

A regular meeting of the Zoning Board of Appeals of the Village of Cooperstown was held in the Village Office, 22 Main Street, Cooperstown, New York on April 7, 2015 at 5:00 pm. Members in attendance were Chair - Susan Snell, Ruth Ayres, Frank Leo, John Sansevere, Marcie Schwartzman, and alternate – Ron Streek. Also in attendance was Trustee – James Dean, Planning Board Chair – Eugene Berman, Zoning Enforcement Officer – Tavis Austin and Deputy Village Clerk – Jennifer Truax. Twelve members of the public were present.

Ms. Snell called the meeting to order at 5:02 p.m.

### **Public Hearings**

#### **20 Eagle Street (Barbara Luhmann) – Public hearing for a home occupation**

Ms. Snell opened the public hearing at 5:03 p.m. and reviewed the application for an art studio, home occupation at 20 Eagle Street. She asked if there was any public comment.

Ms. Robin Lettis, 22 Eagle Street, Ms. Jean Lyons, 8 Eagle Street and Mr. James Dean, 15 Delaware Street all expressed support for the project.

Ms. Snell asked Mr. Austin if any public comment was received prior to the meeting.

Mr. Austin stated that one e-mail from the Hill family at 10 Eagle Street was received and has been placed in the file.

Ms. Snell read the email of support from the Hill's regarding the home occupation at 20 Eagle Street.

Ms. Snell stated that if there was no further comment she would ask the board to move the next agenda item and leave this public hearing open for a short time.

There was no further comment at this time.

#### **61 Lake Street (Mark & Jennifer Meehan) – Public hearing for a 3-room tourist accommodation**

Ms. Snell opened the public hearing at 5:04 p.m. and reviewed the application for a 3-room tourist accommodation at 61 Lake Street.

Mr. Sansevere stated that after the preliminary hearing in March he felt that the only potential issue was the driveway, location of a tree near the proposed driveway, and the parking stalls in the rear of the property.

Mr. Austin stated that the recommendations to the parking plan, as suggested at the March meeting, have been made.

Ms. Snell stated that she does not see new drawings which indicate the changes.

Mr. Austin stated that the modified drawing should be in the file. He explained that the distance from the garage had been modified as well as the turning area.

Mr. Streek asked if the neighbor has any objection to the proposed driveway.

Mr. Austin stated that he has not received any public comment.

Mr. Berman, 63 Lake Street, addressed the board. He explained that he had not received any written notification and was disappointed that the Meehan's had not contacted him directly.

Ms. Meehan stated that she attempted to speak with the Berman's today and that her husband, Mark Meehan, had attempted to see them after the March meeting but no one was home.

Mr. Berman explained that he is opposed to the proposed tourist accommodation. He explained that his son is autistic and has difficulty with excessive noise. He stated that the proposed tourist accommodation will have an impact on his son as there is not much distance between the two homes, and the bedrooms in his residence are on the side of the home which faces the Meehan property. Mr. Berman stated that in addition to this personal opposition to the project he also feels that the addition of a tourist accommodation changes the character of this residential block. He stated that there are several inns, B&Bs as well as the Otesaga in this general area and their block is, at this time, truly residential with no tourist accommodations. He stated that he feels that it is important to maintain the residential qualities of this block. Mr. Berman continued to state that should a tourist accommodation be allowed at this residence then in addition to the added activity the Meehan's would be entitled to signage, which would have additional detriment to the residential character of the area.

Mr. Sansevere stated that a sign is not required for a tourist accommodation.

Mr. Berman stated that the sign law allows a sign for a tourist accommodation and the Meehans would have the legal ability to apply for and install a sign.

Mr. Sansevere stated that just because it is allowed, it doesn't mean it will happen. He stated that there are many tourist accommodations throughout the Village and they do not all have signage.

Mr. Leo reviewed Mr. Berman's objections to the tourist accommodation. He asked if he understood correctly in that the objections were based on his son's disability and the appearance of the neighborhood.

Mr. Berman concurred.

Mr. Streek asked Mr. Berman if the distance between the property line and the driveway was problematic.

Mr. Berman stated that the driveway is on the other side of the residence and will not directly affect his property.

Mr. Streek again asked if the vehicle intensity would be problematic to Mr. Berman's family.

Ms. Snell explained that Mr. Berman is at 63 Lake Street and it is the property on the other side of the property at 59 Lake Street.

Mr. Sansevere asked if there would be any screening for the parking and the potential intrusion from vehicle headlights.

Ms. Meehan stated that there are some shrubs but additional vegetation could be installed if necessary. She explained that she had also been concerned about the possible intrusion from headlights. She stated that the parking as proposed is far enough into the rear yard that any lights will shine into the Berman's rear yard, not the residence, and that the direction of the parking points the headlights towards the rear of the property not the sides. She further explained that the topography of the rear yard allows for the headlights to face into the rising ground, therefore, not affecting the rear neighbors. She asked Mr. Berman if his son is affected by the activity at the Otesaga.

Mr. Berman stated that the distance between the properties makes a difference in the effect on his son. He stated that several times his son has been disturbed by construction occurring in the middle of the night at 61 Lake Street. He further stated that they never received a notice of this proposed tourist accommodation nor had the Meehans ever addressed his family. He stated that when Mr. Meehan was taking measurements in the driveway his wife had questioned Mr. Meehan who stated that they were looking to expand the driveway but never mentioned the tourist accommodation.

Ms. Meehan asked Mr. Berman to provide more information regarding the date of the alleged incident which woke his son so that she could express her disapproval to the contractor who caused this disturbance.

Mr. Berman stated that he does not have those details and he was not overly concerned at the time as he felt it was just an occasional thing and that it was not worth disturbing them over. He continued to state that the tourist accommodation would be a more constant intrusion on the neighborhood and his family and therefore would be problematic.

Ms. Snell asked Mr. Berman what types of noise he expects to be associated with the use and problematic to his son.

Mr. Berman stated that the general noise associated with tenants occupying a property.

Ms. Snell stated that a lot of the noise associated with this use would also be associated with a normal family residence.

Mr. Berman explained that he travels frequently and his experience has shown him that when away from home people tend to not be as conscientious of the noise they are creating, children tend to be louder, parents tend to be more forgiving of the excessive noise, etc.

Mr. Sansevere stated that most do not live across the street from a five star resort. He further stated that he would think that the intensity of use, specifically with the new spa, at the Otesaga would be more problematic than a small tourist accommodation. He further stated that this home is in a busy neighborhood with several different types of tourist accommodations.

Mr. Leo stated that he feels that the noise from the hotel may not be as problematic as the neighbor due to the proximity of the residence. He asked Ms. Meehan if she knew that Mr. Berman had an autistic son.

Ms. Meehan stated that she was aware of Mr. Berman having an autistic son.

Mr. Leo asked if she has tried to make contact with the Bermans.

Ms. Meehan stated that they had tried to make contact with both of the neighboring property owners but on both attempts no one answered the phone. She continued to state that the home was rented for Induction Weekend in 2014 by the Tory family. She stated that after that rental her husband had spoken with the neighbors to ensure that the rental had not been problematic and neither of the neighbors expressed any concerns. Ms. Meehan stated that they try to be good neighbors, they maintain their property, pay their taxes, and they do not intend to do anything that would jeopardize the quality of life in the neighborhood.

Mr. Sansevere asked if they would be living in the home.

Ms. Meehan stated that they will be living in the home and that no sign will be erected.

Ms. Paula Wikoff, Lakefront Hotel, Fair Street, stated that she feels that the Trustees need to look at the law and evaluate what is allowed in residential districts. She explained that when people purchase a home in a residential area they do not expect a business to open up next to them. She further stated that she feels that the Trustees should designate certain zones which allow items like tourist accommodations because we all know that there are certain problems that come along with home rental.

Ms. Snell recommended that Ms. Wikoff speak to the Trustees directly about her concerns. She explained that the ZBA does not have any authority to modify the law but can only work with what the Trustees have provided for in the law.

Mr. Streek stated that he has concerns with the driveway between 59 and 61 Lake Street. He explained that there is only 20' between the two residences and given the driveway is only 10' wide, drivers are likely to move away from the structure causing them to possibly encroach on the neighboring property.

Mr. Berman stated that he did not receive a mailed notification of the meeting and it is possible that the neighbor at 59 Lake did not receive one either.

Mr. Austin provided the board with a copy of the list of properties to which a notice was mailed.

Mr. Sansevere asked if the notice was published.

Ms. Truax provided a copy of the notice to the paper which included the dates of publication.

Mr. Berman stated that he did see the notice in the paper on two occasions.

Ms. Snell asked Mr. Berman if he has any concerns with the parking.

Mr. Berman stated that given the driveway is on the other side of the home he does not feel that the vehicle traffic or parking will affect his property.

Ms. Meehan stated that the home has been occupied for some time. She stated that in December of 2012 the home was purchased and some minor repairs were made, after that they have occupied the home and done some other work.

Ms. Snell stated that there is noise associated with residential use and it is generally similar with a tourist accommodation. She stated that noise complaints regarding tourist accommodations generally occur when the residence is not owner occupied.

Ms. Ayres asked how many rooms are proposed.

Mr. Sansevere stated that three rooms are proposed but they may not all be rented.

Ms. Ayres asked how many parking stall are provided.

Mr. Austin explained that five parking stalls are provided, one for each sleeping room and two for the residence. One parking space is within the garage.

Ms. Snell asked about proposed lighting.

Ms. Meehan stated that solar lights will be used along the perimeter and in other necessary areas. She stated that to anyone passing by the property will look like any other private residence. Ms. Meehan stated that she does not want to disturb anyone's quality of life and she understands the neighbor's son's issue with noise but she does not understand why she would not be entitled to something that she is allowed by law.

Mr. Berman stated that he does not want anyone to misunderstand his comments; the Meehans are good neighbors and they have a nicely kept home but he is concerned about the potential noise from the proposed use.

Mr. Sansevere stated that he does not think that there will be a noise problem but should there be it could be addressed between the neighbors directly.

Mr. Leo stated that he understands that concerns about the residential character as well as potential noise which would be problematic to the young man living next door and will take those concerns into consideration. He asked if any other comments have been received.

Mr. Austin stated that no other comments have been received.

Mr. Streek stated that he is concerned that due to the location and width of the driveway those vehicles may encroach on the neighboring property.

Ms. Schwartzman stated that she always tries to refer back to the law regarding tourist accommodations in order to effectively review any new proposed accommodation. She read the portion of the law regarding tourist accommodations which states "*The operation of tourist accommodations shall be clearly secondary and incidental to the use of the structure as a primary residence of the owner.*" Ms. Schwartzman stated that 61 Lake Street is not a large home and to designate three sleeping rooms might indicate that the operation is not secondary and incidental. She continued to state that once a tourist accommodation is granted that special use permit will go with the property and the board will have no control over it. She stated that a future owner could choose to rent the rooms year-round instead of seasonally or install signage. She explained that when the special permit is granted the board can only hold a property owner to what is allowed by law not by what the applicant stated would be the case. Ms. Schwartzman stated that she does feel that a tourist accommodation changes the feel of a neighborhood and the board can talk all night about whether or not it affects the neighborhood but she has lived by tourist accommodations and she has experienced the increase in activity, movement and noise from those types of uses.

Ms. Meehan asked what would happen if she occupied those rooms every week with family and friends.

Ms. Schwartzman stated that it would be allowed. She further stated that those individuals would not be considered transient guests. She explained that the law was designed to regulate use of transient guests as there tends to be more movement of people and vehicles when the guests are transient.

Ms. Meehan stated that the use by family could potentially be greater than the use by transients.

Ms. Schwartzman stated that when a home owner opens their home to transients it changes the makeup of a home and neighborhood. That is why there is laws regarding this use, a review process and why a permit is required.

Ms. Meehan pointed out several other tourist accommodations in the neighborhood.

Ms. Schwartzman stated that the basic level of existing tourist accommodations is not an argument to have one at every home.

Ms. Ayres stated that she agrees that a tourist accommodation is not the same as a family living in a home. She stated that the investment in the property is different and the use changes the character of the neighborhood. She further stated that having five parking spaces is an increase from residential use, it will also have an increase in traffic, lighting, and noise.

Ms. Snell stated that traditionally the review of a tourist accommodation largely revolves around parking. She further stated that there is no history of the denial of a tourist accommodation for any reason other than parking. She further stated that she does not know how to address Mr. Berman's concerns regarding noise levels. There is an expectation, based on the proximity of homes to each other, that noise will be heard from the neighboring properties. She continued to state that she is also concerned with the tight drive to the rear of the property but it is the applicant's only option. She stated that she wished that the adjacent neighbor, on the proposed driveway side, was here to comment on this situation.

Mr. Austin stated that neighbor must either not be concerned or at least not very concerned based on their lack of comment and attendance. He further stated that what is being proposed is not contrary to the Zoning Law.

Mr. Streek stated that he feels that the driveway will have a definite impact on the neighbor.

Ms. Ayres stated that snow removal could be a problem.

Mr. Leo apologized for not visiting the property prior to the meeting. He stated that he feels that he needs to visit the property to make an informed decision.

Ms. Meehan informed Mr. Leo that he is welcome to visit the property. She assured the board that they would not be renting during the winter months.

Ms. Snell asked if there was any further public comment. There was no further comment. Ms. Snell closed the public hearing at 5:45 p.m. and the board deferred making a decision until the May meeting to allow all members of the board to visit the property.

Ms. Meehan asked what additional details need to be addressed.

Mr. Austin stated that the public hearing has been closed but the board, by law, has 62 days to act.

Ms. Snell explained that they would use the application, the commentary from this evening and visiting the property to make a decision at the May meeting.

## **20 Eagle Street (Barbara Luhmann) – Continuation of public hearing for a home occupation**

Ms. Snell asked if there were any further comment regarding 20 Eagle Street's proposed home occupation. There was no comment. Ms. Snell closed the public hearing at 5:46 p.m.

Ms. Schwartzman made a motion to grant a special use permit to Doug and Barbara Luhmann for a home occupation at 20 Eagle Street as proposed. Mr. Sansevere seconded the motion and the following discussion was held.

Mr. Leo asked if the permit should be reviewed after a year.





are proposing a four story hotel with a roof top terrace which would mean the demolition of the existing structure. She stated that the existing foundation has been found to be sound and will be utilized for the new structure.

Mr. Streek asked what the required number of parking stalls is for this project.

Ms. Drerup stated that the law requires one parking stall for each sleeping room.

Ms. Drerup continued with her presentation by explaining why they would propose a hotel on Main Street. She explained that there is a long history of hotels on Main Street which included the Fenimore Hotel which was on the corner of Chestnut and Main Streets; there was a hotel in the location of the current post office, not to mention the Tunicliff and several others. She explained that many of these hotels were lost to fire. Ms. Drerup stated that hotels are wanted in the business district to bring people into town to spend money with the local merchants. She continued to explain that the proposed hotel would have 8 units on the second and third floors and 6 units on the fourth floor. Each unit has a living area, kitchen, bathroom and one or two sleeping rooms. The total number of sleeping rooms proposed is 31. The rooftop terrace will include seasonal dining, a bar and a pool. The terrace will not have a roof or any type of canopy and be used only in fair weather. She further stated that all accessories on the rooftop terrace will be removed annually at the close of the normal tourism season.

Ms. Snell asked if the bar would also be removed.

Ms. Drerup stated that she does not have specific details on the bar itself but all non-permanent structures, such as tables, chairs, etc. would be removed each fall.

Mr. Leo asked the square footage of the rooms.

Ms. Drerup stated that the square footage of each room and unit varies.

Mr. Streek asked if there are eight units per floor.

Mr. Austin reminded the members of the board that their role in this project is to determine if a variance for height/number of stories should be granted. He stated that the Zoning Law allows 3.5 stories and 42 feet in height but the law does not define a "story." He stated that there is nothing in the Zoning law that will help the board determine the number of stories to the proposed building. He further explained that building code would consider the proposed structure four stories and they would not include the rooftop terrace.

Ms. Drerup stated that the proposed height of the building is 47' to the roof and 51' to the top of the parapet.

Mr. Leo asked how much of a variance is being requested.

Mr. Austin stated that because of a newly enacted law regarding height limitations. This section (300-29) reads *"Exposed rooftop bulkheads, elevator penthouses, stair towers, water towers, fire towers, hose towers, cooling towers, or mechanical or electrical equipment, provided such features occupy, in the aggregate no more than 10% of the roof area of a building measured in plan/aerial view, are set back from the edge of the roof at least one foot for each one foot by which such features exceed the maximum height otherwise specified for the district in which they are located. All exposed mechanical and electrical equipment located on the tops of buildings shall be buffered."* Mr. Austin explained that this law was followed as part of the design of the proposed building therefore; the height variance requested for the proposed project would be 47' where 42' is allowed, plus an additional 9' for the restroom enclosure.

The board discussed the proposed height and the need for a definition of a “story” to be added to the Zoning law.

Mr. Streek left at 6:25 p.m.

Mr. Leo asked to be provided with the exact variance being requested.

Mr. Austin stated that he would suggest to variance to allow a four story structure with a rooftop terrace at 47’ where 3 ½ stories and 42’ are allowed.

Mr. Ofer stated that although a variance is being requested they are trying to be sensitive to the fabric of Main Street. He pointed out through the model and the renderings that there are other buildings on Main Street that are taller than the proposed building and that the building fits the general characteristics of the height of buildings on Main Street.

Mr. Austin stated that he has not been able to determine why the Zoning Law specifically calls out 3 ½ stories and 42’ as the maximum height. When there are buildings over that height and many which are 4 stories.

Ms. Drerup explained that this building is at the low point of Main Street. She further explained that due to Willow Brook running under this portion of Main Street it created the low point and each end of Main Streets topography increases.

Mr. Austin stated that the proposed project does not require any setback variances, only a height variance.

Ms. Snell stated that there are many non-conformities with the proposed structure mostly due to parking. She asked how those were being handled.

Mr. Austin stated that because a site development plan review is required for the project, the Planning Board will be handling the parking issues.

Ms. Ayres asked if the proposed structure would require a variance for the section of the building which projects over the alley/driveway.

Mr. Austin stated that no part of the structure projects over the property line.

Ms. Snell asked if all scenarios for parking including valet and stacked parking would be handled through the Planning Board.

Mr. Tillapaugh stated that due to site plan review the Planning Board would review and approve any parking plan.

Ms. Ayres asked about the trees which have been removed from the property and who would be reviewing that issue.

Mr. Austin stated that he is already dealing with the tree issue.

Ms. Snell asked if the ZBA could proceed prior to the SEQR being complete.

Mr. Tillapaugh stated that there is no issue with the ZBA moving forward with the variance request.



A public hearing was set for Tuesday, May 5, 2015 at 5 PM or as soon thereafter as possible.

Mr. Austin stated that although the law only requires notification of adjacent property owners he will be sending written notification to all property owners within 400' as required for the use permit.

Ms. Snell stated that although the ZBA is only looking at height the height will affect the overall site development. She explained that the property/project does not meet a lot of the requirements. She further stated that the greater the height the greater the intensity.

Mr. Tillapaugh stated that it was not clear whether the site development could be considered as part of the height variance request.

Mr. Austin stated that the impact of the structure could be significantly increased. He explained that a building at 3 stories can based on square footage have a greater intensity of use than this proposed 4 story structure.

Mr. Ofer concurred stating that they could have the same number of sleeping rooms with a three story building and it would not change the required parking.

Ms. Schwartzman stated that she is concerned about setting policy. She stated that size definitely relates to intensity.

Ms. Snell concurred that she feels that size is definitely related to intensity. She further stated that since the site plan review will only be preliminary she is concerned that the ZBA might be acting too quickly.

Mr. Tillapaugh stated that the ZBA can wait to hold their public hearing. He stated that once the public hearing has been opened the board will have 62 days to act.

The board discussed the process and each board's role in this review and the tentative timeline for each board. The board further discussed at what point a public hearing for the height variance would be most appropriate.

The board agreed to hold the public hearing for the height variance in May knowing that they may take up to 62 days to make a determination.

### **Minutes**

Ms. Ayres made a motion to approve the minutes from the March 3, 2015 meeting as submitted. Motion seconded by Mr. Leo and a vote had the following results:

AYES: Ayres, Leo, Sansevere, Snell  
ABSTAIN: Schwartzman

Motion carried.

Meeting adjourned at 7:12 PM

Respectfully Submitted,

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Jennifer Truax  
Deputy Village Clerk