

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 June 3, 2014 at 5:00 pm. Members in attendance were Chair Susan Snell, Ruth Ayres, Frank Leo, Marcie Schwartzman, and John Sansevere. Also in attendance was Zoning Enforcement Officer – Tavis Austin and Deputy Village Clerk – Jennifer Truax. No members of the public were present.

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

### Public Hearings

**61 Elm Street (Charle-Pan Dawson)** – Public hearing for a special permit to operate a home occupation

Ms. Snell opened the public hearing at 5:02 p.m. and reviewed the application to begin the operation of a home occupation consisting of massage therapy in the residence at 61 Elm Street. She noted that there was no public present and asked Mr. Austin if any comment was received prior to the meeting.

Mr. Austin stated that he received one phone call from a neighbor who questioned the proposed use and intensity of the property.

Ms. Truax stated that the Bill & Janet Rigby had reviewed the file at the office and did not express any concern.

Ms. Schwartzman stated that she is concerned about the residency requirement of a home occupation not being met. She continued to state that it would be helpful if Ms. Dawson had attended a meeting to address these concerns directly.

Mr. Sansevere stated that he thought this was discussed at the May meeting and it was agreed that as long as Ms. Dawson was there any time clients were there it was satisfactory.

Ms. Schwartzman stated that in a home occupation the person is supposed to reside in the home. If they do not reside at the property it becomes a business rather than a home occupation.

Ms. Snell stated that she feels that they do need to reside at the property but not necessarily 24/7.

Ms. Ayres read the definition of home occupation. *“An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, by a member of the family residing in the dwelling unit, and is clearly incidental and secondary to the use of the dwelling unit for residential purposes....”*

The board reviewed the definition of residence. *“A structure, or portion of a structure, that is occupied by its owner or rented to a family for a period of 30 consecutive days or more.”* The board discussed the definition of home occupation and residence in regards to how to determine the residing requirements of a person operating a home occupation.

Ms. Ayres stated that the definitions clearly indicate that the primary use of the structure must be for residency.

Ms. Snell stated that in the case of tourist accommodations the line is pretty clear that anytime there someone using the accommodations the owner must be on site. Ms. Snell stated that the expectations of the board as to how much time the property owner must be on site may need to be clarified in any action taken. Furthermore, this may be a permit that should be given on a temporary basis with review after one year or eighteen months. Ms. Snell stated that she feels that the general consensus is that the property should be occupied more than just when clients are present.

Ms. Snell asked the board to table the discussion and move to agenda item number two while the public hearing is left open to allow for the possibility of a member of the public who may arrive late.

**32 Fair Street (Susan Snell for Jocelyn Wittstein)** – Public hearing for an area variance for the distance between a primary and accessory structure

Ms. Snell recused herself.

Ms. Schwartzman opened the public hearing at 5:09 p.m. and reviewed the application to place an addition on the rear of the existing main structure which would reduce the distance between the main structure and the accessory structure to less than the legally required amount which is equal to the height of the accessory structure.

Ms. Ayres asked if the proposal was to extend the residence.

Ms. Snell stated it was and reviewed the details of the proposed addition.

Mr. Austin stated that HPARB has approved the design plans for the addition.

Ms. Schwartzman stated that the law requires that the distance between the primary and accessory structure be at least the height of the accessory structure or in this case 20' 6". She further stated that it was discussed at the May meeting that this law may have initially been due to possible fire hazards but none of the members can see a current need for this requirement.

Ms. Snell stated that this portion of the law has been discussed by the Hospital Zoning Committee and its removal from the law has been made part of the proposed zoning law changes being recommended to the Trustees.

Ms. Schwartzman asked Ms. Snell if she had prepared answers to the area variance test.

Ms. Snell gave oral answers to the area variance test. Ms. Snell read question number one, "whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance," then stated that she does not feel an undesirable change will be produced. She explained that the addition is very small in scale in relation to the residence and it is being added in a non-public part of the property.

Ms. Snell read question number two, "whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance," then stated that the property owner has tried several other ways to handle the need for a mud room through the reuse of interior portions of the home but none have worked well or meet the needs of the family.

Ms. Snell read question number three, "whether the requested area variance is substantial," then explained that the variance is not substantial. She stated that dimensionally the required distance between the structures is 20' 6" and the proposed distance is 16' 5", which is a reduction of 25 % of the required distance.

Ms. Snell read question number four, "whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district," then stated that no adverse effects or impacts have been noted.

Ms. Snell read question number five, "whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance," then stated that although it is self-created in that the standard was part of the law when the residence was purchased, the residence in turn predates the law.

Ms. Schwartzman asked if there was any further comment. There was no further comment and Ms. Schwartzman closed the public hearing at 5:16 p.m.

Mr. Sansevere made a motion to approve the variance for 32 Fair Street as submitted to reduce the required distance between the primary and accessory structure by 4' 1" from 20' 6" to 16' 5". Ms. Ayres seconded the motion and a vote had the following results:

AYES: Ayres, Leo, Sansevere, Schwartzman

Motion carried.

**Continuation of Public Hearing for 61 Elm Street (Charle-Pan Dawson)** – Public hearing for a special permit to operate a home occupation

Ms. Snell returned to the board.

Ms. Ayres stated that she wishes Ms. Dawson was present as the concerns may be able to be resolved if she was present to answer a few questions.

The board discussed the possibility of deferring a decision until additional information is obtained from Ms. Dawson.

Ms. Snell stated that once the public hearing is closed the board has 62 days to make a decision, if no decision is made the application becomes approved as submitted.

The board again discussed the requirement for a home occupation to occur in a structure which is primarily a residence and the impact on the neighborhood when a home occupation is operated from a residence as well as the impact of a structure in a residential district operating as a business rather than a residence. They further discussed seasonal operation of a home occupation and possible seasonal residency.

Ms. Snell proposed that the board close the public hearing and table any decision until the July meeting. She further proposed that they provide Mr. Austin with questions which they would like Ms. Dawson to provide answers to prior to that meeting.

The board concurred and as there were no members of the public present the public hearing was closed at 5:25 p.m.

The board discussed the questions which they would like Ms. Dawson to provide answers to prior to making a decision regarding the special permit for a home occupation.

Mr. Austin will present the following questions to Ms. Dawson and encourage her to attend the July Zoning Board of Appeals meeting.

- 1) Is this your primary residence?
- 2) Will you be sleeping at this residence when in business?
- 3) Will you have employees?

### **CPA Waiver**

Ms. Snell reviewed with the board the County Planning Agency waiver of review of projects.

The board reviewed each area that pertains to the ZBA.

Ms. Snell made a motion to approve the board checking the boxes under Area variances with the percentage indicated as no to exceed 75% of the minimum or maximum standards, Use variances, and SEQR actions, and to check the boxes regarding home-based occupations in the section pertaining to Site Plans, Special Permits and/or Special Extensions. Ms. Schwartzman seconded the motion and a vote had the following results:

AYES: Ayres, Leo, Sansevere, Schwartzman, Snell

Motion carried.

### **Minutes**

Ms. Schwartzman made a motion to approve the minutes from May 6, 2014 with the following change to paragraph four under the regular agenda item for 61 Elm Street change remove paragraph and replace with "Ms. Schwartzman stated that the neighbors should not be affected by this home occupation. Mr. Leo seconded the motion and a vote had the following results:

AYES: Leo, Sansevere, Schwartzman, Snell

ABSTAIN: Ayres

Motion carried.

Meeting adjourned at 5:47 PM

Respectfully Submitted,

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Jennifer Truax  
Deputy Village Clerk