Street into Bugbee and go a very short distance and turn to the right he lived right there. He said coming out of that street one had to look down toward East Street and also there was a curb up to the right. He said the young people coming down there were not often going under the speed limit and one had to be very careful coming out there because they cannot see. He said it was a danger. He said the board says it was not parking now but prior to the owner doing all this work there were a number of vehicles parked there and since he finished there were vehicles parked there. He said what will happen was that evidently there was not enough parking up on at the university and these kids will be driving each other back and forth down to this parking lot to get their cars. He said that was a danger to the people trying to come out of their street.

Ms. Ann Adamo stated she lived at 167 East Street, just a few yards away from the proposed parking lot on Meadowbrook Lane and East Street. She said her husband and she were both opposed to this project for the multiple reasons that had been outlined before. She said clearly Mr. Ranieri has not shown this board in a very clear fashion who will be parking in this parking facility. She said everybody was assuming it was going to be college students but what she did last spring when college was in session she drove around the campus at 8 a.m. and counted the empty spaces for college students living on campus and there were well over 200. She said there was clearly adequate parking on campus. She said obviously they were concerned seeing construction going on and hear from the city that there was no permit for this construction at this site. She said they hear something about a DEC permit and cannot get really good information about that. She said her concerns were threefold, 1) she feels there needed to be better coordination between the city officials, city boards and the DEC when there were overlapping permits being requested for a property, 2) she was asking the Zoning Board not to grant a variance for the use of this property as a parking lot, and 3) she was also asking that the board ensure a very clear system of enforcement to enforce the decisions that this board makes.

Chair May stated the board appreciates the comments but the city does not give the board badges, and guns and they did not enforce the law. He said there were other city agencies that do that. He said if people were parking inappropriately the police would take care of it.

Ms. Adamo stated she would think it would be this board's concern that there was a system and that there was a process in place for enforcement.

Chair May stated Ms. Adamo picked a wonderful night to have this discussion because there were a number of city elected officials in the audience and one as a liaison to the board and he was sure they heard the comments and would take them into consideration.

Ms. Betty Stapley stated she lived at 171 East Street. She said she too was concerned about this parking lot. She questioned the cars parking there and the people walking up Bugbee Road where

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(Petitioners) continued

there were no sidewalks and walk down East Street with no sidewalks. She said the bus did not stop at that corner so there was no way unless one walks out with no light. She said they were told that it was not safe for the mailman to walk up and she questioned why would it be safe for those people to walk there. She said she definitely was opposed.

Mr. Richard Jasper stated he lived at 27 East Street which actually abuts the back side of the property Mr. Ranieri was developing. He said he thought it was a little disingenuous to just suggest that he moved dirt around his property. He said he had graded that lot and it did not have the same shape as it did previously and did not have the trees it had on it 3 months ago, some of which fall into the yard. He said it was clear that he had some intent other than just decorative dirt for that property.

Chair May stated that the board was not going to make assumptions as to what Mr. Ranieri was doing or not doing or assume what decisions this board would or would not make. He said Mr. Ranieri had an absolute right to cut down all of his trees and move the dirt as he sees fit, decorative or not.

Mr. Jasper stated he was opposed to the variance because this has been a disingenuous process from the beginning. He said the information has not been given to him about what was going to happen and what contracts did or did not exist with SUCO.

Ms. Cecelia Zapata, 5 Walnut Street, stated she wanted to support what was said about the person who owns the former Italian Kitchen. She said she was under the impression that the people would be notified about the next hearing and she was also very surprised that it was approved without him proving any of the changes the board recommended and that he would come with a plan to the board about the configuration. She said if she was wrong please tell her so but otherwise please pay attention because they were part of the community, care about this community and trust the board.

Chair May asked if Ms. Zapata was speaking about 66 Church Street or Meadowbrook Lane.

Ms. Zapata replied Church Street.

A petitioner stated when somebody does something or builds something without a permit in the city he asked what the actions were that could be taken against that person.

Chair May stated the Code Enforcement Office had a number of actions they could institute. He said they could stop work or they could require to have it restored to how it was before but that would require a court action.

Code Enforcement Officer Chiappisi stated there was an open permit from the DEC on this property for the revised Stormwater Pollution Plan Permit (SWPPP), which was not his area of expertise. He said he had made sure that permit was in place and checked with the county. He said he contacted the DEC and asked for copies of all applications on this because he did not get those as a matter of course and he did not run his paperwork through them. He said he could not stop DEC projects but if he finds something wrong with the application he would need to contact DEC not the owner to stop the work to discuss those findings. He said presently he was waiting for further information to see what the application says and was trying to set up a meeting with the engineer and the property owner.

There was a brief discussion on that matter.

Chair May stated the board should have that information for the next meeting, August 27th, and would be happy to share that information with anyone who would like to attend.

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(Petitioners) continued

A petitioner asked if the board would be making a decision on this matter at the next meeting because what the people were hearing was that this was causing a bit of concern.

Chair May responded that all the paperwork had not yet been submitted so it was hard to answer the question. He said if all the paperwork came in a decision would be made at the board's next meeting, August 27th at 7:00 p.m.

A petitioner questioned and if not it would be postponed again. He said there was a bit of concern as to how much postponement was. He said that was fine as long as it would be talked about next month.

Chair May stated that was the board's anticipation, they hoped to have it back on the agenda then.

Mr. Peter Friedman questioned the Chair's qualifications to be on the board.

The petitioner stated he felt he should be more modest when overriding laws passed by elected officials.

Chair May stated he was not willing to concede the fact that they were overriding laws written by elected officials. He said the board makes modifications. He said it would help if the petitioner really understood the law of what Mr. Ranieri was and was not allowed to do.

Another petitioner stated that the petitioner was talking about Church Street.

Chair May stated regarding the board he said it was a state law and there was a requirement of the state law that any municipality that had zoning must create a Zoning Board of Appeals because they recognize the fact that the law did not apply equally in every case because every property and circumstance was different. He said there had to be a mechanism for the property owner to gain relief.

Mr. David Hutchison questioned how people were notified because at the meeting in June the Chair said everyone was aware of that because it was stated at the previous meeting in May. He asked if this information was on the city's website and questioned how the public could get a hold of the agenda and what was the date it was available.

Chair May responded he would have the City Clerk address those questions specifically but the issue being referred to was yes it was discussed when it was tabled, it was announced at that point and it was in the minutes of this board's meeting that the meeting would occur on the 25th of June. He said the Aldermen were put on notice as well as all city officials and it was on the city's bulletin board and the website. He said there was no requirement on a tabled issue to re-notify, that means re-mail.

Mr. Hutchison stated that was the key question he guessed that if something was tabled it did not necessarily have to be brought up at the next meeting. He said the public was in a quandary when tabled things would come up.

Chair May stated it was not a real quandary because if one was interested they could go to the city's website that tells about everything going on and the agenda was right there. He said the information about notice requirement was under §300-88(B) (5) of the City Code and he distributed copies of it.

City Clerk Koury stated the Clerk's Office did nothing different than what was usually done for tabled items. He said for a new variance there was a 2-week required notice and there had to be a legal notice in the paper. He said in his 20 years as Clerk it was past practice once an item was tabled not to send letters to the property owners again. He said the old business was listed with the other business on the website.

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(Petitioners) continued

Chair May stated that board had devoted one-half hour to petitioners and now it was time to move on to the agenda.

There was a brief discussion on the matter of notification by various petitioners and the board.

CORRESPONDENCE

City Clerk Koury gave a brief summary on the following correspondence that has been entered as received.

- The following was received from Michael E. Lynch Jr., Alderman, 4th Ward, dated July 8, 2012:

“Dear Mr. May,

On June 25, 2012 the ZBA passed the following motion:

***MOTION**, made by Commissioner Shields and seconded by Commissioner Lawson, that based on site visits by members of the Zoning and Housing Board of Appeals and testimony heard at the June 25, 2012 meeting, the board declares a negative declaration on the Short Environmental Form, approves the Site Plan Review and grants an area variance for density to Mr. James Baldo for 66 Church Street to convert the 1st floor business into two (2) dwelling units with three (3) bedrooms each with the stipulation that a sprinkler system would go through the building and will have American With Disabilities (ADA) compliant apartments on the 1st floor and strongly encourages that it be marked as handicapped accessible units.*

The above motion approved an application filed by Jim Baldo on June 14, 2012. However, the ZBA failed to provide the required public notice with regard to the “hearing” referenced above. The ZBA has an obligation to provide public notice of the date and time of a public hearing on any proposed variance. The notice with regard to the June 14, 2012 application should have been published in the Daily Star and mailed directly to property owners within 200 feet of 66 Church Street.

The public notice requirement ensures that citizens have an opportunity to review and comment on changes that impact their neighborhood. Public confidence in the ZBA requires an unwavering commitment to the law and an unbiased procedure for dealing with applications for variances. The above motion falsely states that a public hearing was conducted on June 25, 2012

Failure to provide public notice defeats the purpose of a public hearing. In this case, you withheld public notice, providing Jim Baldo preferential treatment. The minutes of the June 25, 2012 meeting of the ZBA reveal a “fast track” process free of the concerns you knew to be present from surrounding neighbors. This is unacceptable.

The ZBA should rescind the variance and process the application in the appropriate manner.

I look forward to your response.

Sincerely,”

Chair May asked if the letter from Mr. Lynch was referred to the City Attorney for comments.

City Clerk Koury replied yes it was.

- The return of the Ranieri Project, a parking lot at 176-178 East Street, for local action by the Otsego County Planning Department, 7/16/2012 Official Date of Notice of Recommendation determining there is no county wide or inter-community impacts related to the proposed project.

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(Correspondence)

•The following was received from Steven Londner and Kim Noling, 73 Maple Street, Oneonta, dated July 16, 2012:

Dear Ed and Board members —

We are writing in firm opposition to the variances requested by William Lunn for his property at 65-67 Maple Street, and to urge you to firmly -- and finally -- deny his requests.

Mr. Lunn's cleverly worded application can not obscure his clear intent — to increase the occupancy of his building by unrelated young adults. This immediate neighborhood is struggling to maintain what remains of its family-friendly character. The variances requested pose a direct and serious threat to that character.

The current Zoning rules, and the ZHBA's mandate are clear -- "The Zoning and Housing Board of Appeals is responsible for maintaining the integrity and original intent of the City's Zoning and Housing Codes." (from the City website). We believe the proper course of action is denial of Mr. Lunn's requests and a clear affirmation of the City's commitment to maintaining the family-friendly nature of Center City neighborhoods.

We also ask that you follow up with the code enforcement office to ensure that any unauthorized changes already made to the building or property be reversed.

Sincerely yours,"

•The following was received from Duncan and Grace Smith, 16 Pearl Street, Oneonta, dated July 17, 2012:

"Jim Koury, City Clerk

Attention: *Edward May, Chair
Zoning and Housing Board of Appeals*

Re: *Variance request for 284-290 Chestnut St., Oneonta*

Since the City Zoning Code sections 300-58D and E prohibit erecting a fence taller than 3' which blocks the view of a facade, we object to issuing the requested variance. Such a structure would not fit into the existing pattern of the neighborhood as there is no other similar fence or wall anywhere along Chestnut St. Since the proposed fence would sit atop an existing slope which rises, perhaps, ten feet above the public right-of-way, the visual impact of a 6" solid fence would be greatly magnified.

The letter from the City Clerk refers to 284-290 Chestnut as a commercial property, but the city tax records show it designated as a single family residence that receives a STAR exemption. Despite being the old Chestnut Street public school, having a business sign in front of the home and a website describing it as a "retreat" with a lot size over 3 acres, it's assessment is only \$97,400.

If the variance request is based upon some extraordinary need due to a special use of the property, its actual use and tax status needs to be clarified. Is it a private, single family home with an astoundingly low assessment, a commercial business called Calgary Hill Retreat, or a tax-exempt religious institution which appears to hold no events/services?

We request that a variance for this tall, solid fence not be granted.

Respectfully,"

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(Correspondence) continued

The Chair asked the Clerk to read the following letter.

•The following was received from Jim Phillips, joltingjim@hotmail.com, dated July 19, 2012:

“Subject: *6 Forest Ave., Oneonta NY*

Lee,

I hope that Mr. Kenny's request for a variance from one family to two family on the above mentioned home address is denied.

Mr. Kenny first approached Allen Moore to buy the single family home and paid 67k. His crew moved in and began removing the inside stair case and made renovations w/o permits when making this into a two family home. Now Mr. Kenny is surprised and dumbfounded and possibly trying to hoodwink the zoning board "he wouldn't have purchased this house if it was a one family home". Are you kidding me! He stole this house for the price he paid. If I would have known that it was going up for sale even at this price I would have paid more.

My guess is that Mr. Kenny plans to make this variance work for him so he can sell this house as a two family and make more money. Another two family home on Forest Avenue we don't need. The 2 two family houses now on Forest Avenue are already a burden. One sits empty(10-12) Forest and is in need of much repair. Maybe Mr. Kenny can offer the owners 60k for this eye sore. Plus the tenants that resided there prior were trouble, cops were there frequently and the noise and disturbances coming from this 2 family was shameful. As for two family house next to me, one side sits empty but this landlord is a good landlord and runs a tight ship and takes no nonsense from tenants. But parking can be an issue for the neighbors that are living around these two family apartment houses. The tenants park on the street even though there is a driveway available. If the driveway is used it is only used by one tenant. They have caused problems parking on the street even during major snowfalls.

Mr. Kenny has now rented out 8 Forest Ave to individuals who have PIT BULLS and one of the tenants at this residence informed me while I walked my dog past this house that I better walk my little dog past the house while they were waiting to come off the steps for fear that their dog would rip into my maltese "like a rag doll". Thank you Mr. Kenny for making our street a safe street, especially with small children living across the street.

I am very surprised that a hearing could be held w/o notifying the residents of Forest Avenue.

Sincerely,”

•The following was received from Jean M. Howland, dated July 19, 2012:

“To whom it may concern,

I am replying against the East St. Parking Lot Project. Due to conflicting schedules, I can not make the July 23rd meeting, so I am sending this letter.

Following are my reasons for not granting a variance for this project.

1) Traffic on an additional 200/300 more vehicles plus possible additional OPT bus runs to & from this area is insane.

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(Correspondence) continued

Have you ever tried getting through East St. in the AM & PM when buses for high school, cars & students are all coming in? Check it out. Try the other way, over SUNY campus & students & employee traffic coming to work at SUNY, Job Corps, ARC, & government buildings, same problem.

Sometimes it takes 10 or more minutes just to get out to get around.

By being so close to the high school, more traffic puts students at risk coming up & going to school.

This additional traffic will create more wear & tear on our streets & require more maintenance that I am sure the parking lot project will not provide the funds for the upkeep.

It also, means there will be more garbage strewn along the way such as: broken glass beer bottles, beer cans, soda cans, gum & candy wrappers, empty beverage container from Dunkin Donuts, bags & wrappers from MacDonald's, misc. papers & used condoms.

The noise level will also go up, but then it all ready has with trucks running up & down the street from SUNY to the proposed lot.

2) Property values in the area will decrease, & when it comes time to sell our property people will take a good look round.

For the new beautiful homes built within the last few years, & the other homes below, the lot will be a huge eyesore. The homes in the immediate area will be adversely affected by lights, noise, garbage, traffic all times of the day & night. Their property values & resale value will seriously decrease.

People in this area moved here because it was quieter than most of the city & traffic wasn't an issue. The high school & SUNY expanding has changed the traffic, but was still livable, but to add 200/300 vehicles to this small area is not right.

3) Who is going to use these parking spaces? I can not see a center city dweller parking there & walking all the way back to their living quarters, especially in the winter.

Is it going to be SUNY freshmen? I always understood freshmen were made to live on campus & not allowed to have cars, except for the daily commuters. They wanted freshmen to stay put & adjust to campus life & studies in hopes they wouldn't flunk out or get overwhelmed by the changes, to adjust to being on their own.

If SUNY needs more parking for students & employees, there is plenty of land behind the vehicle maintenance building by the tennis courts & between the field on top of the hill. SUNY property. There is, also, more land beyond that & that would keep traffic on campus & not on our streets.

4) There is talk of possibly adding sidewalks to East St. & Bugbee Rd. possibly.

We do not need sidewalks on Bugbee Rd., as we have done quite well without them for years. The houses are all on one side of street, & all have lawns that go sharply uphill. The other side of road,

maybe? If sidewalks were added who pays for them to be installed & maintained? Mr. Ranieri? The city, because if you clean them early before going to work in the morning, the plows will have them full, & when you get home from work they will be frozen hard. Most of the residents on Bugbee Rd. are senior citizens who can't clean the walks. Will the city clean these walks on either side? There's an old saying, if it ain't broke, don't fix it.

5) When Mr. Ranieri first considered buying the residential zoned property & building homes & apartment building everything was fine.

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(Correspondence) continued

The JV soccer field at the high school is located on the upper level of the grounds, not easily accessible for people who have trouble walking, especially up a steep hill, or the senior citizens. On the backside of the soccer field it is level & next to Mr. Ranieri's proposed land purchase. He told people that he would work with the high school & people could access the property to the field.

After purchasing the land, the school tried to talk to him about buying that piece of land, so people could access the field. He refused to sell any land & told the school to tell people they couldn't park there or vehicles would be towed & people were not to walk on his property to access the fields. Nice guy, huh!

Now, he can't sell the land for people to build on because his price is too high, so we are supposed to lay down & let him turn a residential area to a parking lot? Wake up people, he is not concerned with anyone but himself. If he gets his way, he is destroying a lot of taxpayers' property values which we have worked long hard hours to build. We will lose in the long run as to the upkeep on all conditions caused by this proposed project. If SUNY buys the property from him, if he is allowed to go ahead with this project, that takes away taxes that would help the city/town.

As a taxpayer of city/state taxes & a lifetime resident of Oneonta, I reject the notion of even considering granting this unwanted project.

Mayor Miller has stated time & again, that the city needs more housing. (Not a parking lot). This area should be developed for housing as was originally planned. This is a residential area & there is not a whole lot of open land in the city to build on.

If anything, we should be working to create a housing project as intended, not an unwanted parking lot.

Please use commonsense, & reject this proposal.

Sincerely,"

•The following was received from Michael McKenna, 67 Woodside Avenue, Oneonta, dated July 20, 2012:

"Dear Zoning Board of Appeals Members:

I am writing to express my opposition to the proposed parking-lot project at the corner of East St. and Meadowbrook Lane in the city of Oneonta.

Though the project is complicated by the fact that the proposed lots would be situated in both the town and city of Oneonta, it is hard to see how this project would be good for the Oneonta community. The only conceivable market for these parking lots is Oneonta State freshmen, who are prohibited by College policy from having vehicles on campus. If Mr. Ranieri's proposal is approved, the city (and town) of Oneonta would be assisting him in enabling those students to circumvent long-standing College policy. Moreover, how does it benefit Oneonta to have hundreds more cars on the roads of the city and town? How does it benefit the community to have hundreds of students walking up and down Bugbee Road (which has no pedestrian sidewalks) at all hours of the day and night to get to and from their cars parked off East St.? I fail to see any benefit to the citizens of Oneonta (other than Mr. Ranieri) in this scenario.

I respectfully submit that the parking lots proposed by Mr. Ranieri are a bad idea that would be detrimental to public safety and to the quality of life of the residents of Oneonta, and as such should not be allowed to go forward. Approving this project would set a terrible precedent for the city's residential neighborhoods, especially in light of the major revision of city zoning laws that took place just last year.

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(Correspondence) continued

It should also greatly concern city officials and residents that major work has already been done to turn the East St. site into parking lots, even though the required permits have not been officially granted. Is this construction activity even legal? If not, this work is an outrage against the community that must be stopped immediately.

Sincerely,"

APPROVAL OF MINUTES

MOTION, made by Commissioner Ficano and seconded by Commissioner Robinson, that the board approves the minutes of the regular meeting held June 25, 2012.

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

Noes: None

Absent: Commissioner Rafter

MOTION CARRIED

PUBLIC HEARING ON REQUESTED VARIANCES

The Notice of Public Hearing on the following requests was duly published in The Daily Star on Monday, July 16, 2012. Affidavit as to proof of publication is attached hereto:

- 1. Tom Rowe wishes to build a 20' X 10' deck on the left side of the single-family dwelling located at 13 Draper Street, Oneonta, New York. A 10' X 10' section of the deck will have a roof and be screened in.*
- 2. Calvary Hill Retreat Center wishes to install a solid wood across the front of the property located at 284-290 Chestnut Street, Oneonta, New York, closest to Chestnut Street. The fence will be six feet (6') high and approximately 150 feet long. This is a commercial building.*
- 3. Antonio and Vincent Avanzato wish to increase the number of permitted unrelated individuals from three (3) to four (4) at the property located at 64 Church Street, Oneonta, New York. This is a single-family home with four (4) bedrooms. There is no onsite parking at this property.*
- 4. William Lunn wishes to install an additional exit door from the 1st floor left apartment located at 65-67 Maple Street, Oneonta, New York and install a door between the front room and the living room. The number of tenants living in this apartment will not be increasing. There are three (3) apartments in this dwelling.*

NEW BUSINESS

- 13 Draper Street (288.18-6-80): Area Variance, Site Plan Review: Parking Waiver, Sketch Plan Conference and Short Environmental Assessment Form – Tom Rowe:** The applicant wishes to build a 20' x 10' deck on the left side of this single-family dwelling. A 10' x 10' section of the deck will have a roof and be screened in.

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(Public Hearing Notice) continued

2. **284-290 Chestnut Street (299.08-1-73): Area Variance and Short Environmental Assessment Form – Jerry Kabat, Board Chair:** The applicant wishes to install a solid wood fence across the front of the property closest to Chestnut Street. The fence will be six (6) feet high and approximately 150 feet long. This is a commercial building.
3. **64 Church Street (288.17-5-16): Use Variance, Site Plan Review: Parking Waiver and Sketch Plan Conference – Antonio and Vincenzo Avanzato:** The applicants wish to increase the number of permitted unrelated individuals from three (3) to four (4). This is a single-family home with four (4) bedrooms. There is no onsite parking at this property.
4. **65-67 Maple Street (288.18-1-78): Special Extension of a Non-Conforming Use and Site Plan Review: Parking Waiver – William Lunn:** The applicant wishes to install an additional exit door from the 1st floor left apartment, and install a door between the front room and the living room. The number of tenants living in this apartment will not be increasing. There are three (3) apartments in this building.

Chair May addressed the items of new business as follows:

1. **13 Draper Street (288.18-6-80): Area Variance, Site Plan Review: Parking Waiver, Sketch Plan Conference and Short Environmental Assessment Form – Tom Rowe:**

The following Memorandum, dated July 11, 2012, was received from Ordinance Inspector Ferris:

“SUBJECT: *PROPERTY ADDRESS:* 13 Draper Street
 PROPERTY OWNER(S): Jeanne and Robert Shea
 TAX MAP #: 288.18-6-80
 APPLICANT(S): Tom Rowe
 ZONING DISTRICT: R-2: Moderate Density Residential District
 # OF DWELLING UNITS: 1
 APPLICATION TYPE(S): Area Variance
 Site Plan Review: Parking Waiver
 Sketch Plan Conference
 Short Environmental Assessment Form

PROPOSAL: *The applicant wishes to build a 20’ x 10’ deck on the left side of this single-family dwelling. A 10’ x 10’ section of the deck will have a roof and be screened in.*

CODE SECTIONS:

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

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(13 Draper Street – Memorandum) continued

<i>TABLE</i>	<i>CODE REQUIREMENTS</i>	<i>EXISTING / PROPOSED</i>
<i>300.94 Bulk & Use Table</i>	<i>1-Family Dwellings</i>	
	<i>Minimum lot size is 6,000 square feet.</i>	<i>The existing lot size is approximately 5,886 square feet.</i>
	<i>Minimum side yard setback is 10 feet.</i>	<i>The proposed left side setback is approximately 5 feet.</i>
<i>300-101 Parking Requirements by Use</i>	<i>1-Family Dwelling</i>	
	<i>2 spaces per dwelling unit for units with 2 or more bedrooms are required.</i>	<i>1 parking space exists at this property.”</i>

Forty-six (46) 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. Tom Rowe stated the 13 Draper Street house was at the corner of Draper and Center Street and had an existing fence. He said he would like to build a deck 51’ off the road but needs a 5’ side yard setback to stay within the fence. He said he would move the fence back that was there and increase the front yard a little bit so there would not be a dead area between the end of the deck and the existing fence. He said the only point in question was in looking at the house to the left hand side he needed a 5’ setback where code required 10’.

Chair May stated that the application indicates a parking waiver requirement and he questioned why.

Mr. Rowe responded he had no idea.

Code Enforcement Officer Chiappisi stated for a single-family dwelling it was required to have 2 parking spaces and this has one. He said there was a density issue with this lot. He said there was no increase in the parking there and that was why a waiver was required.

Commissioner Ficano stated this looked like a worthy scenario.

Commissioner Robinson stated he thought this was fine.

City Clerk Koury led the board in the review of the Short Environmental Assessment Form for unlisted actions.

Chair May stated that review resulted in a negative declaration.

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

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REGULAR MEETING OF THE ZONING AND HOUSING BOARD OF APPEALS PG. 14

(13 Draper Street) continued

MOTION, made by Commissioner Geasey 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 July 23, 2012 meeting, the board grants approval to the request by Tom Rowe for the 13 Draper Street (288.18-6-80) property of an area variance to build a 20' x 10' deck on the left side of the single-family dwelling and a 5' side yard setback; a Site Plan for a parking waiver and makes a Negative Declaration on the Short Environmental Assessment Form.

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

MOTION CARRIED

2. **284-290 Chestnut Street (299.08-1-73): Area Variance and Short Environmental Assessment Form – Jerry Kabat, Board Chair:**

The following Memorandum, dated July 11, 2012, was received from Ordinance Inspector Ferris:

“SUBJECT: *PROPERTY ADDRESS:* 284-290 Chestnut Street
 PROPERTY OWNER(S): Calvary Hill Retreat Center
 TAX MAP #: 299.08-1-73
 APPLICANT(S): Jerry Kabat, Board Chair
 ZONING DISTRICT: MU-2: Gateway Mixed-Use District
 APPLICATION TYPE(S): Area Variance
 Short Environmental Assessment Form

PROPOSAL: *The applicant wishes to install a solid wood fence across the front of the property closest to Chestnut Street. The fence will be six (6) feet high and approximately 150 feet long. This is a commercial building.*

<u>CODE SECTIONS</u>	<u>CODE REQUIREMENTS</u>	<u>EXISTING / PROPOSED</u>
300-58 D	<i>Fencing erected between the façade of a building and a public right-of-way shall be no more than 3 feet in height.</i>	<i>A 6 foot high fence is proposed.</i>
300-58 E	<i>In no instance shall fences be placed in front yards so as to prohibit views to the primary frontage façade of principal structures placed along a public right-of-way.</i>	<i>A solid wood fence is proposed.”</i>

Fifty-one (51) letters were sent out by the Clerk’s Office to property owners residing within 200 feet radius of the property in question and one response was received and entered under correspondence.

Mr. Jerry Kabat stated as most knew the property being talked about was the old Chestnut Street School at 290 Chestnut Street. He said Calvary Hill Retreat Center purchased the property about 11 years ago and had steadily rehabilitated it to where it was a pretty nice looking place. He said when

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(284-290 Chestnut Street) continued

they first purchased the property it was a pretty dilapidated place. He said unfortunately the School District had not kept it up and it looked pretty bad. He said it was only habitable at the time and since then they had restored virtually the whole building including the outside. He said the purpose of the building was a retreat center for quiet meditation and religious purposes. He said the front of the property was extremely noisy. He said almost anywhere one stands in the front yard the traffic on Chestnut Street permits conversation. He said across the way was a veteran's hall and it seemed to be a magnet for motorcycles. He said they also had an issue with deer in the front of the property. He said they were trying to create a nice garden space which was conducive to relaxation however the deer kept eating the plantings. He said they needed to prevent the deer from coming into that space as well. He said the Code allowed a small fence of 3' or 4' but that would not prevent deer from coming into that space. He said if one drove by the property recently they could see the panels they were planning on putting up and hopefully they get permission to put them up. He said it was an attractive fence which would be real congruent with the building that was also attractive. He said they would not be putting up a fence that would take away from the aesthetic value of the building.

Commissioner Robinson stated he had not heard anything said that convinces him that the fence needed to be 6' high.

Commissioner Shields questioned if there was a gate in the front and if so what kind.

Mr. Kabat responded there would be a gate and it would be the same as the fence, a solid wood gate with the same style of the fence. He said actually they were planning on putting up 2 gates, one in the center and one on the left far side looking from the street which would allow them to bring a wheelbarrow down.

Commissioner Shields questioned if it was the intention that the gate in the center becomes an entranceway to the property.

Mr. Kabat responded yes.

Mr. Kabat stated that a 3' high fence would not diminish the noise and right from the start when they purchased the building they were looking to develop quiet space both inside and outside the building. He said they had been able to do that in the back however the front was extremely noisy. He said having a higher fence was going to diminish the noise in the front of the building and would create more private space than a 3' fence. He said they also wanted to reduce the visibility in the front yard from traffic on Chestnut. He said a 6' fence would not completely hide the building but only about 10' to 12' up of the building.

Commissioner Ficano stated if this was right on the sidewalk and grade level with the road he would agree but knowing the property fairly well it was up a steep hill, away from the road and not blocking people going in and out of driveways.

Commissioner Lawson questioned if the fence was going to go 150' along the frontage.

Mr. Kabat responded yes.

Commissioner Lawson stated the deer would be able to go around the fence.

Mr. Kabat stated they were planning on putting up some wire.

Commissioner Lawson stated according to the sketch plan submitted the fence would be running along roughly the top of the stairway and without doing any measurements because it was being placed at the top of that first rise it effectively would be about a 12' high barrier from street level.

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(284-290 Chestnut Street) continued

Commissioner Geasey stated she was concerned that the 6' high fence would probably not get rid of as much noise as hoped. She said she was not sure it would cause the motorcycle noise to be any different. She said she thought the Legion veteran's hall was in business at the time the new owners purchased this property but she did not know if the motorcycle runs had started since 11 years ago or not. She said she was under the understanding that people parked in the back of the retreat center to access it and they did not all use those center stairs in front.

Mr. Kabat stated most people park behind and walk in.

Commissioner Geasey stated she would feel better if part of the frontage was fenced. She said she went to school there and liked driving by there seeing the whole school or most of it and she thought it was an historical piece in the city. She said she understood the issues but she just wondered if they could use half of the yard with a partial fence on one piece and most of the building still be viewed. She said she did not want to drive by there and see that great, big fence. She said they work so hard on all the grounds there and all the flowers that she thought it would be a loss to have it all blocked.

Mr. Kabat stated it was not all blocked. He questioned if the commissioner was suggesting a 6' high fence on only part of the property.

Commissioner Geasey responded yes, to one side or the other. She said she was not happy with the whole place not being viewable by people passing by. She said she thought it would be a loss aesthetically.

Council Member Palmer, 5th Ward, stated she would not like to see it all closed up. She said she had many fond memories of working there for 30 years. She said she thought the fence was too high and would look like a barricade and people would not be able to see the building at all from the road. She said speaking personally and not on behalf of her ward she was not in favor of it.

Ms. Grace Smith, 16 Pearl Street, stated she lived around the corner and her back yard borders the property. She said she was speaking aesthetically and thought there was a reason the Code stipulates 3' high fences that could be seen through so that it would prevent the look of buildings being barricaded off from view. She said all knew how loud Chestnut Street was but there was no property along there that had a 6' fence let alone at the top of an incline of about 10' up. She said she was opposed to this on the basis that it would be an unusual property. She said they all had deer in their yards and they all could not build 6' high fences in their front yards. She said maybe there was another softer way that would still allow a feeling that the property was open and visually inviting. She said there was a lot of private space in the back yard for contemplation.

Council Member Brzozowski stated he wondered what if the fence was declined and they densely planted shrubs.

Chair May stated it may solve the problem. He said they could plant vegetation.

Mr. Kabat stated they had been planting vegetation and the reality was that area in the front was not going to be absorptive. He said because of the deer they had been planting thorn bushes for years and at some point if they were not going to have a 6' high fence they could be 8' or 9' high and the front of the building would be blocked by shrubbery. He said the fence they wanted to put up was an attractive fence and with the bushes it would be nice.

Mr. Art Rorick stated he lived a few doors down on Chestnut and grew up there and went to school there. He said he understood the noise factor but it was part of the neighborhood and everybody along there deals with it. He said that hill behind there had been a sanctuary for years for deer and also down on the railroad yards and they deal with it and have to live amongst the animals. He said he did not see blocking a building after all the work done there and changing the aesthetics of the neighborhood. He questioned what was to stop everybody else from doing this to stop the noise and shield out the animals.

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(284-290 Chestnut Street) continued

Commissioner Ficano wondered if there were other ways for the applicant to achieve the goal without putting up a solid such as a 3' non-solid fence and something that would keep deer out.

Chair May stated he was not a wildlife expert but it seemed to him that deer get through almost anything they want to get through.

The board held a brief discussion on the comments made.

Chair May entertained a motion on the matter.

MOTION, made by Commissioner Robinson and seconded by Commissioner Lawson, that based on site visits by members of the Zoning and Housing Board of Appeals and testimony heard at the July 23, 2012 meeting, the board denies the request at 284-290 Chestnut Street (299.08-1-73) by Jerry Kabat for an area variance for a 150' long x 6' high solid wood fence across the front of the property closest to Chestnut Street.

Voting Ayes: Commissioner Ficano
Commissioner Lawson
Commissioner Geasey
Commissioner Shields
Commissioner Robinson

Noes: None

Abstain: Chair May

Absent: Commissioner Rafter

MOTION CARRIED

3. 64 Church Street (288.17-5-16): Use Variance, Site Plan Review: Parking Waiver and Sketch Plan Conference – Antonio and Vincenzo Avanzato:

The following Memorandum, dated July 12, 2012, was received from Ordinance Inspector Ferris:

“SUBJECT: *PROPERTY ADDRESS:* 64 Church Street
 PROPERTY OWNER(S): Antonio and Vincenzo Avanzato
 TAX MAP #: 288.17-5-16
 APPLICANT(S): Antonio and Vincenzo Avanzato
 ZONING DISTRICT: R-4: Transitional Residential District
 # OF DWELLING UNITS: 1
 APPLICATION TYPE(S): Use Variance
 Site Plan Review: Parking Waiver
 Sketch Plan Conference

PROPOSAL: *The applicant wishes to increase the number of permitted unrelated individuals from three (3) to four (4). This is a single-family home with four (4) bedrooms. There is no onsite parking at this property.*

TABLES:

300-92 *Permitted Use by District* *Rooming houses are not listed as a permitted use in any zoning district within the City of Oneonta.*

(64 Church Street – Memorandum) continued

- 300-101 *Parking Requirements by Use* Footnote 2 *Parking waivers may be obtained as specified in Section 300-61 of this code.*
- 300-101 *Parking Requirements by Use* 1-Family Dwelling *2 parking spaces are required per dwelling unit.*
- Boarding, Lodging, or Rooming House* *1 parking space is required per bedroom.*

CODE SECTIONS:

- 300-61: *Non-conforming parking and loading. No building or lot alterations nor change of use shall be allowed which would increase the degree of non-conformity with the off-street parking and loading regulations of this chapter.*
- 300-62 H: *Occupancy of a single dwelling unit by more than three unrelated individuals who have not been determined to be a functional family under the provisions of this statute is prohibited. Each week of occupancy shall constitute a new violation of this provision.*
- 300-70 B (1): *Non-conforming uses* *Discontinuance. Any non-conforming use that has been discontinued for any reason for periods listed as follows shall not be re-established as a non-conforming use, and any future use of the property shall be in conformity with this Article.*
- Rooming houses housing more than 3 unrelated individuals and dwelling units housing more than 3 unrelated individuals, for a period of 6 consecutive months or more.*
- 300-74 E: *At the request of the applicant, a sketch plan conference may be held between the Board and the applicant to review the basic site design concept and generally determine the information to be required on the site plan.*

DEFINITIONS:

- 158-7 C: *Dwelling Unit:* *A complete self-contained residential unit with living, sleeping, cooking, and sanitary facilities within the unit, for use by one family.*
- Dwelling, 1-Family:* *A building containing only one dwelling unit and occupied by only one family.*
- Family:* *A single person; or two or more persons related by blood or marriage, and living and cooking together as a single housekeeping unit with not more than two boarders, roomers or lodgers; or a group of not more than three persons, not necessarily related by blood or marriage, and living and cooking together as a single housekeeping unit.*

(64 Church Street – Memorandum) continued

Lodging House, Rooming House or Boardinghouse:

A building, other than a hotel, fraternity, sorority, dormitory or chapter house, where lodging with or without meals, for four or more roomers or boarders or guests, is provided for compensation, or where lodging is provided for four or more unrelated individuals within a single dwelling unit, or where lodging is provided for three or more boarders, roomers or lodgers, residing with a single family in a single dwelling unit.

300-4 A: Dwelling, 1-Family:

A building containing one dwelling unit.

Family Unit, Functional:

It shall be presumptive evidence that four or more persons living in a single dwelling unit who are not related by blood, marriage, or legal adoption do not constitute the functional equivalent of a traditional family. Such presumption can be rebutted by a determination by the Zoning Board of Appeals that said persons constitute a functional family.

PLEASE NOTE:

No documentation was submitted with the application as evidence for the use variance.

This property is registered as a residential rental property. A current requirement schedule is attached. There is not currently a valid Certificate of Substantial Compliance for this property. A certificate cannot be issued if this application is denied. There are also other issues preventing the certificate from being issued.”

Sixty-eight (68) 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. Antonio Avanzato stated the Memorandum says “the applicant wish to increase the number of permitted unrelated individuals from three (3) to four (4)” but he wanted to make it clear that it had always been 4 and he was just trying to keep the 4. He said in August 2008 they had closed the Italian Kitchen and the buyers signed an agreement. He said he just gave the board a copy of the agreement labeled #1. He said by June/July 2009 there was a closing on the house. He said he had a copy of that contract for the board to review. He said in February 2009 the 4 tenants that were living there wanted to renew their lease for 2009-2010. He said he went back to the person buying the house and was assured the closing would be either June or July. He said he did not sign the tenants’ lease because obviously the purchaser was going to tear the house down and make that parking for the Italian Kitchen. He said he got jerked around for awhile and on July 14th Attorney Richard Rothermel had asked the purchaser if they were going to have this closing and reimburse the Avanzatos the rent lost for June and July. He said this kept going on and on. He said he had another letter from Mr. Rothermel dated July 24th asking the purchaser for a deposit for the house which they gave their attorney and then gave it to Attorney Rothermel. He said as far as he was concerned the house was sold and not rented. He said this kept going until December and approached the purchaser again and he kept delaying this. He said at that point he told the purchaser he was not going to sell him the house. He said in December and January 2010 he tried finding tenants but at that time of the year it was a hard time to find tenants for the year. He said June 2010 he finally found 4 tenants and they signed a lease until May 2011. He said he tried to get some sort of lawsuit or something against the former purchaser for the loss of revenue and bills that were paid but they did not get anywhere with those efforts.

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(64 Church Street) continued

Mr. Avanzato stated that his brother Vincenzo Avanzato and he owned that property for about 20 years and always had 4 tenants except for one or 2 years when it was hard and one could not rent any houses in Oneonta because they all wanted to be downtown. He said at one point he rented to a married couple with 2 dogs. He said in regard to the issue of 66 Church he said there has never been parking for the Italian Kitchen and whenever the house was built there was no driveway. He said 64 Church was not a 2 or 3-bedroom house he was trying to shove 2-3 kids in but it had 4 separate bedrooms and each had enough space. He said there was a large living room, dining room and kitchen area and a big porch in the front. He said because of that delay when he was trying to sell the house he threw away any leases they had in the past because they thought the house was sold. He said any revenue that comes out of that house goes back into the house and obviously without revenue the repairs cannot be done.

Commissioner Ficano stated when the Avanzatos were in negotiations to sell the house he questioned why they stopped renting it until the deal was completed.

Mr. Avanzato stated at the time there was a contract and it was a done deal and he trusted the purchaser. He said the tenants wanted to sign a new lease but the purchaser asked him not to sign because he was going to kick them out anyway because he was going to demolish the place for parking. He said at that point he had a tough decision to make and because he trusted the purchaser he did not sign the lease.

Commissioner Geasey stated in the Occupancy Research included in the packet it says on December 2008 "*ordered to reduce from 4 to 3 uri because lost grandfathering.*" She questioned what happened back in 2008 and the loss of grandfathering if that was why a variance was needed with the Code change.

A petitioner stated she could not hear what the commissioner had said and she asked if it could be repeated.

Chair May stated there was a new Zoning Code in the city and that Commissioner Geasey's question was about what happened back in 2008 under the old Zoning Code when one loses grandfathering because of inactivity for a period of 6 months or more. He said she was asking questions because the applicant had a reason why it was lost. He said he did not know whether the board would accept that reason or not. He said under the new Zoning Code there was a 2-year period.

Mr. Peter Friedman, Maple Street, stated that was not true.

Chair May asked if Code Enforcement Officer Chiappisi had comments on that.

Code Enforcement Officer Chiappisi stated what Mr. Friedman was referring to was described in the memo under § 300-70 B (1) for non-conforming uses from the new Zoning Code. He said the 2nd part of that section says *Rooming houses housing more than 3 unrelated individuals and dwelling units housing more than 3 unrelated individuals, for a period of 6 consecutive months or more.* He said for other non-conforming uses there was a 2-year period but not this particular use.

Chair May questioned if it was Code Enforcement Officer Chiappisi's opinion that this was okay.

Code Enforcement Officer Chiappisi responded no because there were not 4 people for 6 consecutive months it was reduced to 3.

Chair May stated that was his understanding as well.

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(64 Church Street) continued

A petitioner stated it was his understanding that Mr. Baldo owns that building and he did not know who the other people were that Mr. Avanzato talked about.

Mr. Avanzato stated he did not know that Mr. Baldo bought the business until months later. He said the first guy bought the business and the building.

The petitioner stated the board should go by the law. He said he was against any additional variances that would bring more students into that neighborhood. He said he felt more serious about that than fences because it was changing the character of the neighborhood and affecting a lot of people. He said he was opposed to this application. He said he thought it would change the character of the neighborhood as opposed to what the elected officials chose to do.

Mr. Avanzato stated he did not see what was being changed there.

Mr. Copeland questioned when the last time was that this building had a Certificate of Occupancy because that place was a dump and had always been a dump.

Mr. Avanzato stated there were working on getting the Certificate of Occupancy.

Mr. Friedman stated the approval of a variance here was an approval of an expansion of a non-conforming use because they were not allowed 4 unrelated individuals in a dwelling unit in that zone. He said they were only allowed to 3 so it was the same as a use variance. He said the criteria for that was specified in the Code. He said the criteria for a use variance was that documented evidence had to be provided of a financial hardship that was specifically associated with this property and unique to this property, not common to all other similar properties in that zone. He said he did not think that kind of proof had been asked for, which he thought was a problem with the process and the board failed to ask for it.

Chair May stated the board has not gotten there yet. He said this was still the public comment section.

Mr. Friedman stated his second point was that his recollection Mr. May was that he had a very similar property of his own that he hoped to maintain grandfathering in it in spite of the fact that he had reduced the occupancy and therefore he would have a conflict of interest that would at least require he did not participate, perhaps not.

Chair May responded perhaps not.

Ms. Alice Siegfried, 67 Church Street, questioned if where she lived in Ward 7 was mixed use zone neighborhood.

Code Enforcement Officer Chiappisi responded yes it was an R-4 – Transitional Residential District.

Ms. Siegfried stated it sure was. She questioned how a number of people could live next door with no parking. She said by what reason or waiver in whatever Code did the board give a parking waiver as it did last month for 66 Church Street. She said when she reads the memo it says *“Permitted Use by District – Rooming houses are not listed as a permitted use in any zoning district within the City of Oneonta”* and she questioned if that was for student housing.

Chair May stated that a rooming house had a specific definition. He said students could live in a rooming house.

Ms. Siegfried questioned the parking.

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(64 Church Street) continued

Chair May stated that parking was a problem in the city. He said they could stop all growth and all progress by eliminating every application that comes in the door. He said the petitioner seems to be focused on 66 Church Street but the board was hear to talk about 64 Church Street and as Mr. Avanzato had said and as all knew that the Italian Kitchen operated there for many years and they were required to provide 25 spots in order to operate that restaurant which they provided "0" and the owner could have continued running a restaurant absent the 25+ parking spots. He said it was the decision of the board in June that it thought reducing the use to something that was more manageable and asked the owner for a concession of converting the downstairs apartments to handicapped accessible apartments meeting all the ADA requirements. He said he believed it was the board's thinking that some folks with disabilities may not drive, further reducing parking. He said the owner lost the ability to open the restaurant absent the parking in the future. He said the argument could be made that the board reduced the parking impact in the community but the community, as represented here, wants to look at the other perspective.

Mr. Avanzato stated he was offended by Mr. Copeland calling his place a dump. He said he owned one of the most beautiful buildings in Oneonta. He said as far as 66 Church Street was concerned, and he was not on Mr. Baldo's payroll, but he was putting a lot of money into making these apartments beautiful and residents had a problem with the parking.

Chair May stated that the board needed to focus on 64 Church Street.

Mr. Avanzato stated he was not adding 11 people but would have 4, which it has always been that way other than the time when he could not rent apartments in the city because the kids were moving downtown to be close to the bars. He said he was not alone in the period of renting when it was a hard time. He questioned if he was being penalized and saying he hardship did not matter. He said he would have come more prepared if he was told about showing expenses and proving a hardship, the cost of the roof, putting siding on and all that stuff. He said to say he was changing it he was not changing. He said years ago he wanted to put blacktop the little yard to put in parking and he kiddingly mentioned that to Peter Friedman (former code enforcement officer) because for 40 years that place never had any parking places. He said they fought for years with the police giving his customers tickets for parking but they dealt with it. He said this was what he had and just wanted what he had with this house so he could turn around and keep going and try to put some money into fixing the roof.

A petitioner stated her understanding was that the goals of the new Zoning Code was to encourage a transition toward fewer student homes and more housing for families. She said a 4-bedroom was ideal for a single family. She said a major issue in this community was the over occupancy of single family homes by more than 3 students. She said it seems that this has not been occupied by 4 students since at least 2008 that giving a variance where there was not proven financial hardship, there was inadequate parking and runs counter to the goals of the Zoning Code was detrimental to the neighborhood and not reasonable.

Mr. Avanzato stated he wanted to make a correction. He said it has been rented but it was just that one year he did not rent to anybody but after that it has had 4 people. He said it was that 6 or 8 month period when the purchaser reneged from buying it. He said he was not trying to change a whole neighborhood. He said talk about changing a neighborhood the Center Street School was just closed. He said in that whole area there were a lot of college kids. He said he was there for 40 years and knew what it was like but at least now people can park in Center Street School lot.

A petitioner stated that lot was not public parking and should not be included in any plans.

Chair May stated he did not think that suggestion has been made.

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A petitioner questioned that if this was approved by the board to have 4 unrelated persons if it would go on in perpetuity as long as 4 people were there.

Chair May responded no. He said a variance goes along with a property and that means they would have to use it consistent with that variance. He said if they did not use it consistent with that variance for a period of time they could lose that.

The petitioner asked if that would be 6 months in this case.

Chair May responded he thought it would be 2 years in this case under the current Code but it may be short of 6 months.

A petitioner stated it was not about how many people because there could be 6 related people.

Chair May stated it was about how much money could be attained from the property.

Mr. Avanzato stated years before he owned it his brother owned it and rented it to a family and there were about 16 people living there but they had to be evicted and when they were evicted, garbage with maggots was found. He said there was a need for apartment housing but it was not up to him. He said he was just here for his house.

Mr. Friedman stated that 81B of the General Municipal Law says that the first requirement for a use variance was that the application cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. He said if the board gives a variance based on the financial evidence that has been shown so far every single family house that had 3 students in it that needed a roof and siding would be eligible for that variance. He said that was not a reasonable way of making an exception to the zoning law.

Mr. Charles Hartley stated he lived around the corner on Central Avenue. He said regarding 66 Church last month the board gave a variance that allowed 11 bedrooms to go without any parking under the argument which was repeated here tonight that the board was improving the neighborhood because there was not going to be Italian Kitchen Restaurant parking on the street. He said Italian Kitchen customers did not park overnight.

Chair May asked that comments be confined to 64 Church Street.

Mr. Hartley replied no it was the parking problem. He said this board had an opportunity to reduce the non-provided parking by at least one place otherwise it would grandfather it in perpetuity again until the next time someone else wanted a variance. He questioned if this was a public hearing or not or did the Chair just want to argue with him. He questioned if the board wanted his opinion.

Chair May stated the board was hearing public comments on 64 Church Street.

Mr. Hartley questioned if this was how the board behaves and he said he was trying to make a comment about the parking and the parking had to do with the variance that the board allowed for the 11 people that were going to be parking there. He said he worked at Hartwick College for 30 years and could only remember one handicapped student that could not walk and his parents took him there in a van. He said people were not going to flock to that one place who were handicapped and did not have cars. He said he understands at one point the Fire Department had difficulty getting around the corner there because of the illegal parking on the corner. He said he talked to the police about parking in the neighborhood and they said they could only do so much. He said currently it says that there was 24-hour parking but no long term parking and he questioned how that would be enforced and it was a joke. He said it needed to be that there was no parking after 2am

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and no parking until 6am to allow people to clear the streets of snow but it will not happen. He said the board had an opportunity now to stop at least one extra person.

Chair May stated the board understood his position and frustration. He said there were 3 Council Members in the room listening to the discussion and they had the power to change that parking.

Mr. Hartley stated the board had the power to reduce illegal parking or the exceptional parking by at least one.

Chair May stated the board had the ability to alleviate a parking problem that was unique to a piece of property, it did not affect the city.

Mr. Hartley stated it did affect the city, it affects everybody that drives down that street.

Chair May stated someone wants to create a parking lot and no one wants a parking lot. He questioned the balance.

Mr. Hartley responded not allowing apartment complexes to go into neighborhoods where there was no parking was how to alleviate it.

Chair May stated without being argumentative if the board followed to the strict conclusion that it leads them they'll tear down every other property and make parking.

Mr. Hartley stated they should if that was what had to be done.

Mr. Avanzato stated when it snows and people park it was the duty of the police was to tow cars and that could be any street in Oneonta and should not make an example of that from this street and his situation. He said in regard to people talking about students he wondered when people were going to realize that the students feed a lot of the people here. He said this was a college town.

Mr. David Rissberger, 3rd Ward Council Member, stated when the Code was changed to change the number of unrelated individuals to a limit of 3 there was a reason for it. He said it was to maintain the neighborhoods. He said he would urge that the board follow that rule. He said with all due respect to the Avanzatos he did not see this as being anymore of a financial hardship as anybody else had in the city for maintaining a building. He said if the board did consider to grant the variance he agreed with Peter Friedman of where would it stop and where would it change any building that houses 3 unrelated individuals to change to 4 for upkeep of the building. He said he thought the board should stick with the Code and the rules that were made because there was a reason for it.

A petitioner stated it was not just parking. He said 11 students living in a house on the corner was about noise and congestion. He said that was too many unsupervised students and should be up on campus.

Chair May stated he would close the public comment section and move comments from the board members.

Commissioner Ficano questioned if there was a mechanism to limit the grandfathered use of 4 bedrooms to this present owner and not any future owner.

Chair May stated the questioned was if it was grandfathered.

Commissioner Ficano stated he thought in good faith Mr. Avanzato let the use cease and had it vacant for a time. He said he was looking at that as an exception. He said he heard everyone in the room and was usually right there with them but obviously zoning was a blunt instrument and zoning laws were and the board was here to look at new ones.

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Mr. Avanzato stated that the house was up for sale through a real estate agent and he did not know what would happen should it be sold.

Commissioner Lawson stated this was a tough one. He said he definitely sees some of Mr. Avanzato's issues with the deal falling through with the Italian Kitchen and some hardship created by that but on the other side of it he was tending to echo most of the people in the audience. He said the board has had many people in here before with 4-bedroom houses that wanted to do the same thing and turned them down. He said these circumstances were a little different, but he was still not sure it takes it to that threshold. He said he was in the middle.

Commissioner Geasey stated she felt now that Mr. Avanzato mentioned the house was for sale. She said she thought she could not vote for this because it was going against the Code and giving 2 variances for the functional family and rooming house because if you go beyond the functional family it goes to a rooming house. She said for her it was 2 variances plus the parking issue. She said she always enjoyed the businesses that Mr. Avanzato and his family have had in the area and she hoped and trusted that they can land on their feet and make do on the 3 of the 4 bedrooms if he owns the house for awhile.

Commissioner Robinson stated having served on the city's Parking Committee they were always opposed to variances without parking being provided. He said he pretty much felt that way. He said in June he had voted no on the 66 Church Street matter for the reason there was no parking and he would be consistent and vote no on this.

Commissioner Shields stated he was leaning in the direction of a restricted variance. He said Mr. Avanzato was interested in the selling the house and he was not sure what happens beyond that. He said the board cannot predict the future but it could paint a positive picture and should try to do that.

Commissioner Ficano stated there was enough square footage for this to be turned into a two-family home, which was allowed in that zone and have 3 individuals in the 1st floor and 3 individuals on the 2nd floor giving a total of 6 people, legally.

Chair May stated he would still need parking requirements.

Commissioner Ficano stated he was just saying what kind of consequences some decisions could lead to.

Mr. Avanzato stated he did not want to put 6 people in there. He said he just wanted what he had.

Chair May stated the problem was that Mr. Avanzato lost what he had and he was here to ask for it again. He said although it may seem unfair to Mr. Avanzato a use variance was a very difficult bar to reach and it requires severe financial records and information which has not been provided. He said Mr. Avanzato may be able to provide them and what was required was indicated in the application for the use variance.

Mr. Avanzato stated it did show on the sheet he submitted that the person did not buy the house and he was over \$17,000 in the hole.

Chair May stated that did show a single event but it did not show a continuing history or continuing hardship and for a use variance this was not the place to get relief for a poor business agreement.

Mr. Avanzato stated there was about \$18,000 lost for that year and that was a financial burden.

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Chair May stated he was sure Mr. Avanzato saw it that way but it did not meet the burden of the test for a use variance. He said if Mr. Avanzato thought he could meet that task the board could consider this at a later date but the consensus on the board was that the votes were not there to get the use variance requested.

Mr. Avanzato stated but all he was hearing was about the parking situation and he would be creating an extra parking issue. He said the people who were living there right now did not own cars.

Chair May stated Mr. Avanzato has not heard a board member focus on cars and parking, except for Commissioner Robinson because the rest were willing to overlook that at some level but they still had to meet the barrier for a use variance. He said from his perspective he did not think the board could do so.

Commissioner Ficano stated he was not thinking about a hardship at all. He said he did not think it was a hardship issue at all and that it was just a variance issue and trying to remain somewhat consistent in the way the board was in some of the other cases.

Chair May stated the consistency was that there was not a restaurant operating in this particular property with 25-30 cars at that location.

Commissioner Ficano stated he was not talking about that one. He said his unofficial opinion was that property could be supported with 3 rents as well as 4.

Chair May stated he concurred.

MOTION, made by Commissioner Robinson 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 July 23, 2012 meeting, the board denies the applications for a use variance, site plan for a parking waiver and sketch plan conference by Antonio and Vincenzo Avanzato for 64 Church Street (288.17-5-16) to increase the number of permitted unrelated individuals from three (3) to four (4) to live in this house.

Voting Ayes: Commissioner Lawson
Commissioner Geasey
Commissioner Shields
Commissioner Robinson

Noes: Commissioner Ficano

Abstain: Chair May

Absent: Commissioner Rafter

MOTION CARRIED

Mr. Friedman stated he would like to make a comment about two things that were proposed in this hearing. He said one was that the board could just accept the grandfathering and the other was that there could be a restricted variance that would apply just to this property owner. He said both of these things would not stand up in court.

Chair May stated neither of those things occurred.

4. **65-67 Maple Street (288.18-1-78): Special Extension of a Non-Conforming Use and Site Plan Review: Parking Waiver – William Lunn:**

The following Memorandum, dated July 12, 2012, was received from Ordinance Inspector Ferris:

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being that where he would like a door in the front room he would not have a lock on it but if someone did latch it there would still be an exit to the street. He said with it unlocked there would be 3 exits. He said he would like to do this to increase the revenue by having separate people instead of couples living there. He said there were college students living there now and there had been couples in the past. He said he was waiting to find out from the board about what would be okay to have live there in the future. He said submitted in the application were drawings and a plan of what he wants to do.

Chair May questioned if this was the same application Mr. Lunn had before.

Mr. Lunn responded it was similar and the difference was that he thought that off-street parking was a desirable thing and because he had so much land he had added a parking lot in his previous proposal but did not talk to the neighbors. He said after he withdrew that proposal he talked to the neighbors and found out that his proposing to make a parking lot in the back was what scared them. He said he thought he was doing a positive thing but he realized the neighbors thought he was turning this into some big student rental. He said that was not his intention and he took that proposal out of the application. He said the doors would allow him to have the same number of people living there but it would allow him better revenue because there could be individuals paying instead of couples in the same bedroom.

Commissioner Ficano stated Mr. Lunn kind of made it clear it was attractive for him to do this because it would be safer and would stand to raise more income from the space without increasing the total number of occupants in the home. He said he wanted to hear about the reasoning why a family, a couple with one child, was less desirable to rent than 2 unrelated individuals assuming that was part of the motivation to have separate bedrooms.

Mr. Lunn stated the bottom line was financial. He said he had rented to 3 different single fathers but he was not able to get the rates that he was able to charge and be reasonable. He said he was not able to generate enough to put back into the house and it was starting to show. He said he had to say something that Mr. Avanzato said and that he thought all assumed the students were terrible to rent to in the neighbor but he had to say that he had a student who was the best tenant he ever had in his 14 years of renting this house and another before. He said he also had some individuals who stiffed him and trashed his house. He said one of the reasons why he made this decision was because the last people he had in there did not take care of it. He said he questioned why he was losing money and not be able to generate enough money to put into this house and have 3 people living there. He said he probably did not do as good a job as he should have interviewing them but now he has an interview process. He said he was generating enough money to finally put back into the house and wanted to continue doing that. He said it was really a matter of improving the house and being able to make the house pay for itself.

Commissioner Lawson questioned if all the improvements have already been made.

Mr. Lunn responded no. He said he redid 2 bathrooms. He said there were a lot of things that were going to need to be done soon and there were some ongoing ones.

Commissioner Lawson stated he was talking about the ones that were before the board.

Mr. Lunn stated no. He said as the board knows there was no door in that apartment. He said there was framing put up but he did not realize he needed a permit. He said the board knew all about that and he took the door off as soon as the Code Enforcement Office indicated he should not be doing that. He said that was gone and for the other door only the engineer has come in and assessed it saying that door could go there.

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Commissioner Robinson stated he liked the idea of adding safety with the door to the foyer. He said this was not increasing the occupancy, was not changing the outside and the added parking was dropped off. He said he guessed he could go along with this.

Commissioner Shields stated he saw this as an improvement.

Ms. Marilyn Helterline stated she lived next door and had lived there for 25 years. She said the apartment being talked about has in probably 25 years been rented to a single individual and another time there was a couple. She said in terms of the general occupancy putting 2 people in there was an increase in occupancy because he generally rented it to one person. She said Mr. Lunn was putting a 2nd bedroom in order to increase its appeal to more than one individual. She said so they really were talking about an increase and she was personally opposed.

At this time, Ms. Helterline read the letter in opposition to this by neighbors Steven Londner and Kim Noling that the Clerk acknowledged earlier and was entered under correspondence.

Mr. David Hutchison, 2 Irving Place, stated he seconded Steve Londner and Kim Noling's letter.

Ms. Linda Wilcox, 75 Maple Street, stated she would like to agree with what they both said.

Mr. Peter Friedman, Maple Street, stated he had a statement he would like to read.

The following is the statement read by Mr. Friedman:

When Will Lunn stopped maintaining his property around 2003 and it started on a downward slide, I didn't complain. When he allowed a taxi business to operate in violation of the zoning code in one of the apartments, I didn't complain. When he rented the one bedroom apartment to families of 3, in violation of the zoning code, I didn't complain. When he kicked out the senior citizen in one of his apartments so he could rent to 3 students, I didn't complain. When he kicked out the single father and child from another apartment so he could rent to students, I still didn't complain. Now he's looking for permission to increase the number of bedrooms, a permanent change that most likely will never be changed back, and now I am complaining.

If you approve this application, the result will be an apartment with 2 bedrooms that by occupancy law based on room size can have a total of 4 occupants. You should not approve this application because it requires that you accept the 2 person limit as realistic, and because Mr. Lunn's past record of not limiting the use of his property to permitted uses and the city's inability to enforce this kind of law make it unrealistic.

In order to be approved, Mr. Lunn needs 5 variances. That's a lot of variances. His proposal violates each of 5 zoning code sections. I can read them to you later if you want them.

Mr. Lunn's proposal will do the exact opposite of the purpose and Intent of the R-2 zone (section 300-7, paragraphs 3), 4), and 5) states that that the purpose and intent is to:

"(5) Encourage the conversion of existing higher-density unrelated individual occupancies to senior citizen, family, or adult housing. (4) Encourage the reversion of previously converted existing multiple-family and two-family homes back to single-family; (3) Prohibit additional conversions from single-family homes to two-family or multifamily homes;"

In the past year Mr. Lunn, with the intent of occupying this building with at least 8 students, has kicked out one senior citizen occupant from one apartment, one single father and his young child from another, and another single father and his 2 children from the third.

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The state law (General City Law § 81-b. Permitted action by board of appeals. 3. Use variances), is what sets the criteria of what qualifies as a financial hardship and this is what it says: "to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located: (l) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;..."

Mr. Lunn can already make a substantial return from his investment with the use that is permitted there now and without adding another bedroom. The state law requires a showing of "substantial" "lack of return". He can not show that. He recently kicked out all of his non student tenants and is planning to move in students this fall. Since he provided no information to support his claim of financial hardship, I can only guesstimate the increase to be expected. It appears to me that his change in tenancy will result in him making without the added bedroom approximately 45,000 gross annual income. He has probably been making, since around 2003, approximately 29,000 gross annual income. That's a big increase. He has stated on his application that he will take in another 5,000 per year with the addition of the proposed bedroom.

The fact that he may have some maintenance costs now is not due to a financial hardship associated with the property but rather it is due to the fact that he has not reinvested in the property in the past. With better management he would have been able to pay for the maintenance from the income he was getting.

This will have a significant negative effect on the character of this neighborhood and of the R-2 zones. I believe that you must reject this application as an obvious fantasy scenario designed to skirt the law. If you allowed this additional bedroom here and in every rental property within 500 feet measured along streets, the result would be an increase in student occupants of approximately 16, or 25 % more than were there last spring. If you allowed this scheme to increase the number of unrelated individuals by 1 in every similar rental property in the R-2 zone you would be working against one of the most prominent goals of the comprehensive plan and the new zoning code, which is to stabilize and pushback the ratio of student rentals to nonstudent rentals. This same application can be made for numerous 2 family and 3 or more family homes in the r-2 zones all over the city. If Mr. Lunn is approved for the added bedroom and with no financial hardship, you will be setting a precedent that will apply to many of those rental properties. The city just got a new zoning code approved a little over 1 year ago that was designed to prevent this very thing. Don't undermine the new zoning code.

The reason the building is in as good a shape as it is is because the previous owner, Mrs. Leamy, took excellent care of it and always had top quality work done. But 13 years ago she sold it. Mr. Lunn has not been a "hands on" manager. Since he took over responsibility for the property, I've hardly ever seen him at the property, until a few months ago when he began to get it ready for this variance hearing. The maintenance at the property has been the responsibility of the tenants, who mowed the lawn and took care of the garbage. The shrubs rarely got trimmed and litter sometimes remained in the front yard for weeks at a time. If you look in the shrubs in the rear yard you'll see many bottles and cans and litter scattered there that have been there for years. Before the code office clamped down on properties without Certificates of Compliance, this property went for 9 years without a Certificate of Compliance, and for many years with violations outstanding.

Commissioner Ficano stated for the record he was not leaning toward voting for this application but when Mr. Friedman says "kicked out" we all know it was difficult to evict tenants and he asked if that was to Mr. Friedman's knowledge because he was ignorant of this and he asked if Mr. Lunn went through eviction proceedings or how did he do that.

Mr. Friedman suggested that the commissioner ask him how he did that.

Commissioner Ficano stated that Mr. Friedman was claiming and questioned if he knew something.

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Mr. Friedman stated he was told by the tenants that he was raising their rents and they could not afford it so they had to find another place to stay.

Commissioner Ficano stated raising rents was a little different than raising rents.

Ms. Laurie Zimmiewicz, Oneonta, questioned if she was correct in saying that under the new zoning this property was grandfathered for what it has and that the applicant was to increase or change the grandfathering.

Code Enforcement Officer Chiappisi responded correct.

Ms. Zimmiewicz questioned if she understands that under the new zoning that under the R-2 Zone that substantially there would be no changes to grandfathered properties.

Code Enforcement Officer Chiappisi responded he believed it was.

Ms. Zimmiewicz stated she would ask this board to uphold the Zoning Code.

Commissioner Robinson stated § 300-70 A (2) states *“No non-conforming use shall be changed in any way that would have the effect of increasing the density, intensity, or occupancy of the non conforming use.”*

Mr. Lunn stated he was not asking for an increase in density or a number of occupants.

Ms. Zimmiewicz questioned if the Code Enforcement Office had the ability to ensure on a regular basis that Mr. Lunn did not put more individuals in this building.

Code Enforcement Officer Chiappisi responded his office was limited in that capacity.

Ms. Zimmiewicz stated she would ask this board not to approve this because it could not be monitored.

Mr. Grant Labarr, Irving Place, stated he was in agreement with them. He said he looked at the diagrams and the property was designed somewhat like the house he lived in. He said in looking at it he could see no reason for this other than to make another bedroom for the purpose of adding another student to it and bringing the level of students above which was already authorized. He said he therefore requested that it be denied.

Commissioner Ficano questioned if there was anything that could stop a family of 6 from currently moving into that apartment.

Code Enforcement Officer Chiappisi responded that would be limited based upon New York State Occupancy Codes which based upon the size of the bedrooms had many people could be in those bedrooms. He said 120 square could have 2 people per bedroom so a family of 6 would be hard pressed to fit in there.

Mr. Friedman stated he read the numbers for that and 4 people could be put into those 2 bedrooms.

Commissioner Geasey stated which meant that there could be 3 unrelated and still be under the functional family definition instead of only 2 or there could be 4 related individuals.

Commissioner Lawson stated anyway you look at it still increased the density and he was opposed to it.

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Commissioner Geasey stated she felt the same as she did the last time about how many variances the board was actually making and the precedent.

Chair May questioned how many the board was making.

Commissioner Geasey responded stated they did not talk about the parking this time but she was more concerned with setting a precedent. She said she was all for additional entrances and exits for safety but she just saw this as an ability, whether it was intended or not, to increase the density.

Commissioner Robinson stated after listening to all that was said he would have to vote no.

Mr. Lunn stated he was not increasing the density but if he rented to a family he could have more people in that building and was a little offended by Mr. Friedman's accusation.

Commissioner Robinson stated that there was the potential to increase the density and that was what the board had to go by.

Commissioner Geasey stated if the board approves this there could be 4 related individuals or 3 unrelated individuals in there and nobody could enforce Mr. Lunn's desire and his intent to do just 2.

Chair May questioned if it was Commissioner Geasey's intent that because the city was unable to enforce its regulations that no one should be allowed to do what otherwise would be permitted.

Commissioner Geasey responded no that was not her main reason but was a part of it and it leaves the neighbors to figure out exactly who was living there.

The board held a brief discussion on the matter.

Chair May stated after hearing everyone's position he said he did not have a strong position one way or the other including his opinion that the city should be able to enforce its regulations and that it was probably improper for this board to limit Mr. Lunn's use of the property as it was used before the Zoning Code change. He said that was his opinion for the record.

Chair May entertained a motion.

MOTION, made by Commissioner Ficano and seconded by Commissioner Lawson, that based on site visits by members of the Zoning and Housing Board of Appeals and testimony heard at the July 23, 2012 meeting, the denies the application for Special Extension of a Non-Conforming Use and Site Plan for a Parking Waiver as presented by William Lunn for 65-67 Maple Street (288.18-1-78) to install an additional exit door from the 1st floor left apartment and install a door between the front room and living room.

Voting Ayes: Commissioner Ficano
Commissioner Lawson
Commissioner Geasey
Commissioner Shields
Commissioner Robinson

Noes: Chair May

Absent: Commissioner Rafter

MOTION CARRIED

Chair May stated that Mr. Lunn was stuck where he was and had the option of filing an Article 78 for a court to make a decision and a judge to make the final decision.

OLD BUSINESS

1. **6 Forest Avenue (300.07-4-71): Use Variance – James C. Kenny:** The applicant wishes to use the referenced property as a two (2) family dwelling. There are two (2) rooms in each apartment that meet the requirements to be used as bedrooms. (This was tabled at the June 25th meeting)

Mr. Joseph Pondolfino, Attorney, stated he was representing Mr. Kenny and his request. He said first he would address Mr. Phillips' letter and said he represented Mr. Kenny at the time he bought the property in November 2009. He said at that time Mr. Kenny bought it from Allen Moore and it was in fact being used as a two-family home. He said Allen was living in one apartment and his mother living in the other and because they were related they did not have to register and his client lived next door. He said after Mr. Kenny purchased his property he advised him before the new Zoning Code came into affect Mr. Kenny went to the Code Enforcement Office to register and was told that he did not have to because he was going to have his family leaving there so he did not. He said the City Code 158-58 contrary to what was discussed at the board's last meeting requires owners to register tenant housing within one-year after the Code had been in effect or 90-days from the date of the mailing of the registration from the City Codes Office. He said in this case the applicant had one year until May 17, 2012 to register this 2-family residence. He said Mr. Kenny did file his property use certification form with the Code Office before the November 14, 2011, which was way before the expiration date of the one year he had and he also filed within the 90 days he had received it. He said it was by letter of November 14, 2011 from the Code Office that said they could let Mr. Kenny have this because he had to get a variance. He said it was because of that Mr. Kenny was here looking for the variance. He said Mr. Kenny has tried everything from day one to comply with the ordinance and file the certificates trying to get it registered. He said the City Assessor as was indicated last time assessed this property as a 2-family residence in 2012. He said the applicant has paid taxes as a 2-family residence and his assessment was increased by over 20 percent. He said as was admitted by the Code Office at the last meeting the Officer did inspect this property pursuant to a 2-family residence. He said Mr. Kenny did pay his \$25 fee on April 25, 2012 and as a result of the application and the inspection he had to file an application for a use variance and correct the minor variations of violations that were found. He said when he looked at the Code Mr. Kenny's property was assessed as a 2-family residence by the City Assessor. He said that was acknowledged. He said when he looked at the tax rolls it shocked him to found out that Mr. Kenny has an 1800 square foot assessed value of \$79,000 and assessed as a 2-family home. He said there were two other 2-family residences on this block. He said one was owned by Jonathan Schneider at 10 Forest Avenue that was 2335 square feet and was only assessed at \$61,000 and that was a 2-family home. He said the other was Andy Schliske, 20 Forest Avenue at 2160 square feet and assessed at only \$57,000. He said when one takes a look at Mr. Kenny's property he was the 3rd highest assessment on this whole street. He said the property when Mr. Kenny bought it was used as a 2-family home. He said the board has been pictures that were submitted to them and he would give some more. He said this had been a 2-family home, Mr. Kenny did not put in a staircase or create a 2-family. He said it was the same today as it was when Mr. Kenny bought it except for some minor improvements. He said there had been no capital construction. He said the character of the neighborhood was not all affected because the front of the building shows one door and so the neighborhood was conforming. He said that one door only goes to the lower apartment. He said in looking at the pictures there were two and there always had been two separate entrances that take people to the upstairs and downstairs. He said attached to the original application was a floor plan of only 1800 square feet that was 900 square feet in each of the two apartments. He said the Code has already assessed that the 2-bedrooms in each of these apartments complies with the Code in terms of their size and dimension. He said the Mr. Kenny has not done anything to change it from when he bought it and would like to keep it as a 2-family. He said Mr. Kenny has tried in his best efforts to keep it as a 2-family, he was assessed as a 2-family, his taxes were a 2-family and it did not affect the character of the neighborhood. He said Mr. Kenny had submitted in the previous application some financial data to show that if it was not able to be rented it was costing him \$9000 a year to pay taxes, heat, electricity

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and all the other things that were there. He said it was presently rented and they were related family of his daughter in one apartment and his son and his partner in the other apartment. He said in summation he was specifically asking that the board allows Mr. Kenny to have this treated as a 2-family home as it has been. He thanked the board for its attention and said that he and Mr. Kenny were open for questions.

Chair May asked Code Enforcement Officer Chiappisi what the Code Office's outlook was on this.

Code Enforcement Officer Chiappisi replied he could find no report for the conversion. He said he knew an inspection was done but had not read the report and did track the reports that closely because his staff handled those.

Chair May questioned if Code Enforcement Officer Chiappisi believed this was a recent conversion or at it being longstanding for about 20 years.

Code Enforcement Officer Chiappisi responded colonial homes in the 1970s and into the early 1980s looked different than the more modern in later 1980s and 1990s colonial home. He said sometimes he could look at the trim work and make a determination as to whether it was original or if work had been done. He said when Codes went to this property for a Housing Code assessment they were not really looking for that type of thing. He said typically when he did something like that it was a 3rd floor occupancy that someone wanted grandfathered in. He said if it was prior to 1984 and there was a record it was something he would work with the owner with. He said a lot of times he would go up into these and see old style sheetrock or flooring tiles that were from the 1950s or 1960s but it get more tricky when things were more recent.

Chair May stated he had asked Code Enforcement Officer Chiappisi to search the records in the Code Office for any building permits that might have been issued for this property. He asked if he had any found anything.

Code Enforcement Officer Chiappisi replied no.

Chair May stated he had also asked Code Enforcement Officer Chiappisi to look at all the rental registry forms for this property. He asked if he find anything indicating it was a 2-family house.

Code Enforcement Officer Chiappisi replied there were no rental registries, it was never a registered rental. He said as Mr. Pondolino had said if it was occupied by family members it was not required and was considered an owner-occupied home.

Chair May stated that if it was an owner-occupied home in an R-2 Zone and it now wanted to be considered a 2-family home that was a substantial change.

Commissioner Ficano stated he was a little bit at a loss what to think about this. He said if it had been a 2-family home he wondered if Mr. Kenny missed classifying it a 2-family home or not. He said Mr. Kenny's attorney was claiming there was a period in which to change the status and register he had a 2-family home and he was saying he did.

Code Enforcement Officer Chiappisi stated he did not know offhand what the Code section cited 158-58 said but he thought that one year period was just for the initial passing of the law saying from this point all rentals had to be registered within a year and after that it was a 90-day thing and not a 1-year thing the way he understands it.

Mr. Pondolino read the following, § 158-58. Registration. A. *Owners and lessors of premises, or their respective agents, shall within one year after the effective date of this Part 2 or 90 days from the date of mailing of registration forms by the City Engineer, whichever occurs first, file with the City Engineer, on the registration forms provided by the City Engineer, the following information.*

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Code Enforcement Officer Chiappisi stated he understood that to be one-year from the implementation of that Code, which City Clerk Koury may be able to say when that was, but otherwise it was 90-days. He one of Code Enforcement's struggles was getting property use forms returned and property transfers but when they get the property transfer in the office they send the forms out but it was up to the people to respond to them. He said if the people do not respond and Codes thinks it was a rental they force their hand by sending them all the forms saying they need to register it as a rental, they assume it is a rental and that usually gets the people to come in and say it was a rental or not. He said they had about a 60 percent turnover.

Commissioner Geasey stated in this case Mr. Kenny tried to fill them out.

Code Enforcement Officer Chiappisi stated when Mr. Kenny came to the Code Enforcement Office and he believed he filled out most of it there.

Mr. Pondolfino reported on the violations found when the property was inspected other than saying it was a dwelling converted from one to a two-family. He said the argument was that it was never converted from one to two and has always been a two and never had to be registered.

Chair May asked if it was Mr. Pondolfino's contention that the property was always a 2-family house.

Mr. Pondolfino replied at the time Mr. Kenny bought it and Mr. Moore sold it, yes. He said he did not know the history of the house prior to that and could not represent it. He said the record shows the house was built in the 1800s.

Chair May stated Mr. Kenny was a landlord and knew the requirement to register a rental properties.

Mr. Pondolfino stated Mr. Kenny knew that and went to register this property and complied with the statute.

Chair May asked Code Enforcement Officer Chiappisi if there was any evidence in his office that within the year from November 2011 Mr. Kenny came to the office.

Code Enforcement Officer Chiappisi replied no he would not have a record if he came in to discuss the property.

Mr. Pondolfino read from a letter Mr. Kenny received from Mr. Chiappisi dated November 14, 2011 saying he received Mr. Kenny's property use certification form the above referenced property. He said so yes Mr. Kenny did submit it and yes there was documentary evidence. He said that was when he went in and tried to register it.

Chair May asked to take a look at that letter.

Mr. Pondolfino referred the letter to the Chair.

Commissioner Geasey questioned if the people who had been in this home had always be Mr. Kenny's relatives.

Mr. Kenny responded that was correct.

Commissioner Geasey questioned Mr. Kenny's need to consider this a rental and if the time came that he wanted to sell the property that was why he would need all of this in place.

Mr. Kenny stated that his daughter was interested in purchasing the building at the time and she was concerned that if her brother moved out if she could live in it and rent it out.

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Commissioner Geasey stated or the daughter could move out and rent it.

The board reviewed the matter.

Council Member Brzozowski stated regarding the talk about the internal things that may have taken place and how it was hard to judge if it took place in the 1970s or 1980s but it seemed like the external back porch could yield some evidence of whether it was a single family.

Code Enforcement Officer Chiappisi stated potentially yes but he did not go to the property.

Commissioner Robinson asked if there was plumbing there for 2 kitchens.

Mr. Kenny replied yes, it has been there and there had been no changes with respect to plumbing, bathrooms, electric but there was just one meter so the tenants share the costs.

Chair May asked Code Enforcement Officer Chiappisi if his office had issued any permits for the building for construction on that property at all.

Code Enforcement Officer Chiappisi replied no, not since he was Code Enforcement Officer.

Chair May questioned if Code Enforcement Officer Chiappisi would accept the face value and whatever work was done there was done legally and if he had any evidence to the opposite he would probably know.

Code Enforcement Officer Chiappisi responded yes.

Mr. Chris Strignano stated he lived on the corner of Main Street and Forest Avenue. He said he purchased his house in 2004 and had about 113' that borders Forest Avenue and his driveway was kind of diagonal to this property. He said when he bought his house there was just one woman living there for about 5 years, Caroline Moore. He said he never saw an Allen Moore. He questioned if a family constitutes a 2-family house if it was just a family living there, i.e. if it was Allen Moore and his parents did that make it a legitimate 2-family house that someone else could buy it and use it as a 2-family.

Chair May stated it depended on the structure of the house and if it had 2 bathrooms, 2 kitchens, etc.

Mr. Strignano stated when Mr. Kenny purchased the house in 2009 he did see construction there constantly. He said he knew there was a lot of work done but did not know what was done. He said it just felt to him that it was the Moore family that owned the house years going back, the parents passed away and the children rented it. He said he never saw it rented to anybody else until Mr. Kenny purchased it.

Chair May asked if Mr. Strignano was speaking in opposition to this application.

Mr. Strignano replied correct.

Mr. Bruce Layman, 22 Forest Avenue, stated he lived there since 1976. He said he knew the parents that lived in the house at 6 Forest Avenue and they had one daughter and after the parents passed away the daughter started living in the house and she somehow went missing for a year or two. He said she was found in Binghamton and the brother took her out of the house. He said the brother took good care of the house and sold it to Mr. Kenny. He said there were never 2 families or anybody else living in that house but the mother and father at one time and then the daughter after they passed away. He said the brother never lived in the house. He said he had seen a lot of brand new sheetrock going into this house.

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Mr. Kenny stated that he had made improvements.

A petitioner asked if there was an inside staircase taken down.

Chair May stated the board could ask that question later. He asked the petitioner if he was opposed to the application.

The petition responded yes.

Ms. Gloria Layman, 22 Forest Avenue, stated if there was a 2-family dwelling there at any time they would have separate meters and the electric company would be billing two different sets of people.

Chair May stated not necessarily. He said it was an indicator but not a primary indicator because the landlord could be paying all the utilities.

Ms. Layman stated if that was a landlord but if it was a family, which it was for years, then that was the way it was going with one family and one meter.

Chair May stated they could have had any arrangement they wanted. He asked if Ms. Layman was opposed to the application.

Ms. Layman replied she was opposed.

Chair May stated the board has heard that there was construction in 2009, people observing material in and out and construction done in the absence of a building permit.

Mr. Kenny stated there was a permit.

The Chair asked if Mr. Kenny was speaking or was his attorney speaking for him.

Mr. Pondolfino stated he would repeat that Mr. Kenny had a permit for what he did.

Chair May asked Code Enforcement Officer Chiappisi if he or Ordinance Inspector Ferris could check the office.

Code Enforcement Officer Chiappisi stated he checked before the meeting and find nothing. He asked if Mr. Kenny had a copy of what Code Enforcement would have mailed him.

Mr. Kenny stated he believed he did. He said he paid \$75 for it.

Code Enforcement Officer Chiappisi stated that was part of the application to make it a 2-family and was in the application packet.

Mr. Pondolfino stated the board's question was if back in 2009 when the neighbors said they had seen sheetrock, plumbing and that going in if Mr. Kenny had a permit for any of that.

Mr. Kenny stated he did not file a permit at that time. He said he filed it then.

Chair May stated the board was trying to help Mr. Kenny find evidence that this was in fact a 2-family house.

Mr. Kenny stated as he had mentioned when he bought the house it was not being used as a 2-family but it was structured as a 2-family because of the plumbing, the kitchen and the bathroom. He said when he bought it he cleaned it up, sanded the floor, built a closet, linoleum, new appliances and so forth.

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Commissioner Ficano questioned if he did not put in a rear stairway to the 2nd floor.

Mr. Kenny stated no he did not. He said from the photographs of the outside one could tell the house was not altered in a way to make another entrance.

Commissioner Ficano stated to his knowledge one could replace sheetrock and make internal improvements to a structure without getting a permit.

Code Enforcement Officer Chiappisi stated that depended on what they were. He said once someone starts removing sheetrock they need a permit and if someone was going to re-sheetrock over something a permit was needed too because generally what happens electrical boxes were recessed in the wall and there could be extension boxes but on properly. He said Mr. Kenny's building permit application in the packet says "*Revert to 2 family, R - R existing bathroom & kitchen fixtures, R-R windows, re-do wood floors install wanes coating it kitchen, 1st floor. Install steel roof. Paint interior & interior.*" He said not rearranging interior space would not necessarily require a permit. He said the real question on this was revert to a 2 family, which I think he was really just trying to get. He said on the record this was a 2-family and that was what triggered this whole thing on the building permit and he had to go to Zoning Board to get this squared away.

Commissioner Geasey stated there was a question about whether an interior stairwell was removed.

Mr. Kenny responded no.

Commissioner Geasey questioned if there was no interior stairwell that connects the 2 apartments.

Mr. Kenny stated the stairwell was still there but it was boarded off.

Chair May asked about when did that occur.

Mr. Kenny replied that was after he bought it.

Chair May stated so that was something Mr. Kenny did and that was the act that separated the 2 apartments.

Mr. Kenny stated that or the doorways.

Chair May stated in the absence of convincing evidence that this house has always been a 2-family based on the information before the board he was reluctant to conclude that it was. He said that was just him.

Commissioner Shields stated it sounded a little bit to him like this might have been an in-law apartment for equal access on both sides. He said in that case if that was true it could have been 2 units shared back and forth and now it was 1 on each side. He said he was still confused as to why the Assessor assessed it for a 2-family.

Chair May stated that the Assessor did not visit the property and took the information over the phone. He said he confirmed that with the Assessor. He said after a fairly exhaustive search of city records there was no clear and convincing evidence that that house had ever been a 2-family residence.

Mr. Pondolino questioned how the Chair was defining a 2-family house.

Chair May responded separate dwelling units.

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Mr. Kenny stated if the area was not rezoned this would not really be an issue.

Chair May stated this property was in an R-2 Zone now and as was said earlier there was a great furor for protecting the R-2 Zone even for the extent of the one case earlier where in his opinion only had a right to put 3 unrelated people in that structure that had been an apartment forever. He said the board had a different opinion and he chose not to go with them and the applicant could then file an Article 78 for relief. He said in this case he did not find clear and convincing evidence that it was ever a 2-family unit. He said Mr. Kenny knew the rules and regulations, was as smart as he was could have filled out a rental registry form and solved his problem even if the Code Enforcement Office said he did not have to do this because by owning other properties he knew he had to do it. He said so even if Code Enforcement made a mistake Mr. Kenny knew he had to do it. He said he knew he had to do it because he himself had to do it and was doing it for 17 years.

The board held a brief discussion on the information presented and the rezoning of that area.

Chair May stated he was coming down to the sense here that this would be a non-conforming use in an R-2 Zone.

The Chair polled the board and that was the consensus of the board.

Chair May entertained a motion on the matter.

MOTION, made by Commissioner Ficano and seconded by Commissioner Robinson, that based on site visits by members of the Zoning and Housing Board of Appeals, record searches done by the board and the city and testimony heard at the July 23, 2012 meeting, the board denies the application for a use variance by James C. Kenny for 6 Forest Avenue (300.07-4-71) to use it as a two (2) family dwelling.

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

MOTION CARRIED

There being no further business to come before the board, Chair May adjourned the regular meeting at approximately 10:00 p.m.

JAMES R. KOURY, City Clerk

JRK/pab