

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 May 5, 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 were Trustees, Louis Allstadt, James Dean, Cynthia Falk, and Ellen Tillapaugh, Village Attorney – Martin Tillapaugh, Zoning Enforcement Officer – Tavis Austin and Deputy Village Clerk – Jennifer Truax. Forty-eight members of the public were present.

Ms. Snell called the meeting to order at 5:01 p.m. and reviewed the agenda.

### **Public Hearings**

**25 Lakeview Drive South (Susan Snell architect for Booker)** – Public hearing for an area variance for a porch

Ms. Snell recused herself at 5:02 p.m.

Ms. Schwartzman opened the public hearing at 5:02 p.m. and reviewed the application for a variance for a porch and deck on new construction at 25 Lakeview Drive South.

Mr. Leo stated that the requested variance is small.

Mr. Sansevere stated that he had visited the property and believes that the requested variance will be in keeping with the neighborhood.

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

Ms. Snell stated that the porch will protrude 3' into the setback and will be 17' from the property line.

Ms. Schwartzman stated that the required setback is 20'. She asked if there was any public comment. There was no public comment. Ms. Schwartzman asked Mr. Austin if any written comments had been received.

Mr. Austin stated that he had not received any written comment.

Ms. Schwartzman asked if there was any public comment. There was no public comment and Ms. Schwartzman closed the public hearing at 5:04 p.m.

Mr. Sansevere stated that he has no issue with the proposed variance.

Mr. Streek made a motion to approve the area variance, 3' into the setback in the south corner of 25 Lakeview Drive South as submitted on plans dated 03/24/2015. Ms. Ayres seconded the motion and a vote had the following results:

AYES: Ayres, Leo, Sansevere, Schwartzman, Streek

Motion carried.

**13 Main Street (Weldon)** – Public hearing for a 2-room tourist accommodation

Ms. Snell returned to the board at 5:04 p.m.

Ms. Snell reviewed the application for a 2-room tourist accommodation at 13 Main Street and opened the public hearing at 5:05 p.m. She asked if there was any public comment. There was no public comment. Ms. Snell asked Mr. Austin if any written comments had been received.

Mr. Austin stated that he has not received any written comments.

Ms. Snell stated that this property has been used as an accessory apartment and is now being request for use as a tourist accommodation.

Mr. Leo stated that he understood it was used for family and now they want to use it as a tourist accommodation.

Ms. Snell stated that the original application, a few years ago, was for an accessory apartment for personal use or long term rental.

Mr. Leo asked if the use will remain the same.

Ms. Snell stated that the use will change from an accessory apartment, long term rental, to a tourist accommodation, short term rental. She explained that a recent change to the zoning law allows the proposed use as a tourist accommodation which was not allowed in this zone previously.

Ms. Snell asked for public comment. There was no public comment. Ms. Snell closed the public hearing at 5:05 p.m.

Ms. Schwartzman stated that she feels like this is a conundrum. She explained that the applicant originally came to the ZBA and requested an accessory apartment for family use and now is requested a tourist accommodation, which may have been the use for some time. She stated that although she understands that the law has now changed and will allow a tourist accommodation at this property she feels that the applicant did not follow the required procedures to legally obtain the special use permit. She further stated that she is displeased with the applicant's disregard for the efforts and action of the ZBA and is now a little shy about making caveats or special provisos to allow a use as there is no way to know that the board's intentions are followed.

Ms. Snell stated that this situation is a reality of a complaint based enforcement of the zoning law, which is how the Village zoning law is enforced.

Ms. Schwartzman stated that even though the special provisos were filled with Otsego County miscellaneous records and the owner knew the conditions placed on use, there is no way to ensure that the conditions are followed. She stated that it is not just this property in which situations such as this have occurred and going forward she feels that the board needs to be careful when acting to know that special conditions cannot be enforced and that although at the time the applicant may be willing to accommodate special conditions there is no way to ensure that in the future the current applicant or any future owner will continued to follow those conditions.

Mr. Sansevere stated that that law has changed and the applicant now wants to change the use based on the change in the law.

Mr. Streek stated that the applicant made an agreement with the board at the time.

Mr. Sansevere stated that the law has changed now and that agreement is not something they want to continue. He stated that they are not asking to violate the law they are asking to be allowed to do what the law allows.

Ms. Schwartzman read the original motion which allowed the accessory apartment at 13 Main Street. It reads as follows: "*Mrs. Schwartzman made a motion to grant a special permit to create an accessory apartment above the existing garage at 13 Main Street as proposed provided that the apartment only be used for personal use or long term rental, provided that the owner live in one of the units and that documentation of the decision be filed in Miscellaneous Records at the County Office Building at the owner's expense.*"

Mr. Sansevere stated that he understands but the applicant is now looking to change that use to what is now permitted by law.

Ms. Schwartzman stated that the applicant did not follow the appropriate procedures.

Mr. Lester Sittler, Attorney for the Weldon family, stated that he is not aware of any violation being brought before the board. He further stated that the previous motion is what was allowed for this application previously and that he understands that a lot of property owners were taking advantage of "grandfathering" and therefore the change to the law. He continued to state that the only thing that the board can weigh in on at this time is the application before them and he feels that the Weldon's have met all the requirements of the law.

Ms. Snell stated that the decision tonight needs to be based on the law. She read section 300-16C. She stated that there is more than adequate parking and no concerns have been raised by the neighbors and although she understands and shares the frustration of Ms. Schwartzman she feels that the application is complete and in compliance with the law.

Ms. Schwartzman stated that she is not alleging any violation but she wants the board to be aware and remember when making any decision that special conditions may not always be followed.

Mr. Sansevere stated that any resident has the right to make changes based on changes to the law.

Mr. Streek stated that a vote on the application must be as it relates to the law regardless of any feelings one may have.

Ms. Snell read from section 300-16.C regarding the guidelines for considering special permit uses, which includes "*that the proposed use shall be of such location, size and character that it will be in harmony with its surroundings and with the appropriate and orderly development of the district in which it is proposed to be situated. The use shall not be detrimental to its site or to adjacent properties. The density of the surrounding area, such as lot size, distances between structures, amount of open space, street width and parking regulations, shall be carefully considered so as to maintain the integrity of the district.*" Ms. Snell stated that a tourist accommodation at 13 Main Street meets these guidelines.

Mr. Sansevere made a motion to approve the two-room tourist accommodation at 13 Main Street as submitted. Mr. Leo seconded the motion and a vote had the following results:

AYES: Ayres, Leo, Sansevere, Schwartzman, Snell

Motion carried.

**124 Main Street (Altonview Architects)** – Public hearing for an area variance for height

Ms. Snell reviewed the application for a height variance. She provided for the board and interested members of the public with an informational sheet which provided details on the required area variances and section 300-66.C of the zoning law which pertains to area variances and the proposed hotel. Ms. Snell stated that although she understands that the public may have many areas of concerns, regarding the proposed hotel at 124 Main Street, the ZBA will only be acting on requests for variances which are required to build as proposed which relate to the building height and the number of stories. She asked that comments tonight be limited to those which pertain to height and the number of stories. Ms. Snell opened the public hearing at 5:21 p.m.

Mr. Sansevere stated that the informational sheet indicates eight variances. He asked if all eight variances will be acted upon this evening.

Mr. Streek stated that although there are eight variances it may be made as one or more motions depending on the feelings of the board.

Ms. Snell stated that all eight variances, as listed, will be required to build the hotel as proposed.

Mr. Sansevere stated that if the first variance is denied that the following seven will be obsolete.

Ms. Snell stated that the first variance listed is the most critical but she does not know if any of the others would be deal breakers. She stated that she does not feel that she will be ready to vote today and that the board has 62 days to make a decision. She explained that she feels that tonight the board will take public comment and maybe discuss the project but it may take time to fully process all of the information and make a good informed decision.

Mr. Sansevere stated that the ZBA will only act on the height of the building and will not have any say in the use.

Ms. Snell concurred that height is the only issue which the ZBA will address. She further explained that the ZBA will not look at use, design, landscape, parking or any other issues. Those will be handled by other boards. She continued to state that the ZBA will have 62 days from today to act on the application and they do not need to feel pressured to act today.

Ms. Connie Haney, Cooperstown Bat Company, 118 Main Street, stated that as a neighbor of the proposed hotel she is concerned with the proposed height. She stated that their building is three stories and the window on the third floor currently overlooks the existing building. She further stated that the third floor is a two-bedroom apartment and if the hotel is constructed it will cover the window on the third floor, eliminating the egress, and reduce the apartment to a one-bedroom, thereby reducing the property value. Ms. Haney further stated that the proposed hotel will also be higher than their existing chimney causing additional issues.

Mr. Ted Feury, 4 Chestnut Street, stated that height is directly related to the number of occupants which in turn is directly related to intensity in use, and noise. He stated that he is aware that there are other four story hotels in the Village, such as the Otesaga, but they are not in this area of the Village and their use intensity is placed in the rear of the property away from the public, not on the rooftop where are safety concerns such as the possibility of projectiles falling onto the Main Street sidewalk. He stated that the roof top use is not necessary for the hotel and he does not feel that the height variance is warranted.

Mr. Milo Stewart, 15 Church Street, stated that the main objective of the law is to maintain the residential quality of the village and the proposed hotel does not meet that objective. He stated

that the requested variances are too substantial. In addition, he is concerned about the proposed reuse of the existing foundation of the 1 ½ story structure for the proposed 4 story structure. He stated that he does not feel the variances should be granted as Main Street should retain a residential feel.

Mr. Jim Potts, 14 Leatherstocking Street, stated that during his brief time as a Trustee the Board of Trustees was concerned about economic growth and he feels that the proposed project is a means of positive growth for the business district. He stated that the project will increase the tax base, and the bed tax money. He continued to state that there are already structures on Main Street which exceed the proposed height.

Mr. Marc Kingsley, 16 Chestnut Street, Inn of Cooperstown, stated that the height variance is self-created. He explained that the project could easily be scaled down to be in compliance with the law. He stated that granting this variance would set a precedent for the downtown area and other properties will want to increase their height. He further stated that the rooftop terrace is not need and will just further increase noise and other issues.

Trustee James Dean, 15 Delaware Street, stated that he is against any variance to exceed the height limit. He explained that the height limit was put into law in 1963 and at no time in the past 52 years has a variance been granted. He further stated that the structures over 42 feet in height were built prior to the law and that it was felt that structures of that height were not in the best interest of the Village and therefore the law was enacted.

Ms. Ellen Pope, 28 Elm Street, Otsego 2000, stated that she agrees with Mr. Dean and feels that the proposed structure is not in keeping with the streetscape. She stated that although the proposed height may be relative to other structures, particularly on the south side of Main Street, its height dwarfs the existing structures on the north side of Main Street. She further stated that the board should adhere to the guidelines of compatibility as the proposed structure is not in harmony with the scale of the existing structures on Main Street. Ms. Pope provided a written statement for the board.

Ms. Snell read the statement for the record.

Mr. Bernie Viek, 19 Fair Street, stated that he agrees with Ms. Pope's statement in that the Village is not just about what visitors see, need and want, but also what the resident's see, need and want. He stated that he is proud of the fact that the Village has preserved its look, character and community.

Ms. Paula Wikoff, Lakefront Hotel, Fair Street, stated that any improvement to the properties on Main Street is a positive thing. She stated that when she went through the application process for improvements to her hotel she was denied the opportunity to build to the maximum height allowed by the law due to three neighbors who objected. She stated that she was unable to complete approximately 1/3 of her project. She continued to state that whatever the law is should be the standard for everyone. She explained that it is not fair to allow one property to build over the limit while denying another property the ability to build to the limit. She stated that after an 18 month battle and a significant financial investment she was denied the opportunity to build to the extent allowed by law due to three individual properties. She stated that she certainly understands how the applicant feels but that she feels that everyone should have to play by the same rules and stay within the established boundaries.

Mr. Charles Hill, 10 Eagle Street, provided a prepared statement for the board and reviewed the statement. He explained that the variance requested will be 14 – 18 feet, that the benefit can be

achieved by other means, and that the request is substantial. He stated that the average number of variances per property is one to two and once a variance is granted it runs with the land and property regardless of ownership. He shared the percentage of increase over what is allowed and stated that there are 23 buildings on Main Street between Pioneer and Chestnut Streets; of those buildings 1 is four stories, 13 are three stories, 6 are two stories and 3 are one story. Mr. Hill further pointed out that there are 12 hotels in the village all of which have at least one parking stall for each sleeping room with a minimum stall size of 9' X 28' as required by law. He stated that he feels that this structure is being "over" built.

Mr. John Horrigan, 26 Eagle Street, stated that he does not feel that the requested variance is that great. He further stated that he understands the neighbors' concerns in regards to the window and chimney but as long as the structure is built to code and necessary precautions are put into place he does not see this as a detriment to the village. He pointed out that Newton's law proved that an object falls at the same rate of speed regardless of whether it is falling from a two story or five story building. He stated that he came tonight because he didn't understand why people were so concerned about the proposed structure and he now can more readily appreciate the role of the ZBA. He further stated that he is okay with the height variance and maybe it's time to change the law and allow taller structures.

Mr. Paul Clark, 90 Main Street, stated that he grew up in the Ironclad Building on Main Street and is familiar with the rooftop. Regardless of safety precautions people will throw things from the rooftop. In addition, they will be shouting out to people on the street. He stated that the close vicinity of the neighbors makes the use of the rooftop and its increased noise level problematic. He stated that with other businesses noise from patrons, bands, etc. can be contained behind walls and doors. Mr. Clark stated that some people do not appreciate the serenity of the village until the move away. He stated that he often hears from visitors how beautiful and well-kept the village is and it is the responsibility of the board to continue to protect it.

Ms. Drerup stated that patrons of the proposed rooftop will not be able to throw items from the roof or yell to people on the street because due to the design of the rooftop they will not even be seen from the street.

Mr. Leo asked Mr. Hill when the last updates were made to the law.

Mr. Hill stated that the height was designated in the 1963 law but the law has been amended in 1973, 1989, 2012 and 2015 but the maximum height has remained the same.

Mr. Austin stated that although the height limit has remained the same, how it was determined is not clear.

Mr. Sansevere asked if there is a definition of a story.

Mr. Austin stated that the term is used in the law but there is no definition of story.

Mr. Mike Jerome, 16 Mill Street stated that the plans indicate 22 units and 31 sleeping rooms but it does not mention a maximum number of guests. He asked if there is a maximum number.

Ms. Snell informed Mr. Jerome that the number of guests is not in the purview of the ZBA but it is a good question which he may be able to get addressed by the applicant.

Mr. Jerome stated that although the number of occupants does not seem to directly correlate to the height variance it may effect a decision by the ZBA as the board weighs the benefit to the

applicant versus the detriment to the community. He explained that the occupancy of the restaurant, plus the units and the rooftop could change the effects on the village and therefore the variance. He stated that occupancy might affect community services such as fire and ems.

Mr. Sansevere stated that there are county and state fire regulations which will regulate occupancy.

Mr. Jerome asked if emergency equipment will be able to access the rear of the building.

Mr. Sansevere stated that this is not in the purview of the ZBA. He stated that building code will regulate and enforce this type of safety issue based on current code.

Ms. Snell stated that Mr. Jerome does have valid questions but they are related to design and would be handled by the County Codes Office and could be reviewed by the Board of Trustees when they look at use for the special permit.

Trustee Dean pointed out that the drawings provided of the streetscape show, in very light lines, the outlines of the rooftop structures. He stated that these structures are taller than other buildings on Main Street but it is not easily recognized due to the lines being faint.

Ms. Drerup stated that all of the structures are also shown clearly on the model.

Ms. Joan Clark, 90 Main Street, asked if the board would take action tonight.

Ms. Snell stated that, in her opinion, the board will not come to a decision tonight but rather will need some time to review all public comment and further review the application before making a decision. She stated that the board has 62 days to give a decision.

Ms. Clark asked if there would be additional time for public comment.

Ms. Snell stated that this ZBA public hearing is for all the variances related to height and stories. There will be other public hearings before other boards and the public is welcome to attend any meetings of the Village as they are all public meetings.

Ms. Clark stated that there are eight proposed variances on the information sheet provided. She again asked if there would be additional public hearings for the other variances.

Ms. Schwartzman stated that there are a total of eight variances which all relate to height. She continued to state that the public is welcome to comment on any or all of those variances tonight but this would be the only opportunity for the public to comment on the variances.

Ms. Clark stated that the board needs to consider the fact that when Main Street was built it was a time of horse and wagon. She stated that the intensified use with the increased vehicle traffic is not appropriate.

Mr. Bruce Hall, Main Street, Bruce Hall Corporation, stated that he feels that any work at 124 Main Street will be a major improvement and can only increase the architectural harmony with the neighborhood. He suggested that the boards find some way to work with the applicant to make this a success.

Ms. Pope stated that although most people will attest to the fact that the TJ's building is not the most attractive it would not be appropriate to set the bar for design standards that low. She

stated that each board should evaluate the project on its own merit not in relationship to the current structure.

Mr. Viek stated that the TJ's building is not in harmony with the neighborhood but it is a small building. He continued to state that he feels a larger building, which is not appropriate for the surrounding structures, will be more obtrusive than the existing building and it will be intensified by noise from the rooftop.

Ms. Joan Badgley, 64 Elm Street, stated that the board needs to also consider the intangibles. She explained that we often look simply at the physical characteristics when the intangibles can be so much more important. She stated that the board should consider what Main Street is to the community and what the community wants Main Street to be.

Ms. Ayres asked Ms. Haney about the window which may be obstructed by the proposed building.

Ms. Haney stated that the window is the egress from one of the two existing bedrooms on the third floor of their building. She stated that should the hotel be built it will block the egress window for one of the bedrooms; therefore, making the apartment a one bedroom.

Mr. Austin pointed out that even if the building is built at the legally allowed height of 42' the window would be covered.

Ms. Drerup stated that she checked with the County Code office and found out that a property owner is not allowed to place an egress window on a wall that sets on a property line because egress windows need to exit onto a public way. Therefore, the window in question is not a legally established egress.

Mr. Clark stated that even with safety rails there will be individuals who try to throw a baseball to Doubleday Field or onto the next building.

Mr. Austin stated that it is not up to the ZBA to control what happens on the roof. It is only in the ZBA's purview to establish height. He continued to state that the BOT may deny or limit the use of the rooftop as part of the special use permit.

Mr. Potts stated that everyone has been looking at the reasons not to allow the height and/or the hotel and maybe we should look at what we should or could do with this property and this project.

Ms. Snell asked for additional public comment. There was no further public comment and Ms. Snell closed the public hearing at 6:03 p.m.

Ms. Snell asked the board how they would like to proceed this evening. She reminded them that they have 62 days to make a decision and that they can have further discussion this evening as a board or table the discussion until the next meeting to allow individuals time to put their thoughts together.

Mr. Leo stated that he feels that discussion would be beneficial.

Mr. Streek stated that he would like additional time to review the comments and project as a whole and does not feel comfortable making a decision tonight.



Mr. Austin suggested moving forward with the agenda items and coming back to the 124 Main Street project at the end of the meeting.

Mr. Streek stated that the law does have height restrictions and at first the talk was a five foot variance, then it was nine feet and now we are looking at fourteen or fifteen feet. He stated that is substantial and he needs time to review the project and the feedback provided.

Mr. Austin stated that the variances are not consistently the same height. He explained that in some areas the variances are up to 14 or 15 feet.

Mr. Leo stated that if the variance is denied there are other alternatives for the property owner to pursue.

Mr. Austin stated that if the variances are denied then the application is dead as presented. If the height variance is not granted then the applicant cannot proceed with the application as submitted and would have to submit a new application for review.

Mr. Leo stated that there were a lot of good comments this evening and there are a lot of things to think about.

Mr. Austin stated that as the variances are reviewed the board could grant one or more variances and deny others. He stated that he is not sure how that might affect the overall application but it is an option for the board.

Ms. Schwartzman stated that she is not ready to make any decisions this evening.

Mr. Austin stated that the ZBA might choose to approve the height as proposed and the BOT may limit the use and not allow the occupancy of the rooftop. He explained that the applicant would still need the height for the mechanicals even if the rooftop was not utilized by patrons.

Mr. Leo asked if the ZBA would take action before the BOT made a decision regarding the use.

Mr. Austin stated that it is likely that the ZBA will make a decision prior to the BOT making a decision regarding use. He further stated that the Zoning Board is not acting on the use or even what goes into the proposed structure. The Zoning Board is only looking at the shell, and the ZBA is only reviewing the height. He stated that the ZBA must determine how tall the structure is allowed to be and justify their action regarding height.

Ms. Snell stated that the applicant's response to the variance criteria will help the ZBA justify their action. She further stated that it is the applicant's responsibility to justify the need for the variance. She stated that one of the justifications is the use but she is not sure that they have wholly justified the proposed height variance.

Mr. Leo asked Ms. Schwartzman to read the section of the law that she pointed out to him regarding the responsibility of the board.

Ms. Schwartzman read the section 300.2 of the law regarding intent.

Ms. Snell stated that those are the Land Use polices for all of the Zoning law.

Mr. Sansevere asked what the shaded areas on the rendering of Main Street are.

Ms. Snell stated that those areas reflect the buildings on the other side of Main Street.

Mr. Leo asked Mr. Hill what the average building size for Main Street is.

Mr. Hill reviewed the data he provided regarding the number of stories each building has, stating there are 23 structures, 13 with three stories, 6 with two stories, 3 with one story and 1 with four stories.

Ms. Snell asked Ms. Drerup to show the board, on the rendering, approximately where 42 feet would fall in relation to the height of the proposed structure.

Ms. Drerup indicated the approximate location and stated that it would be near the top of the parapet.

Mr. Hill stated that 134 Main Street is approximately 37 or 38 feet in height.

Mr. Sansevere stated that he believes that the design of the building is done in a manner that will fit the character of Main Street. He further stated that there will be an increase in noise but business brings noise and he does not feel it will be any more excessive than the outdoor café on the other side of Main Street.

Ms. Schwartzman stated that she does not feel that she is prepared to vote this evening. She continued to state that the law is the law and the board cannot give a variance just because they like something. She stated that the applicant needs to persuade her why they should be allowed to exceed the limit set by law. Ms. Schwartzman further stated that the other structures which are over the allowed 42' are preexisting nonconformities.

Mr. Sansevere stated that the board grants variances on a regular basis.

Ms. Schwartzman stated that this requested variance is different from the variances which are often requested. She continued to state that she always asks why the variances are being requested and feels that compelling reasons must be given for her to vote in favor of any variance. Ms. Schwartzman stated she understands that they want to build this building as proposed but why. Just wanting to build it is not enough of a reason for the ZBA to grant a variance.

Mr. Sansevere asked Ms. Schwartzman what kind of reasons would persuade her to grant the variance.

Ms. Schwartzman stated that it is not her job to provide reasons for granting the variance it is her job to review the information provided and determine if the applicant's reasons for requesting the variance actually warrant granting a variance.

Ms. Ayres stated that she is not ready to make a decision at this time. She stated that there were a lot of comments tonight which she would like to ponder. She continued to state that the ZBA's decision will have a major effect on the business district and she want to be sure she has weighed all of the information.

The board discussed what factors can be considered.

Mr. Tillapaugh, Village Attorney, stated that they can consider anything that impacts the neighborhood.



Ms. Snell stated that the public hearing was closed but, as chair, she has the discretion to allow additional public comment if she feels that the information has not previously been heard and is relevant to the application.

Mr. Leo asked if there would be vehicles parked in the driveway.

Mr. Austin explained that there would be four vehicles to the rear of the garage.

Mr. Berman stated that the drawing which was in the file when he reviewed it was not as currently proposed. He explained that the currently proposed parking will impact his property. He referred the board to section 300-17.A6(c) which indicates that *“off street parking shall be installed in a manner that minimizes visual impacts to neighboring properties and streets with regard to light, noise, snow removal, etc.”*

Mr. Streek asked Mr. Berman if he has spoken to the neighbor at 59 Lake Street.

Mr. Berman stated that he has spoken to the neighbor but he is not inclined to speak for him regarding this project as it would be unfair to the Meehans.

Ms. Snell stated that the proposed parking area would have a visual impact on the neighbors and the backyard privacy.

Mr. Sansevere stated that there are currently shrubs in place which would help screen the property.

Mr. Sittler stated that he has a problem with allowing additional public comment once the public hearing has been closed.

Mr. Tillapaugh stated that if the party is raising a new issue and the board feels that issue is relevant to the application the board may choose to allow comment. He further stated that the board should not allow the reiteration of previously heard comments.

Mr. Sittler stated that based on the minutes from the April meeting the parking plan was discussed in detail.

Ms. Snell stated the parking plan was modified during the meeting and would not have been available for review by the public prior to the meeting.

Mr. Streek left the meeting at 6:38 p.m.

Mr. Leo asked if we know that all of the neighbors received notification.

Mr. Austin stated that he will attest to printing mailing labels and mailing the notice to all required neighbors. He continued to state that he cannot attest to whether or not those notices were delivered by the post office. He explained that there are times when several months after a letter is mailed it is returned to the office as undeliverable but he has no way to know the status of any particular letter other than that they were mailed as required. He further stated that a public hearing notice was also published in the paper as required by the law.

The board discussed possible parking plans and changes to the plans if the tree is removed.

Ms. Snell stated that the parking plan must be approved by the board and may not be changed at a later time without applying for a field change.

Mr. Sittler stated that they will be removing the tree but that the parking plan will not be changed.

Ms. Schwartzman stated that the residence is listed as a two-bedroom residence both on the assessment roll and when it was last listed for sale. She stated that she feels that the proposal for a three-sleeping room tourist accommodation is too intense for this residence and this neighborhood.

Mr. Sansevere asked Ms. Schwartzman if she has been into the home are seen the layout and the location of the proposed sleeping rooms.

Ms. Schwartzman stated that she has not been into the home but based on other factors she feels that the use is too intense.

Mr. Sansevere stated that the neighborhood will not be changed simply by one residence.

Ms. Schwartzman stated that based on the square footage of the structure and it being assessed as a two-bedroom home she feels that the proposed use is too intense.

Ms. Ayres stated that in addition to the guest rooms a sleeping room would also need to be available for the owners, therefore, there will actually be four rooms used for sleeping.

Ms. Schwartzman stated that she feels that the proposed tourist accommodation is too intense and will have an adverse effect on the character of the neighborhood.

Ms. Sansevere stated that tourist accommodations are allowed in this district.

Ms. Schwartzman stated that the law allows tourist accommodations in this district with the issuance of a special permit by the ZBA. She continued to state that use as a tourist accommodation increases occupancy, vehicle traffic, noise, etc that would not be part of a traditional residence.

Mr. Leo stated that he has visited the property and has some concern over the vehicle headlights shining on the neighboring property. He explained that he has lived next door to a hotel for over 20 years and never had any issues but when his other neighbor rented a room it was very problematic. He continued to state that screening may be able to resolve the situation and that since the home owners will be present they will need to help ensure the character of the neighborhood remains when guests are in their home.

Mr. Sansevere stated that parking was resolved last month and that he felt that everyone was in agreement that parking was adequate as amended.

The board discussed the parking plan and if screen should be required.

Mr. Sittler asked if the board felt that the occupancy would exceed ten people. He pointed out that regardless of the number of sleeping rooms the law does not allow any tourist accommodation to have more than a total occupancy of ten.

Ms. Schwartzman stated that the application indicates that a 3 sleeping room tourist accommodation is requested. She explained that the law requires any tourist accommodation to

receive a special permit from the ZBA and it is her job as a member of the ZBA to review the application in regards to all aspects of the law, including the potential effect on the neighborhood. She further explained that she feels that a 3 sleeping room tourist accommodation will significantly diminish the residential character of this neighborhood. Ms. Schwartzman explained that the special permit will not only be in effect for the current resident, but also future owners of the home and therefore, she must base her decision on the physical facts not on the understanding that the owner will be respectful of the neighbors or only intends to have one guest per room, etc. The permit as issued will be in effect 365 days per year, will allow the property owner to apply for signage, and have the number of sleeping rooms for which the permit is issued, up to ten occupants.

Mr. Sittler stated that his point is that regardless of the number of sleeping rooms the maximum occupancy is ten. He further stated that if an occupancy of ten is too much than change the law to reflect the appropriate density.

Ms. Schwartzman stated that a tourist accommodation with 1 sleeping room could potentially hit the maximum allowed occupancy. She further stated that the law does not give her the discretion to regulate the maximum occupancy but it does give her the discretion to regulate the number of sleeping rooms. Ms. Schwartzman stated that the law was written to give the board guidance while still allow discretion in some areas. She continued to state that if the law was written in clear cut and dry regulations there would be no need for a board it would simply be a matter of ensuring that all areas of the law were met but that is not how the current law is assembled.

Ms. Ayres stated that she has experienced the effects of a rental with her neighbor. She explained that although she has screening in the form of a fence and trees each time a vehicle enters the property the motion light is activated which shines into her bedroom. She stated that she feels that the neighbor's comments are important to consider and that she feels that the intensity for this residency is great.

Ms. Snell stated that a property's ability to meet the parking requirement often is a deciding factor in the issuance of a permit and the number of sleeping rooms permitted. She continued to state that while visiting the property she noted that the distance between the residence and the property line is 10'. In order to obtain a 10' driveway the existing privacy shrubs will have to be removed. She further stated that the proposed development of a 4 car parking area will have an effect on the patio space in the rear yards and the living and sleeping areas of the neighboring properties. Ms. Snell stated that the 10' between the residence and the property line was probably the minimum side yard setback and was not intended to be maintained as a driveway. She stated that although there is more than adequate room in the rear yard for the proposed parking the access to the parking area is incredibly restrictive. Ms. Snell stated that she does not know if the marking paint on the property accurately indicates the property line but if it does there is less than 10' between the residence and the property line. She stated that the law requires a 12' driveway but allows a 10' driveway if the existing driveway is 10'. Ms. Snell explained that the existing driveway is 8.5' in width and does not meet the requirements for reduction the required driveway width. She further stated that not only is the existing driveway too narrow to meet the exception of the law, the proposed driveway is 40' in length and would be an extremely tight area for regular use by visitors. Ms. Snell stated that the removal of the tree would be very helpful in lessening the tightness of the drive but it would still not meet the technical reading of the law.

Ms. Meehan stated that they are willing to blacktop the driveway all the way to the property line.

Ms. Snell stated that the law requires a 12' driveway with the only exception being if a 10' driveway exist, which is not the case. She explained that the property does not have the means to provide for the required driveway.

Mr. Meehan stated that members of the board are speculating that the residence is too small for a 3 sleeping room tourist accommodation. He invited the members of the board to visit the home before making that type of judgement.

Ms. Schwartzman stated that her determination that the intensity was too great for the residence is based on the square footage of the home. She further stated that it seems like common sense that if the assessment states 2 bedrooms use as a 3 sleeping room tourist accommodation would be too intense. In addition, if a 3 sleeping room tourist accommodation is allowed in this residence than the board would be saying that a 3 sleeping room tourist accommodation would be appropriate in each of the homes in this area.

Ms. Snell stated that her biggest issue is the lack of property to provide for the required driveway and the impact of a parking area in the rear yard on the backyards and living spaces of the adjacent houses given their close proximity.

Ms. Meehan stated that they have discussed parking and the fact that topography of the property will screen the neighbors from the vehicle headlights.

Mr. Sittler asked the board if they felt that any number of sleeping rooms would be appropriate.

Ms. Snell stated that the only possible parking plan is in the rear of the residence and the narrowness of the property prevents the installation of a legal driveway. In addition, the length of the driveway, the inability to recreate the privacy for the neighbors once the shrubs are removed all add to the fact that a tourist accommodation is not harmonious with the neighborhood.

Mr. Sittler asked Ms. Snell if she felt that no sized tourist accommodation would be appropriate at this residence.

Ms. Snell concurred that she does not feel any size tourist accommodation is appropriate at this location due to the fact that there is not an acceptable parking plan which would not negatively impact the neighbors.

Mr. Sansevere stated that the parking was reviewed and agreed upon at the April meeting and that he does not feel it is an issue. He stated that he could access the parking even with the tree still in place.

Ms. Snell stated that after a site visit she and further review of the law she realized that the plan does not meet the requirements of the law.

The board discussed the proposed parking plan, the requirements of the law regarding parking and circulation, and the possibility of screening. They compared this application to the application approved for 13 Main Street earlier in the meeting. The property at 13 Main Street is much large, has much more separation from neighbors, has existing parking that is more than adequate and is on Main Street near businesses. By comparison, although 61 Lake Street is across the street from the Otesaga, it is in a small scale residential block with only 20' separation between houses.

Ms. Schwartzman made a motion to approve the 3 bedroom tourist accommodation at 61 Lake Street as submitted. Mr. Leo seconded and the following discussion was held.

Mr. Sansevere stated that he does not feel that this use has a drastic effect on the neighborhood. He pointed out that the Otesaga is across the street and that additional screen can always be added.

A vote had the following results:

AYES: Sansevere

NAYES: Ayres, Leo, Schwartzman, Snell

Motion failed.

### **21 Leatherstocking Street (Gary Kiss)** – Preliminary hearing for an area variance for a garage

Mr. Kiss reviewed the proposed application to remove an existing deteriorated shed and replace it with a garage.

Ms. Snell stated that a public hearing is required for an area variance in the rear yard as the one story garage is proposed to be on the rear property line. She asked Mr. Kiss if the property has been surveyed.

Mr. Kiss stated that it has not been surveyed but there are visible survey markers.

Ms. Snell stated that if the proposed structure will be built on the property line it is important that the applicant know exactly where the property line is.

Mr. Kiss stated that if necessary they are willing to move the building forward on the property.

Mr. Tillapaugh stated that Mr. Kiss has a few options to resolve this situation, he may move the building forward, have the property surveyed, or obtain written documentation from the neighboring property owner affirming the property line location.

Ms. Snell stated that if Mr. Kiss choose to move the building location she feels a minimum distance of the building from the possible property line should be three feet, in order to provide for some leeway should the location be incorrect.

Mr. Kiss stated that he will move the building away from the property line by a few feet.

A public hearing was set for Tuesday, June 2, 2015 at 5 PM or as soon thereafter as possible.

### **22 Eagle Street (Susan Snell for Robin Lettis)** – Preliminary hearing for removal of a tree

Ms. Snell recused herself at 7:23 p.m.

Ms. Schwartzman reviewed the application to remove one of two trees on the property for an addition to the residence. She explained that the law only allows for the removal of up to 30% of the trees on a property every 10 years and this tree removal would be 50% of the trees on the property.

Ms. Ayres stated that this tree removal was discussed at the Tree Committee meeting and they felt that it would be appropriate to ask the applicant to plant another tree to replace the one being removed.

A public hearing was set for Tuesday, June 2, 2015 at 5 PM or as soon thereafter as possible.



Ms. Snell returned to the board at 7:28 p.m.

**Minutes**

Ms. Schwartzman made a motion to approve the minutes from the April 7, 2015 meeting as submitted. Motion seconded by Ms. Ayres and a vote had the following results:

AYES: Ayres, Leo, Sansevere, Schwartzman, Snell

Motion carried.

Meeting adjourned at 7:29 PM

Respectfully Submitted,

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Jennifer Truax  
Deputy Village Clerk