

A regular meeting of the Zoning Board of Appeals of the Village of Cooperstown was held in the Village Office Building, 22 Main Street, Cooperstown, New York on May 8, 2017 at 5:00 p.m.

In attendance:

- Members Present: Susan Snell (ZBA Chair) / John Sansevere / Ron Streek / Marcie Schwartzman / Frank Leo / Jeff Schneider – Alternate
- Members Absent: none
- Others: Zoning Enforcement Officer, Jane Gentile (ZEO) / Clerk PT, Mikal Sky-Shrewsberry / Village Attorney, Martin Tillapaugh (Vill Atty) / Applicant Attorney, Doug Zamelis (App Atty) (17) Members of the Public (including Cynthia Falk, Village Trustee)

Susan Snell (ZBA Chair) Opened the Meeting at 5:03 PM

- Note: For May 2017, the ZBA meeting date was changed from its standard time slot. It was moved from the 1st Tuesday of the month to the 2nd Monday of the month.

PUBLIC HEARING (1 Item) /AGENDA #1

SUSAN SNELL (ZBA CHAIR) OPENED THE PUBLIC HEARING AT 5:05 PM

- **NOTE: THIS HEARING/AGENDA ITEM HAS BETWEEN 1 TO 3 PARTS THAT WILL BE CONSIDERED SEPARATELY: (1) INTERPRETATION; (2) VARIANCE; (3) SPECIAL PERMIT**
 - Interpretation will be considered first
 - Depending on the interpretation decision , the ZBA will/will not address the area variance
 - Depending on the previous decisions , the ZBA will/will not address the special permit
 - Each part that is considered will be opened individually to public comments and then immediately followed by board discussion and vote (if appropriate)

1. JOANN HUBBELL (COOPERSTOWN EAGLES, LLC), 25 CHESTNUT STREET

for an interpretation, area variance and special use permit to operate a two bedroom apartment tourist accommodation at 25 Chestnut Street

- **PRESENT / PARTICIPATING**
 - Applicant(s): Cooperstown Eagles LLC (joann Hubbell, Cindy Hubbell & Glen Hubbell)
 - Applicant Attorney: Doug Zamelis (App Atty)
 - Cooperstown Village Attorney: Martin Tillapaugh (Vill Atty)
- **PROPERTY / CURRENT USE DESCRIPTION**
 - Mixed occupancy containing both a professional (dental office) and 2 residential units (1) two bedroom and (1) one bedroom
 - Located in the business district
- **PUBLIC COMMENTS**
 - **VERONICA SEAVER (160 MAIN STREET)**
 - There is big problem with the volume of weekly rentals that exist in the Village (believes there are currently more than 50)
 - The volume of weekly rentals is changing the fabric / nature of the community
 - Would like to see existing weekly rentals grandfathered and go forward with new laws that completely prohibit the establishment of new weekly rentals (tourist accommodations) in the Village
 - **ROGER MACMILLAN (12 MAIN STREET)**
 - Agrees with the statements made by Veronica Seaver : “When is enough enough?”
 - Asked: Why is ZBA considering waiving the owner occupancy requirement when it is intended to control the volume of weekly rentals in the Village?

- Recognizes that the difference in income between weekly and monthly rentals is significant and is driving the increased number of weekly rentals
- Urges ZBA to oppose the “cancerous” growth of weekly rentals in the Village
- **ALICE GAVIRIA (44 SUSQUEHANNA)**
 - Has a different perspective from the people who previously spoke
 - Will be renting her properties primarily as AirBnb rather than Dreams Park
 - Believes AirBnb is good for the Village
 - Embeds tourists in the community
 - Owners can act as concierges: introducing guests to the true flavor/people of the Village
 - Encourages the use of local businesses
- 2. In some cases she works with realtors
 - A number of her guests have been staying before deciding whether or not to relocate

PART 1: INTERPRETATION (RE: TYPE OF DWELLING)

- **SUSAN SNELL (ZBA CHAIR)**
 - **EXPLAINED THE ZBA INTERPRETATION PROCESS/REQUEST FOR THE PUBLIC**
 - Independent of variance and special permit processes
 - The applicants’ lawyer has asked ZBA to reexamine Jane Gentile’s (the Village zoning enforcement officer’s) interpretation of how the Hubbell’s application should be reviewed according to Village law
 - The basic question that is being addressed: what category of dwelling does the Hubbells’ building fall under?
- **MARTIN TILLAPPAUGH (VILL ATTY)- SUMMARIZED THE 2 SIDES OF THE ARGUMENT**
 - **DOUG ZAMELIS (APP ATTY) CONTENTS:**

25 CHESTNUT STREET DOES NOT CLEARLY FIT ANY OF THE 3 DEFINITIONS OF DWELLING CATEGORIES THAT VILLAGE LAW REQUIRES TO BE A TOURIST ACCOMMODATION SO THE HUBBELL APPLICATION REQUIRES INTERPRETATION BY THE ZBA

*(*NOTE this is Martin Tillapaugh (Vill Atty) summary of the applicants’ argument rather than their own summary in their own words)*

 - If it does not fit any of the recognized categories of dwelling it is not subject to the tourist accommodation requirements and should be able to be rented to short term tenants
Note: if ZBA decides the dwelling is multi-family, the applicants will apply for an area variance and a special permit
 - According to Village Law (300-24) to be a tourist accommodation a dwelling must be fit one of three categories: single family, two family or multi-family in which overnight accommodations are provided or offered to transient guests for compensation
 - Multi-family dwellings are defined in the law (300-84) as a residence for MORE than 2 families living independently from each other with separate housekeeping facilities for each
 - The dwelling at 25 Chestnut is at most mixed occupancy / It is used for both business and residence purposes / it contains 2 apartments / it is in the business district
 - 25 Chestnut does not meet any of the 3 dwelling categories mentioned in the tourist accommodation law
 - It is not a single family dwelling since it has 2 apartments
 - It is not a two family dwelling since the dwelling is not used exclusively for residential purposes (it is mixed-use with an office)
 - It is not a multi-Family because 25 Chestnut does not have MORE than 2 residential units (as specified in the Village’s legal definition of multi-family dwellings 300-84)
 - Since 25 Chestnut does NOT fit any of Village’s 3 categories of dwellings

- Local law does not address this type of residence at all
- Doug Zamelis (App Atty) contends that legally what is not specifically prohibited is allowed
- Therefore 25 Chestnut cannot be held subject to the rules of a tourist accommodation and can rent for any term of the landlord's choosing
- **MARTIN TILLAPPAUGH (VILL ATTY) CONTENDS:
THE DWELLING IN QUESTION IS MULTI-FAMILY**
 - There is a second sentence in Village law under the definition of multi-family dwellings (300-84) that states apartments, condominiums and cooperatives fall under the category of multi-family residences
 - Martin Tillapaugh (Vill Atty) believes this 2nd sentence is controlling and takes precedence over the 1st sentence of the definition
 - The Village contends that a dwelling with any number of internal (rather than detached) apartment units is classified as a multi-family dwelling regardless of the number of units it contains
 - Since 25 Chestnut Street has 2 apartments within it that are used exclusively for residential purposes but the building is mixed-use the Village contends that 25 Chestnut falls under the classification of mixed occupancy with an office and a multi-family dwelling
 - If it is a multi-family dwelling then 25 Chestnut does fall under one of the 3 classifications of dwellings that the Village allows for tourist accommodations
 - It is therefore subject to all standard tourist accommodation requirements
- 1. 300-8 of the zoning law states that
 - Any use that is not permitted is prohibited
 - It is a blanket statement that applies to all of Cooperstown's Zoning Law
- **SUSAN SNELL (ZBA CHAIR) : CLARIFIED THE 3 HOUSING TYPE DEFINITIONS**
 - Both the definitions of single and two family dwellings include the term detached whereas the definition of multi-family dwelling does not
 - The use of the term detached eliminates the possibility that 25 Chestnut can be any of the 3 dwelling types other than multi-family
- **JOHN SANSEVERE: INQUIRY/DISCUSSION RE: TOURIST ACCOMMODATIONS IN COMMERCIAL VS RESIDENTIAL ZONES**
 - Are there differences in the tourist accommodation laws depending on what zone the tourist housing is in (different laws for commercial vs residential?)
 - Martin Tillapaugh (Vill Atty): response
 - Currently tourist accommodations are permitted in any zoning district in the Village / there is no prohibition so the requirements are the same in all districts
 - (1) owner operation/owner occupancy / (2) sufficient parking (3) fire safety inspection (4) pay bed tax
 - Additional discussion occurred between John Sansevere and Martin Tillapaugh (Vill Atty) regarding the desirability of having tourist accommodations in the business district and what that means
 - John Sansevere stated he feels it would be beneficial if tourist accommodations were primarily located in the commercial/business districts and not in the residential districts

- **DOUG ZAMELIS (APP ATTY)**
 - **NOTE: Doug Zamelis (App Atty) provided ZBA with handouts of the provisions that are key to his argument**
 - Stated he was from Springfield NY and represented Cooperstown Eagles
 - Described the property at 25 Chestnut
 - Mixed occupancy containing both a professional (dental office) and 2 residential units (1 two bedroom and (1) one bedroom
 - Located in a highly commercialized busy section of the Village
 - Described proposed changes/impact that would occur if were able to act as a tourist accommodation (instead of a long term accommodation)
 - No exterior or interior renovations of any kind
 - No impact on the residential character of the neighborhood because it is in already in a high traffic area and tenants have already been living there so any differences in coming/going /parking will hardly be noticed
 - Only changed being proposed is the reduction in the length of the rental term from its current 30 day period to a 7 day period
 - Addressed dwelling classification of 25 Chestnut
 - Agrees that it is not a single or multi-family
 - Disagrees with Martin Tillapaugh's (Vill Atty) classification of 25 Chestnut as a multi-family dwelling
 - It does not contain more than 2 apartments as stated in the 1st sentence of the definition in Village law
 - Doesn't believe that the definition of multi-family dwellings is meant to include 2 distinct sub-definitions
 1. Any type of dwelling with more than 2 residential units
 2. Apartments, condos and cooperatives which may contain any number of units
 - Believes the 2nd sentence of the definition clarifies the first rather than expands it
 - He interprets the sentence to mean that apartments, cooperatives and condos must have more than 2 units
 - ZBA must decide if the 2 sentences are intended to be harmonized or to be treated separately (which means they are in conflict with one another)
 - Other issues he feels should be taken into consideration
 - Zoning is contrary to common law
 - Common law says anyone can do what they want with their property if it does harm neighboring properties/people/community
 - Ambiguities must be construed in favor of the owner & against the municipality
 - Any use that is not strictly prohibited is allowed
 - The rental term of 25 Chestnut will revert to 30 day month to month in the off season
 - The applicants are not home owners, they are commercial property owners
- **VERONICA SEAVER (160 MAIN) STATED**
 - Entire Village of Cooperstown is residential regardless of its official zoning classification
 - She can see 25 Chestnut from her house (her house is also in the business district)
 - The Village needs to have year round rentals
 - There are many apartments and private homes all along main street that could potentially be converted to tourist accommodations
 - Eliminating the need for owner occupancy at 25 Chestnut will open a pandora's box
- **DOROTHY PHILIPS (9 WESTRIDGE RD) STATED**

- She agrees with all of Veronica Seaver's previous statements
- **MARTIN TILLAPPAUGH (VILL ATTY)**
 - Interpretation should follow common sense and be reasonable/ non-arbitrary /rational
 - Village law states that tourist accommodations can only exist in single/ 2 family /multi-family residences
 - Village law states that any use not permitted shall be deemed prohibitive
 - The list of examples provided in the law is not meant to be exhaustive
- **DOUG ZAMELIS (APP ATTY)**
 - 25 Chestnut is surrounded by other businesses
 - There are some residences in the business district but they are non-conforming
 - Land use laws regulate the use of land not the terms of tenancy
- **SUSAN SNELL (ZBA CHAIR) & MARCY SCHWARTZMAN: INQUIRY DIRECTED TO DOUG ZAMELIS (APP ATTY)**
(RE: CLASSIFICATION OF DWELLING)
 - Believes short term housing must be classifiable as either hotel / motel /tourist (single family / two family / multi-family)
 - If it cannot be classified as one of these it is cannot be a tourist accommodation
 - What classification of building does Doug Zamelis (App Atty) believe 25 Chestnut is?
 - Is it a 4th type of dwelling?
 - If so, it cannot function as tourist accommodation because it not one of the only allowable types
- **DOUG ZAMELIS (APP ATTY) RESPONSE**
 - This is mixed use occupancy building
 - The apartments are used for residential purposes but the dwelling is NOT a residence
 - Believes classification as a multi-family residence needs to have more than 2 apartments
 - Applicants are asking the ZBA to make a determination regarding the classification

PUBLIC HEARING PART 1 : INTERPRETATION CLOSED AT 5:48 PM

BOARD DISCUSSION (RE: INTERPRETATION COMPONENT)

- **JOHN SANSEVERE STATED**
 - "As much as I think it could work I think it is not a two family it's a multiple. I think the law was written to be more than one. I think that there is a quirk here. There is a quirk in this law that you can go either way on this because you can interpret the law as a two family or a multi-family. I think when they wrote it they meant more than one family. Two family means more to me. It means it's a multi-family. I don't personally agree with the interpretation of the law. My personal thing is that they be more definite when they fix it. "
 - "I'm saying it's a multi. I'm with the Village on this one."
 - **SUSAN SNELL (ZBA CHAIR) REQUESTED CLARIFICATION**
 - "So you would uphold the way it's currently been interpreted as being a multi-family?"
 - **JOHN SANSEVERE RESPONDED**
 - I think so. I think that's the way they meant it when they wrote it. I don't think that's what it says but I think that's the way they meant it. I'm going with the intent of the Village not with what the law says.
- **FRANK LEO STATED**
 - "I agree with John Sansevere. I agree with the Village on this ummm... and I will go with that until they, as John Sansevere said, change it."

- **RON STREEK STATED**
 - “I think the intent of the law was to make it two family and I will go with the Village also.”
 - **SUSAN SNELL (ZBA CHAIR) REQUESTED CLARIFICATION**
 - “You’re saying 2 different things to me. Two family is the definition that says it’s detached. The multi-family which is what the Village has determined because of the second sentence.”
 - **RON STREEK RESPONDED**
 - “OK. Multi-family.”
- **MARCY SCHWARTZMAN STATED**
 - “I agree. My interpretation is also that this is a multiple family dwelling and is therefore subject to the current, ongoing, established rules for tourist accommodations.”
- **SUSAN SNELL (ZBA CHAIR) STATED**
 - “I have to say that I also agree. I think that the two sentences in the definition can be read independently. And I would say particularly the second sentence because it is prefaced with “for the purposes of this chapter” which is kind of a broader more encompassing reference to the broad law as opposed to the first sentence. And then it refers to apartments, condos and cooperatives as multi-family dwellings. I think that that is a reasonable interpretation for Jane Gentile (ZEO) to have made and I would uphold that.”
- **JEFF SCHNEIDER (ALTERNATE)**

NOTE: DOES NOT HAVE A VOTE, BUT WAS INVITED BY SUSAN SNELL (ZBA CHAIR) TO GIVE HIS OPINION

 - “I agree with everybody else. I think that it’s a multiple dwelling. I think what they’re doing in the second sentence is just clarifying apartments and condominiums that they fall under the multiple as opposed to a single unit house type setting, more specifically residential setting. This is different from an owner occupied building. It’s a residential building but it’s not an owner occupied building which I think you would be into a two family or multiple family more clearly defined. So when you get into apartments and condominiums maybe that’s just a clarification of the previous sentence.”
- **MOTION (RE: INTERPRETATION COMPONENT)**
 - **MADE BY** John Sansevere / **SECONDED BY** Ron Streek
 - **RESOLUTION**
 - We agree with the interpretation of the Village that this unit is a multi-family dwelling.
 - **VOTE**
 - **AYES (5)** Sansevere / Leo / Streek / Schwartzman / Snell
 - **OPPOSED (0)**
 - **MOTION APPROVED**
- Susan Snell (ZBA Chair): stated that the ZBA has upheld the zoning board enforcement officer’s decision that 25 Chestnut Street is a multi-family dwelling

PART 2: AREA VARIANCE (RE: OWNER OCCUPANCY)

Variance is required because Village law stipulates that tourist accommodations are required to be owner operated and owner occupied.

- **THERE ARE 2 PERTINENT ISSUES THAT SUSAN SNELL (ZBA CHAIR) THINKS NEED TO BE ADDRESSED**
 1. Is owner occupancy a physical feature whose standard requirements can be altered through an area variance or is it a non-physical feature that can only be altered through a waiver?
 2. If it requires a waiver, does the ZBA have the right to grant waivers?

- **MARTIN TILLAPPAUGH (VILL ATTY) INTRODUCED THE ISSUE OF VARIANCE VS WAIVER**
 - Section 725 (B)(3) and (B)(5) of Village law addresses some of the powers granted to the ZBA (Copies of the law handed out by the applicant's lawyer)
 - **MARTIN TILLAPPAUGH (VILL ATTY) DISCUSSED THE POWERS GRANTED BY 725(B)(3) WHICH STATES ZBA CAN GRANT AREA VARIANCES**
 - He noted that there are the powers granted by 725(B)(3) can be interpreted in different ways and that he and Doug Zamelis (App Atty) have different interpretations
 - He believes 725(B)(3) grants limited powers related only to dimensional/physical space (such as setbacks, Distances from a road or side yard) - this a common sense definition of variance
 - Doug Zamelis (App Atty), the applicant's lawyer contends that 725(B)(3) also grants the ZBA authority to address other things beyond dimensional/physical space, including whether an owner must live on the premises
 - **MARTIN TILLAPPAUGH (VILL ATTY) DISCUSSED THE POWERS GRANTED BY 725(B)(5) WHICH GIVES A BOARD OF TRUSTEES THE OPTION TO GRANT A ZONING BOARD THE POWER TO ISSUE WAIVERS**
 - Zoning boards do not automatically get that power - it must be expressly given/stated
 - Waivers allow zoning boards to make exceptions regarding issues that do not fall under the category of dimensional/physical space that the ZBA has authority to alter through area variances
 - If granted waiver authority, the ZBA would be allowed to alter or impose special conditions regarding non-space related requirements such as owner occupancy
 - Martin Tillapaugh (Vill Atty) cannot find any passage in the Cooperstown Village ordinance that grants the ZBA any type of waiver authority
 - The Village Ordinance does specifically grant waiver authority to the planning board
 - Martin Tillapaugh (Vill Atty) and Doug Zamelis (App Atty) both agree that ZBA has NOT been granted waiver authority
 - **THE DIFFERENCE BETWEEN MARTIN TILLAPPAUGH (VILL ATTY) AND DOUG ZAMELIS' (APP ATTY) PERSPECTIVE ON THIS ISSUE IS THAT**
 - Martin Tillapaugh (Vill Atty) believes that the ZBA requires waiver authority to alter the owner occupancy requirement because it deals with non-space issues
 - Martin Tillapaugh (Vill Atty) contends that Cooperstown ZBA does Not possess the necessary power to alter the owner occupancy requirement Because(1) The ZBA has not been granted Waiver Authority and (2) because owner occupancy does not fall under the categories of dimensional space that can be addressed by variances that the ZBA does have the power to grant
 - Doug Zamelis (App Atty) believes that variance authority is adequate for addressing the owner occupancy issue so ZBA does have the necessary power to grant the variance they seek
 - Section 366(E)(1) adds a complicating factor / it states:
ZBA "shall have the power to grant variances of any provisions of this chapter or on any application for a special permit."
 - **MARTIN TILLAPPAUGH (VILL ATTY) CONTENDS THERE WOULD BE NO REASON FOR REQUIRING WAIVER AUTHORITY IF THE POWERS GRANTED BY 366(E)(1) ENCOMPASSED ALL SPACE AND NON-SPACE RELATED ISSUES**
 - **SUSAN SNELL (ZBA CHAIR): INQUIRY FOR CLARIFICATION**
 - Does this only apply to Special permits?
 - **MARTIN TILLAPPAUGH (VILL ATTY) RESPONDED**
"yes, only on special permits"

- **JOHN SANSEVERE INQUIRY/DISCUSSION RE: POWERS GRANTED TO THE ZBA**
HOW DO THE POWERS OF ZBA THAT ARE GRANTED BY THE STATE VILLAGE LAW COMPARE TO THE POWERS GRANTED BY THE VILLAGE BOARD?
 - Village board passes local laws, ZBA interprets them as they relate to zoning (specified in the powers section)
 - There are 2 categories of law
 1. State Village Law
the NY State Village Law specifies the full range of potential powers the Zoning Board can exercise if those powers are specifically granted by the Village Board
 2. Local Village Law
the Local Village Law which is created by the Village Board specifies which of the potential powers allowed by the state are actually granted to the Zoning Board
 - **FOLLOW-UP INQUIRY: IF A POWER IS NOT SPECIFICALLY ALLOWED OR DISALLOWED (IT IS NOT MENTIONED AT ALL) DOES IT MEAN THE ZBA CAN'T DO IT?**
 - Cooperstown Village Local Law specifically states that if a power is not specifically granted (in this case, to the ZBA) then it is prohibited
 - **FOLLOW-UP INQUIRY: WHO GAVE ZBA THE POWER TO INTERPRET THE CATEGORY OF DWELLING?**
 1. Address appeals from or review decisions made by the code's official (Jane Gentile (ZEO))
 2. Determination of the meaning of any portion of the text in the relevant chapter of Village Law
 3. Determination of location of district boundaries
 4. Area variances
 5. Use variances
 6. Special use permits
 - **1ST SECTION OF VILLAGE LAWS 366(B) DOES NOT MENTION THE POWER TO GRANT WAIVERS**
 - **SUSAN SNELL (ZBA CHAIR) STATED:**
the meaning of the law is muddled by the statement that says:
"ZBA has the power to grant variances of any provisions in a manner that is not allowed by the divisional or physical requirements of the applicant zoning law"
 - This is either a misuse of the term variance or it meant to grant waiver authority
 - It doesn't make sense but if it allows you to grant variances it flies in the face of the state law because it is not a variance. It's a waiver
 - **MARTIN TILLAPPAUGH (VILL ATTY) STATED:**
725(B)(5) also presents another problem because it says that if the Village Board grants the ZBA waiver authority, the Village Board should specify the conditions under which the ZBA can exercise that power and what the ZBA needs to consider when exercising it. That list of considerations and specifications does not exist except for generic terminology in 366 of the Village Code.
 - Martin Tillapaugh (Vill Atty) requests that if ZBA decides that 366(E)(1) grants the authority to do more than address area variances then at least consider the general conditions of a special use permit: health, safety, welfare
 - **ZBA'S JOB NOW IS TO DETERMINE HOW IT INTERPRETS ITS OWN AUTHORITY ACCORDING TO WHAT IS WRITTEN IN VILLAGE STATUTE**
 - Can ZBA only grant variances related to features of dimensionality and physical/location as typically addressed or is the ZBA authorized to address a broader range of features?

- **SUSAN SNELL (ZBA CHAIR) INQUIRED ABOUT PROCESS OF DETERMINING ZBA AUTHORITY**
 - Does (1) Jane Gentile (ZEO), ZEO make a determination first and then (2) ZBA addresses an appeal if someone objects to her interpretation?
 - **MARTIN TILLAPPAUGH (VILL ATTY) CONFIRMED THAT IS HOW THE PROCESS WORKS**
- **DISCUSSION OF JANE GENTILE (ZEO)'S ROLE AND DECISION**
 - NOTE: a copy of Jane Gentile's original determination was distributed to the ZBA members at the beginning of this meeting
 - Jane Gentile (ZEO) stated that she reviewed this before but it was without the information about waivers and before hearing Martin Tillapaugh's (Vill Atty) perspective regarding the law
 - **SUSAN SNELL (ZBA CHAIR) ASKED JANE GENTILE (ZEO) TO SHARE HER CURRENT OPINION BECAUSE THE ZBA DOES NOT MAKE DETERMINATIONS EXCEPT IN RESPONSE TO ONES ALREADY MADE BY THE ZEO**
 - Jane Gentile (ZEO) did not feel familiar enough to provide an answer at the current time
 - Jane Gentile (ZEO) stated that her original determination, which she had made months ago (that the applicants could apply for an area variance), was based on state law 725(B) application for an area variance in a special use permit which said:
"Notwithstanding where a proposed special use permit contains 1 or more features which do not comply with the zoning regulations application can be made with the zoning board of appeals for an area variance ..."
 - Jane Gentile (ZEO) stated that her decision was based on the fact that this code only talked about variances and said any provisions in this chapter but she was unaware of the relationship between state and local law and of the differences between variances and waivers
- **JOHN SANSEVERE STATED**

He believes the ZBA has the authority to make determinations beyond features of space/dimensionality
- **SUSAN SNELL (ZBA CHAIR) NOTED**

that the word "features" is a term not previously used or defined and is therefore difficult to know if it applies to qualities beyond those typically associated with area variances

 - Neither Martin Tillapaugh (Vill Atty) nor Doug Zamelis (App Atty) has found any legal history or other info that clarifies the meaning of the word features
- **MARTIN TILLAPPAUGH (VILL ATTY) CONCLUDED**

that the ZBA can make the determination without hearing from Jane Gentile (ZEO) first
- **DOUG ZAMELIS (APP ATTY) OBJECTED**

to keeping the public hearing open while the ZEO is being asked to make a determination
- **DOUG ZAMELIS' (APP ATTY) PRESENTATION REGARDING 2ND PART OF APPEAL**
 - Applicants are applying for (1) a special permit for tourist accommodations at 25 Chestnut street and a (2) request for an area variance from "the physical" owner occupancy requirements
 - Applicants are not seeking a waiver / they recognize the ZBA has NOT been given the authority to grant a waiver
 - Applicants are seeking a variance

- ZBA needs to decide if it is acting within its original jurisdiction (ability to make an original decision of its own instead of first going through the ZEO) or its appellate jurisdiction (reviewing a decision that has already been made by the ZEO or other administrative body)
 - Special permits fall under original jurisdiction
- 7725b subsection 3 (page 1 of handout) specifically states ZBA has the power to grant area variances as part of special use permits
 - 7-712 Definition of area variance is the power to alter use of land in a manner that is not allowed by the dimensional or physical requirements of the applicable zoning regs
 - Claims all regs fall under either dimensional or physical classification
 - Claims owner occupancy is a physical requirement and a feature as specified under the zoning law
 - Edison vs Hoffman: an area variance is anything but a use variance
 - The law says that there must be potential relief for every dimensional or physical requirement
 - If you accept that the owner occupancy requirement is a physical requirement then the law requires there to be a potential way to obtain a variance for that requirement
- **THE SECOND PART OF THE APPLICANT'S APPEAL IS A "JURISDICTIONAL HYBRID" WITH 2 PARTS:
ASKING FOR (1) A SPECIAL PERMIT IN YOUR ORIGINAL JURISDICTION AND THEN
(2) AN AREA VARIANCE IN YOUR APPELLATE JURISDICTION**
 - Absence of ability to grant a waiver in your original jurisdiction does not impact ZBA's ability to grant an area variance in its appellate jurisdiction
 - **CONTENDS THAT APPLICANTS MEET OR EXCEED ALL 6 SPECIAL PERMIT REQUIREMENTS (AS SUMMARIZED BELOW) AND THEREFORE MUST BE GRANTED A SPECIAL PERMIT**
 1. In harmony with surroundings and with appropriate development of the surrounding district: it is (The Board of Trustees has indicated it believes tourist accommodations are in harmony with the business district since they permit them to exist within the business district)
 2. Not detrimental to site or adjacent properties: it isn't (especially since the nearest property is owned by the applicants)
 3. Density of surrounding area will be considered: no change proposed
 4. Will not create hazardous situations for pedestrians or assembly and use: It won't
 5. Won't hinder or discourage use of adjacent land and buildings: it won't
 6. Will not require significant expenditure or creation of additional public resources than those permitted by right: it won't
 - **DOUG ZAMELIS' (APP ATTY) IDENTIFIED ADDITIONAL FACTORS IN THE APPLICANTS FAVOR**
 - There will be no interior or exterior modifications
 - There are over 20 parking spaces
 - Applicants' son lives next door and will be able to closely monitor 25 Chestnut and it's residents
 - Plenty of room for pedestrian movement
 - The only real change being proposed is a change in the rental term of the tenants
 - Since these apartments have already been occupied with people coming and going, parking spaces being used etc – no significant changes in impact on the community/neighborhood will be created

- **AREA VARIANCE REQUIRES ZBA TO CONSIDER THE BENEFIT TO THE APPLICANTS COMPARED TO ANY DETRIMENTAL IMPACT IT MAY HAVE ON THE HEALTH, SAFETY AND WELFARE OF THE NEIGHBORHOOD/COMMUNITY.**
- **APPLICANTS SUBMIT THAT THE BENEFIT TO THEM FAR OUTWEIGHS ANY DETRIMENTAL EFFECTS, IF ANY, THAT MAY BE FELT BY THE NEIGHBORHOOD**
 - There is a substantial economic benefit to the applicants if they are not required to occupy one of the units (exhibit b) = \$18,950
 - Changing the rental term from 30 days to less than 7 days will not impact the neighborhood since it is in a busy business district and people have already been living in the apartments
- **CONTENDS THE PROPOSED TOURIST ACCOMMODATION MEETS THE 4 CRITERIA FOR GRANTING AN AREA VARIANCE**
 1. No change in the character of the community since it has already had tenants and the applicants own the nearest building
 2. Can't achieve /offer tourist accommodations in any other way except by getting an area variance for owner occupancy
 3. It is not a "substantial" request because applicants own, operate and work next door and their son resides above the bakery next door
 4. Hardship is self-created when they acquire property already subject to the restrictions from which they seek relief (Building purchased before 2015 tourist accommodation regulations)
 - **SUSAN SNELL (ZBA CHAIR) STATED**

tourist accommodations were allowed in the business district under special permits beginning in 1989 so purchase of property did not predate the owner occupancy restrictions
- **SUSAN SNELL (ZBA CHAIR) REVISITS PROCEDURE**
 - Is considering an area variance the next step?
- **DISCUSSION WITH SUSAN SNELL (ZBA CHAIR), MARTIN TILLAPPAUGH (VILL ATTY) AND DOUG ZAMELIS (APP ATTY) REGARDING WHETHER ZBA NEEDS TO WAIT FOR THE ZEO TO MAKE A DECISION ABOUT WHETHER THEY COULD SEEK A VARIANCE AND WHETHER AN THE HEARING SHOULD BE EXTENDED**
 - Martin Tillapaugh (Vill Atty) and Doug Zamelis (App Atty) agree that applicants can come directly to the board for an area variance (it can act under its original jurisdiction)
 - Martin Tillapaugh (Vill Atty) stated that he does not feel the ZEO needs to make a determination for the ZBA to move forward with a decision
- **MARTIN TILLAPPAUGH (VILL ATTY) REMINDS THE BOARD ABOUT THE FACTORS IT SHOULD CONSIDER WHEN MAKING ITS DECISION**
 - Financial gain is just one of several factors
- **DOUG ZAMELIS (APP ATTY) REITERATES THAT HE BELIEVES THE ONLY REAL POINT OF DISAGREEMENT BETWEEN THE APPLICANTS AND THE VILLAGE IS WHETHER OWNER OCCUPANCY CAN BE ADDRESSED THROUGH AN AREA VARIANCE**
 - Doug Zamelis (App Atty) says everything in the zoning law can be addressed through either area or use variance. Owner occupancy is a physical feature and therefore can be addressed through an area variance.

- **MARTIN TILLAPPAUGH (VILL ATTY) SAYS ONLY DIMENSIONAL AND SPACE RELATED ISSUES CAN BE ADDRESSED THROUGH AN AREA VARIANCE. CONSIDERING OWNER OCCUPANCY TO BE A PHYSICAL FEATURE IS A "STRETCH" AT BEST AND "FLIES IN THE FACE OF A WAIVER"**
 - **INQUIRY: SUSAN SNELL (ZBA CHAIR) REQUESTS THAT DOUG ZAMELIS (APP ATTY) CLARIFY HIS OPINION**

Can everything in the law can be addressed through an area variance or just the stipulations that fall under special permits?

 - **DOUG ZAMELIS (APP ATTY) RESPONDED**

Every substantive item in the law must be variable or else it is unconstitutional
 - **INQUIRY: SUSAN SNELL (ZBA CHAIR) ASKS JANE GENTILE (ZEO)**

Does she feels ok about the ZBA reviewing this as an area variance?

 - **JANE GENTILE (ZEO) STATED**

Her original interpretation of the law was that the application should be able to be considered for a variance and she still feels it is appropriate
 - **DOUG ZAMELIS (APP ATTY) STATED**

He agrees with the ZEO on this point
 - **SUSAN SNELL (ZBA CHAIR) STATED THAT THE ZBA WILL ADDRESS THE OWNER OCCUPANCY ISSUE AS AN AREA VARIANCE**
 - She further stated that it is the only way the applicants can possibly move forward and get the special permit they were also applying for
 - Request for additional public comments
 - **VERONICA SEAVER (160 MAIN STREET)**
 - Asks the ZBA to remember they are potentially opening a Pandora's box
 - **BILL WALLER (66 BEAVER STREET)**
 - Believes the applicants definition of the neighborhood/community they impact is too narrow
 - The entire Cooperstown community will be impacted, not just the people and businesses on the street corner where the property is actually located
 - **JOHN SANSEVERE INQUIRED:**

Is there is a case being litigated regarding a tourist accommodation that is not owner operated?

 - **MARTIN TILLAPPAUGH (VILL ATTY) STATED**

the Village has identified several properties operating as tourist accommodations that do not meet the owner occupied requirement and they are being litigated
 - **JOHN SANSEVERE STATED**

He wants to make sure the record shows this is not the first time this issue has ever come up- this is an ongoing problem
- **PUBLIC HEARING FOR PART 2 CLOSED AT 6:40PM: (RE: AREA VARIANCE FOR OWNER OCCUPANCY)**
- **BOARD DISCUSSION FOR PART 2 (RE: AREA VARIANCE FOR OWNER OCCUPANCY)**
 - **DISCUSSION BETWEEN SUSAN SNELL (ZBA CHAIR) AND DOUG ZAMELIS (APP ATTY) RE WHICH SHOULD BE ADDRESSED FIRST: THE AREA VARIANCE OR THE SPECIAL PERMIT**
 - Conclusion: the area variance needs to be addressed first because owner operated/owner occupied is a condition of the special permit (agreed to by both Susan Snell (ZBA Chair) and Doug Zamelis (App Atty))

- **SUSAN SNELL (ZBA CHAIR) ADDRESSED THE RELATIVE IMPORTANCE OF THE OWNER OPERATED/OWNER OCCUPIED REGULATION**
 - Owner operated/owner occupied and parking components of tourist accommodations have been the baseline that have historically prevented most properties from even being considered for a Special Permit for a Tourist Accommodation
 - The variance being requested can therefore be considered a very significant variance
- **DISCUSSION OF THE CRITERIA FOR GRANTING A VARIANCE**
 - **JOHN SANSEVERE STATED**

that the property was owner operated because the owners live next door

 - **SUSAN SNELL (ZBA CHAIR) RESPONDED**

that he was incorrect - a family member lives next door, not the owners and this does NOT fulfill the requirements specified in the law
 - **SUSAN SNELL (ZBA CHAIR) READ THE RELEVANT PASSAGES IN THE LAW**

that specify what ZBA needs to take into consideration when making their determination

 - Benefit to the applicant vs detriment to the health, safety and welfare of the neighborhood/community
 - Undesirable change will be produced or detriment to neighboring properties
 - **JEFF SCHNEIDER STATED**

ZBA needs to consider how waiving the requirement of being owner occupied (how the owner not living on the premises) may affect the specified considerations

 - Typically area variances deal with physical and dimensional features
 - **MARCIE SCHWARTZMAN STATED**
 - Does not believe owner occupied can be classified as dimensional or physical- it's a rule, a quality of life rule - Area variances have always dealt with questions of "where's the fence?", "where's the setback?"
 - Does NOT believe it is appropriate to address owner occupancy with an area variance
 - ZBA puts a great deal of emphasis on making sure applicants meet the parking requirements and that owner supervision should be given at least as much weight when considering granting a variance
 - Believes granting the right to a tourist accommodation without requiring owner occupancy is totally at odds with what ZBA does
 - **SUSAN SNELL (ZBA CHAIR) STATED SHE AGREES THAT IT IS HISTORICALLY AT ODDS**
 - Based on established work done by the ZBA and precedence the ZBA does not address rules other than those related to physical space and dimensions . It has not historically addressed the rules related to owner occupancy
 - The bar needs to be set extremely high before granting a variance to the owner occupancy rule, especially in light of how the ZBA has addressed previous applications for Special Permits for a Tourist Accommodation
 - **JOHN SANSEVERE STATED**
 - He agrees that owner occupancy is addressable via variance because people are physical and therefore it meets the criteria set forth in the law
 - **DOUG ZAMELIS (APP ATTY) STATED**
 - That the right to the variance must be determined by weighing the benefit to the applicants against the detriment to the community
 - If ZBA does not grant the variance, they will need to specify in what ways granting the variance will be a detriment to the health, safety and/or welfare of the community

- ZBA should not be applying a higher bar but rather the same bar used for every variance application received
- **SUSAN SNELL (ZBA CHAIR) STATED**
 - The ZBA's task is to look at the question of granting a variance to this applicant from a broader perspective than normal
- **MARTIN TILLAPPAUGH (VILL ATTY) STATED**
 - One of the most important terms to keep in mind is "community"
 - When dealing with area variances they could easily have said "and any other requirement" instead of specifying dimensional and physical. That's why waivers exist
- **DOUG ZAMELIS (APP ATTY) STATED**
 - Respectfully disagreed and pointed out that if you could vary everything it wouldn't separate area variances from use variances
- **SUSAN SNELL (ZBA CHAIR) STATED**
 - ZBA is considering an area variance
 - Reread the law
 - Take into consideration the benefit to the applicant which in this case is more income
- **MARTIN TILLAPPAUGH (VILL ATTY) STATED THAT INCOME WAS IRRELEVANT AND SUSAN SNELL (ZBA CHAIR) FEELS THIS MAKES SENSE BECAUSE IT WOULD APPLY TO EVERY POTENTIAL APPLICATION FOR A TOURIST ACCOMMODATION**
 - Doug Zamelis (App Atty) objected to the statement that economic benefit should be treated as irrelevant
 - Economics come into play in the use variance but not the area variance
 - Take into consideration the detriment to the health, safety and welfare of the neighborhood
 - Several residents at recent public hearings have spoken to (1) the importance of maintaining long term rentals in the Village and the problems that are resulting because there is not enough long term housing available
 - (2) concerns about problems that arise when tourists live in housing that is not directly occupied/operated by the owner
 - Owner occupancy/owner operation has historically been the cornerstone of Cooperstown's tourist accommodation control mechanism in the law
- **JOHN SANSEVERE STATED**
 - He feels this is a unique situation that he has not run across in the 2 years he has been on the board
 - It is in the business zone (non-residential zone)
- **SUSAN SNELL (ZBA CHAIR) RESTATED**
 - ZBA needs take into consideration #1 the detriment to the community and asked for board input
- **RON STREEK STATED**
 - Feels it will be a detriment because if the variance is granted it will open a floodgate.
 - The law exists to protect the Village
 - It is very different than granting setbacks etc. It will have far reaching repercussions
- **DOUG ZAMELIS (APP ATTY) STATED**
 - That the question to be addressed is will having tenants who stay for 7 day terms instead of 30 cause a detriment to the health, safety or well-being of the community. (the question is not what the impact of granting the variance will be on future applications.)

- **JOHN SANSEVERE STATED**
 - The applicants could put in another office which might result in a much higher and more frequent volume of traffic than having short term residential tenants and the applicants would not have to come before the ZBA for a variance at all even though it would have a much bigger and potentially more negative impact on the neighborhood
 - He doesn't see where having a short term rental in that particular location would be detrimental
- **FRANK LEO STATED**
 - Not having a point of contact on location is a problem. It needs to be owner occupied
 - If living next door is ok, why not down the street? How do you determine how far away is too far?
 - Agrees with Ron Streek about the need for owner occupancy
 - Agrees with John Sansevere about the impact on the neighborhood due to changes in traffic and parking etc
- **JOHN SANSEVERE STATED**
 - Marcie Schwartzman had a great point when she said that they needed to meet a high bar
 - They meet every requirement but 2 so he feels they reach that high bar that should be set
 - He feels that family living in an adjacent property provides an adequate point of contact
- **MARCIE SCHWARTZMAN STATED**
 - If someone buys the building, ZBA cannot require the owner to live either on-site or next door. The fact that the owner's family lives next door is a coincidence that can't be counted on.
- **JOHN SANSEVERE STATED**
 - Since permits need to be renewed every year the variance can be revoked if the situation changes (the owner does not reside on the premises or a relative does not reside next door)
- **JANE GENTILE (ZEO) STATED**
 - As she reads the law special permits allow you to put any conditions you want on them
- **FRANK LEO STATED**
 - If allowing off premise supervision it will be difficult if not impossible to limit by distance (why not down the block or the other side of town?)
 - The question is Cooperstown willing to accept anything other than owner occupied?
 - The applicants deserve an answer tonight and should not have to wait
- **SUSAN SNELL (ZBA CHAIR) STATED**
 - ZBA needs to consider #2 whether the applicant can achieve their goals through some mechanism other than an area variance
 - Options available include living there, continuing their historical practice of renting long term, etc
- **ALL BOARD MEMBERS BASICALLY AGREED A VARIANCE WAS THE ONLY MECHANISM**
- **SUSAN SNELL (ZBA CHAIR) STATED**
 - ZBA needs to consider #3 whether the requested area variance is substantial
 - Owner occupancy is "majorly substantial"
- **JOHN SANSEVERE STATED**
 - He agrees it is substantial and requires a high bar
 - He feels the standard is different because it is in a business zone and not a residential one and they basically have oversight next door
 - Permits/variances should be considered each year and revoked if changes in circumstances seem to warrant it

- The law was put in there for a reason so there is some recourse if there is a problem
- **MARCIE SCHWARTZMAN STATED**
 - Agrees with Susan Snell (ZBA Chair). Owner occupancy is the cornerstone.
- **SUSAN SNELL (ZBA CHAIR) STATED**
 - ZBA needs to consider #4 whether the variance will have an adverse affect on the physical or environmental condition of the neighborhood or district
 - She did not see how change in rental terms would have an adverse effect
- **JOHN SANSEVERE STATED**
 - It's been rented now
- **SUSAN SNELL (ZBA CHAIR) STATED**
 - ZBA needs to consider #5 whether the alleged difficulty was self-created
 - She believes it is self-created
- **MALE BOARD MEMBER (NOT SURE WHO BECAUSE OF SIMULTANEOUS TALKING) STATED**
 - It was self-created
- **SUSAN SNELL (ZBA CHAIR) ASKED IF ANYONE HAD ANYTHING ELSE TO ADD**
 - There was no further discussion
- **MOTION**
 - **MADE BY** Marcie Schwartzman/**SECONDED BY** Frank Leo
 - **RESOLUTION**
 - To grant a variance to the owners of 25 Chestnut street from the owner occupied/owner operated requirement of the tourist accommodation regulation
 - **VOTE**
(NOTE: THE MEANING OF A YES OR NO VOTE WAS CLARIFIED FOR BOARD MEMBERS BEFORE THE VOTE WAS TAKEN)
 - **AYES (1):** Sansevere
 - **OPPOSED (4):** Snell / Schwartzman / Leo / Streek
 - **MOTION DENIED**

PART 3: SPECIAL PERMIT

- BECAUSE THE VARIANCE WAS NOT GRANTED THE APPLICATION FOR A SPECIAL PERMIT WAS NOT ENTERTAINED
 - THE SPECIAL PERMIT HAS OWNER OCCUPANCY AS ONE OF ITS STIPULATIONS AND WOULD EITHER REQUIRE THAT STIPULATION TO BE MET OR OFFICIALLY ALTERED THROUGH A ZBA VARIANCE

REGULAR AGENDA (5 ITEMS)

1. 42 Susquehanna Avenue and (Alice and Sergio Gaviria)

The preliminary hearing for a special use permit to operate a two bedroom tourist accommodation (four unit apartment structure with two long term rental units, one owner unit and one transient rental unit).

- **PRESENT/PARTICIPATING:**
 - Alice and Sergio Gaviria – applicants
- **PROPERTY / CURRENT USE DESCRIPTION**
 - 4 unit apartment house
 - 2 units on the top floor are long term rentals and are currently occupied
 - 1 unit on the bottom floor: Sergio's (owner's) studio apartment
 - 1 unit on the bottom floor: 2 bedroom to be used as a short term tourist accommodation
 - Owner operated / owner occupied (Sergio Gaviria lives on the premises)
 - More than enough parking

2. **44 Susquehanna Avenue (Alice and Sergio Gaviria)**

The preliminary hearing for a special use permit to operate a four bedroom tourist accommodation in a (five (5) bedroom single family house)

- **PRESENT/PARTICIPATING:**
 - Alice and Sergio Gaviria – applicants
- **PROPERTY / CURRENT USE DESCRIPTION**
 - 4 bedroom house with attached efficiency apartment
 - 2 parking spaces
 - Additional parking is available on the property next door which is also owned by the applicants
 - Alice gaviria resides on the premises but will use different bedrooms or the efficiency depending on the needs of her guests
 - Plans to rent 4 bedrooms or (3 bedrooms + the efficiency) as short term accommodations – which rooms get rented will vary depending on the needs of her guests
 - Most neighbors have written letters or signed a paper saying they do not object to the proposed use of the property(ies)
- **FRANK LEO (ZBA)**
 - Asked if they had been already been operating as an airbnb without a permit
 - Stated they must live on the premises of both 42 Susquehanna and 44 Susquehanna
- **NEXT STEPS FOR (BOTH 42 AND 44 SUSQUEHANNA)**
 - Submit the letters / signed statement from the neighbors
 - Set public hearing for next meeting date (currently planned for 5pm on June 6, 2017)
 - Discussion of whether a variance is necessary to allow parking needs of 44 Susquehanna to be met by using spaces on adjacent property at 42 Susquehanna also owned by the applicants
 - Martin Tillapaugh (Vill Atty) stated that parking can be addressed by making a condition on the permit / a variance is not necessary
 - Alice & Sergio need to provide a written notarized statement acknowledges that a certain number of spaces on the property at 42 Susquehanna are designated for residents of 44 Susquehanna
 - The statement should be filed under miscellaneous records

3. **71 Fair Street (Nicole Retzler and Andrew Hage)**

The preliminary hearing for a 7' - 5" area variance to extend a six (6') foot high fence in front yard setback per Section 30066C.(1) - this is a joint project with Christ Episcopal Church at 69 Fair Street of a combination retaining wall/fence alongside property line (HPARB is reviewing this on May 9th)

- **SUSAN SNELL (ZBA CHAIR) RECUSED HERSELF AND MARCIE SCHWARTZMAN ASSUMED THE CHAIR POSITION.**
- **PRESENT/PARTICIPATING:**
 - Carol Waller – applicant representing the church
- **EXPLANATION OF PROPOSED CHANGES**
 - Joint project undertaken by both the church and Retzler/Hage
 - Church is building a 2'6" high poured concrete retaining wall between 24 inches to 30 inches tall along the entire side property line to address a water run-off problem that effects its neighbor's (the Retzler/Hage property)
 - Retzler/Hage are building a 3'6" fence on top of the retaining wall for privacy purposes making the final height of the fence approx. 6 feet

- Since the height of the fence is greater than 4 feet a variance is required in the front yard setback
- The fence will be made of 6" cedar decking
- The church is in favor of the fence
- A picture was submitted
- A variance is required because they are asking for a 6' high fence in a front yard setback where the max is a 4 foot tall fence
 - THE SETBACK WILL BE 12 FEET 5 INCHES INSTEAD OF THE STANDARD 20 FEET
- **NEXT STEPS**
 - **SET PUBLIC HEARING FOR NEXT MEETING DATE (CURRENTLY PLANNED FOR JUNE 6, 2017)**

4. **17 Lake Street (Nicholas Preston) - The preliminary hearing for an area variance to locate a gate in front yard setback (gate to be located at front left corner of house) per Section 30066C.(1)**

- **SUSAN SNELL (ZBA CHAIR) RESUMED THE CHAIR POSITION.**
- **PRESENT/PARTICIPATING:**
 - There was NO representative present
- **PROPERTY / CURRENT USE DESCRIPTION**
 - House is located right across from the park
 - Building in a setback
 - Gate taller than 4 feet
 - Applying to HPARB for approval of the gate
 - There are no complaints filed

REVIEW OF THE ZONING BOARD OF APPEALS MEETING MINUTES FOR APRIL 11, 2017

- **CORRECTION(S) REQUESTD**
 - Requested by Marcie Schwartzman
typo "iunt" (agenda item 1, line 9)
- **MOTION**
 - To approve the minutes as submitted
 - **Motion made by** Marcie Schwartzman / **Seconded by** /Ron Streek
 - **VOTE:**
 - **AYES (5):** Snell / Streek / Sansevere / Schwartzman / Leo
 - **NAYS (0)**
 - **MOTION APPROVED**

OTHER BUSINESS

- No other business was discussed

MEETING CLOSED 7:30 PM