

A regular meeting of the Planning Board of the Village of Cooperstown was held in the Village Office Building, 22 Main Street, Cooperstown, New York on November 18, 2014 at 4:30 p.m. Members in attendance were Chair – Eugene Berman, Richard Blabey, Chuck Knull, Paul Kuhn, and Richard Sternberg. Zoning Enforcement Officer – Tavis Austin and Deputy Village Clerk – Jennifer Truax were also present. There were no members of the public present.

Mr. Berman called the meeting to order at 4:30 p.m.

Regular Agenda

Proposed Zoning Law Change to setbacks – referral from Board of Trustees

Mr. Austin explained that the proposed changes came out of the Economic Development and Sustainability Committee as a mechanism to allow property owners to be able to more fully develop their property without requiring an area variance.

Mr. Blabey stated that the committee felt that in some situations the property could be better used if there is some flexibility in the setbacks built into the law. He continued to explain that there will still be a minimum setback of five feet and that the combined setback remains the same but that property owners can adjust the side yard setbacks if it better serves the use of the property. Mr. Blabey continued to state that the original intention of the 10 foot rear yard setback was for alleyways which would allow owners to access their property from the rear but that was never developed.

Mr. Austin stated that the law was amended previously to reduce the setbacks from 20 feet to 10 feet in the rear. He pointed out that the previously required setbacks were enough to create a road.

Mr. Blabey stated that the Village is already built and anything in the law that makes variances routine should be removed from the law. He stated that a setback is necessary for the maintenance of a structure without intrusion onto the neighbor's property. He further stated that for this reason structures should not be built on the property line but that he feels 10 feet is excessive.

Mr. Austin asked why the law is more flexible for a narrow lot. He stated that he does not understand why the not less than 5 foot setback should not apply to all lots. He further stated that the law does not define an accessory structure. He explained that he feels that this is problematic in that he does not know when a structure moves from being part of the principal structure to accessory structure on the property. He gave examples of different means which garages are sometimes connected to a principal structure and questioned when the structure becomes accessory.

Mr. Sternburg stated that if there is a way to get from one structure to another without going outside then he feels that it is part of the principal structure.

Mr. Austin asked if an enclosed breezeway would constitute a connection between two parts of a principal structure and at what point the connector would no longer constitute a connection between two parts of a principal structure.

Mr. Sternburg asked what the definition of a breezeway is.

Mr. Austin gave several examples of what a breezeway could be.

Mr. Sternburg stated that the accessory structure would not be able to be used for anything but its intended purpose, i.e. a garage for storage of vehicles and other items normally stored in this type of structure.

Mr. Austin explained that the current law states that an accessory structure must be at least the same distance from the principal structure as the height of the accessory structure. He continued to explain that to get around this stipulation in the law property owners have often connected the accessory structure to the principal structure with some kind of breezeway. Mr. Austin gave the example of a project on Delaware Street and stated that the ZBA needs a way to determine when the applicant has crossed the line.

Mr. Blabey asked what the purpose for the distinction in the law between the types of structures was originally for. He asked if it may have been due to fire protection.

Mr. Austin stated that he believes that the separation distance initially would have been a measure to help with potential fire hazards.

Mr. Blabey explained that he had removed a small accessory structure from his property and built a wing on his residence which included an attached garage with a bedroom on the second floor in the location of the original structure. He pointed out that due to County Building and Fire Code certain safety precautions were required.

Mr. Austin stated that Zoning was originally developed for the separation of uses, to have all residential properties in one area, businesses in another, and so on. The view of accessory structures is different and the village does not have any set regulations regarding placement of this type of structure other than for it to be incidental and subordinate to the principal structure. He stated that the determination of incidental and subordinate is very subjective.

Mr. Sternburg suggested that when viewed from the front of the property, if the accessory structure cannot be seen, it would be incidental and subordinate.

The board further discussed the definition of accessory structure as well as the proposed setback changes.

Mr. Blabey suggested that maybe the law should define the buildable area of a lot versus having a definition of primary and accessory structures.

Mr. Sternburg stated that if a property owner was allowed to fill 75% of their lot the lot would be nearly filled with structure.

Mr. Austin stated that in the Village the minimum lot size is 50' X 100' and lots of that size would require a Planned Unit Development in most places but the setbacks in the Village are typical of properties which are between 7,000 and 10,000 square feet in most places. He explained that the proportion of lot size to setbacks in the Village is much greater than in most places.

Mr. Kuhn asked why we are so opposed to variances requests. He stated that every problem cannot be solved by a definition or change in the law. He continued to state that if a property owner would like to do something that is not allowed under the current law they may apply to the ZBA for a variance and each situation may be looked at individually as they are each unique. He further stated that it also allows for the neighbor's input as not each request is simple.

Mr. Austin agreed that the ZBA is a valuable tool. He further stated that there is a problem with the law when every application requires a variance and most if not all receive the requested variance.

Mr. Kuhn stated that the process makes sense and that making the law too complex does not work.

Mr. Austin stated that when a variance request comes up for the side and rear yard setbacks the ZBA typically does not have an issue with any variance which allows at least a 5 foot setback. He continued to stated that anything less than 5 feet the ZBA will look at closely. He stated that the change in the setback to allow a minimum of 5 feet makes sense.

Mr. Blabey stated that it might make sense to consider a law which requires a certain percentage of a property to be a permeable surface. He explained that this type of law would help maintain the character of the Village and not create a more urban feel like NYC. He stated that the law draws the lines which regulate how far a property owner may go but should they want to go beyond that point they would need to present their case to the ZBA. Mr. Blabey further pointed out that the property owner should not be in a place where they do not feel that nothing is allowed.

Mr. Kuhn asked Mr. Austin how many application require a variance.

Mr. Austin stated that about 80% require variances but the variance are for a wide range of issues. He continued to point out that there are not many empty buildable lots within the Village but that applications for renovations such as the expansion of a carriage barn are regularly entertained. He further pointed out that the granting of area variances is a sticky situation as the applicant is required to answer five questions which are the criteria for the basis of granting a variance. He stated that the fifth question asks if the hardship is self-created and it almost always is. He pointed out that in most jurisdictions the minute the answer is affirmative the variance is denied.

Mr. Kuhn stated that he lives in the R-3 district and the road frontage is less than 60 feet. He explained that if the neighbor places a structure 5 feet from the property line it would create a hardship for him and could potentially damage his property. He stated that he would care about decisions to grant this type of use of the property.

Mr. Sternburg suggested that maybe no change should be considered at this time.

Mr. Berman suggested that further study would be helpful in making an informed decision.

Mr. Blabey stated that controlling how the development of a property based on the effects neighbors is not appropriate. He stated that living in the Village owners should expect to have neighbors in close proximity and have to facilitate a give and take type of relationship. He further stated that if other items such as privacy are more important the resident might need to consider living in a less dense area.

Mr. Austin stated that there are items which are not addressed in the law such as blocking sunlight to solar panels and blocking the scenic view. He explained that in the case of the Lake Front Hotel the neighbors protested any increase in height due to blocking the view of the lake. He reminded the board that view is not something that Zoning can regulate.

Mr. Blabey stated that in some areas of the world they do regulate things such as blocking sunshine. He explained the sunshine law in Japan which does not allow neighbors to block sunlight from each other.

Mr. Austin stated that in some places setbacks are dealt with in ratios. He explained that for example every two feet the height of a structure increases the distance from the property line must increase by a foot. He further explained that the intent of the proposed change was to allow individuals to renovate an existing accessory structure for a new use or place a shed on the side and rear of the property. He further stated that it does not address someone building a three car garage or other accessory use building in all the open space behind the principal structure.

Mr. Kuhn stated that he agrees with a lot of what has been said and that maybe a percentage of coverage would be appropriate. He referenced the home on Fair Street previously owned by Dr. Short which expanded in to every allowable portion of open space on the property creating an addition which was at least as large as the original structure. He stated that there is a need for the law to prevent that type of expansion. Mr. Kuhn stated that although that is something that should be looked at, at this time the board has been asked just to review these four specific law changes.

Mr. Austin stated that the safest way to look at this would be developing the concept of proportionate coverage of a property but there are other areas which would require review before any recommendation as to the development of that law could be done.

Mr. Berman asked if there is anything in the current zoning law which regulates the amount of non-permeable surface on a property.

Mr. Austin stated that there is not currently anything in the law to prevent paving the entire property. He stated that the City of Oneonta has done a good job of regulating setbacks and the percentage of a property which can be covered with non-permeable surfaces.

Mr. Sternburg made a motion, that having reviewed the proposed law changes, the Planning Board finds that the proposed change need to be part of an integrated solution to the overall problem; therefore, the board recommends that the Board of Trustees not vote on these law changes at this time. Mr. Kuhn seconded the motion and a vote had the following results:

AYES: Berman, Blabey, Knull, Kuhn, Sternberg Motion carried.

Mr. Kuhn asked Mr. Austin to provide the board with sample law from other municipalities which effectively handle setbacks, and property coverage.

Mr. Austin stated that typically the allowed percentage of coverage is 50 percent. He further stated that he would forward to the board sample municipal law which uses percentage of coverage and/or required square footage of open space.

Mr. Blabey asked if there are areas where the volume of a structure not exceed a certain number of cubic feet.

Mr. Sternburg stated that even in NYC an engineer managed to get around the Zoning regulations and has built a structure over 100 stories tall on a footprint no large than his home.

Mr. Austin stated that this is covered in Village law with the maximum height allowance.

Minutes:

Mr. Sternberg made a motion to accept the October 21, 2014 minutes as presented. Mr. Kuhn seconded the motion and a vote had the following results:

AYES: Berman, Blabey, Kuhn, Knull, Sternberg Motion carried.

Other Business:

Mr. Austin reviewed the email from Trustee Dean regarding concerns at NY Pizzeria. He explained that when NYP approached him regarding the expansion of the business portion of the use he did not believe that expansion of use was allowed. He continued to state that upon review Mr. Blabey pointed out that the law only requires that the uses be retained, not that a minimum percent of each use be retained. Mr. Austin continued to explain that prior to Mr. Blabey's research concerning the law regarding mixed occupancy, NYP had proposed the addition of three tables to the second floor but has installed eight tables. Trustee Dean is calling into question the use and possible safety issue due to the expansion. Mr. Austin stated that after conferring with Village Attorney, Mr. Martin Tillapaugh, he visited the site and confirmed that there is a legal apartment in the structure and that the property is in compliance with Village Law. He further stated that he did view the apartment and the property is in compliance with Village law.

Mr. Sternburg asked if the structure meets fire code.

Mr. Austin stated that it is his understanding that it does but it is not the Village's jurisdiction. He further stated that he finds it difficult to believe that the owner would have gone to the expense of the existing upgrades and not complied with egress requirements.

Mr. Sternburg stated that it is his opinion that the Village has confirmed that the structure is in compliance with the Village law and the other areas of concern pointed out in the email are not the Village's problem.

Mr. Kuhn asked if the email was circulated to the Fire Marshal and County Code Enforcement Office.

Mr. Austin stated that the email had been circulated to those parties.

The board discussed the law and its potential impact on other properties within the Village.

Meeting adjourned at 5:52 PM

Respectfully submitted,

Jennifer Truax
Deputy Clerk