

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 2, 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 Village Attorney – Martin Tillapaugh, Zoning Enforcement Officer – Tavis Austin and Deputy Village Clerk – Jennifer Truax. Twenty-six members of the public were present.

Ms. Snell called the meeting to order at 5:00 p.m. and reviewed the agenda.

Public Hearing

21 Leatherstocking Street (Gary Kiss) – Public hearing for an area variance for a garage

Ms. Snell reviewed the application for an area variance in the rear yard setback for a garage to replace the existing storage shed and opened the public hearing at 5:01 PM. Ms. Snell further stated that it is her understanding that survey stakes have been located and that the board will need to consider, if they choose to grant a variance, if the variance will allow construction of the garage on the property line or a distance from the property line, i.e. 3 feet from the line, as discussed in May at the preliminary hearing.

Mr. Kiss stated that no survey of the property has been completed but that survey stakes have been located.

Mr. Sansevere asked about that flags around the property.

Mr. Kiss stated that the flags are there for newly installed invisible fence.

Ms. Snell asked if there was any public comment.

There was no public comment at this time. Ms. Snell stated that she would like to hold the public hearing over for a little longer and suggested that the board move onto the next agenda item to allow a little more time for possible public comment.

The board concurred.

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

Ms. Snell recused herself at 5:03 PM.

Ms. Schwartzman opened the public hearing at 5:03 PM and 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. Lettis stated that she had planted the tree proposed to be removed in the late 1990s after the winds from the tornado in the Milford area had created damage to the existing tree.

Mr. James Dean, 15 Delaware Street, stated that as one of the adjoining neighbors he has no issue with the proposed tree removal.

Mr. William Waller, 60 Beaver Street, stated that he is also an adjoining neighbor and has no concerns with the proposed tree removal.

Ms. Schwartzman asked if there were any further comments. There were no additional comments. Ms. Schwartzman asked Mr. Austin if he had received any comments prior to the public hearing.

Mr. Austin stated that he had not received any comments.

Ms. Schwartzman closed the public hearing at 5:05 PM.

Mr. Sansevere stated that the tree is in a bad location and needs to be removed.

Mr. Streek made a motion to approve the removal of one tree at 22 Eagle Street on the southside of the residence as indicated in the application, with the condition that a new tree be planted on the property to replace the tree being removed. Mr. Leo seconded the motion and a vote had the following results:

AYES: Leo, Sansevere, Schwartzman, Streek Motion carried.

Continuation of 21 Leatherstocking Street (Gary Kiss) – Public hearing for an area variance for a garage

Ms. Snell returned to the board at 5:07 PM and asked if there was any public comment for 21 Leatherstocking Street.

Mr. Brian Clancy, 19 Leatherstocking Street, stated that he is the closest neighbor to Mr. Kiss and that he does not have any objection to the proposed garage.

Ms. Snell asked if there was any further public comment. There was no additional public comment and Ms. Snell closed the public hearing at 5:07 PM.

Ms. Snell asked the board to review the area variance test and 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.*" Ms. Snell pointed out that the proposed garage, although larger than the existing structure will be in the same location.

Mr. Streek stated that the proposed location is in keeping with the neighborhood. He pointed out that most properties in this area with this type of accessory structure have them located on or close to the rear property line.

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.*" She stated that the proposed location is on the driveway side of the property and would be difficult to locate in another area.

Ms. Schwartzman stated that the driveway is preexisting.

Ms. Snell read question number three, "*whether the requested area variance is substantial,*" then explained that the variance is not substantial."

Mr. Streek stated that the board has discussed many times issues around structures being built on the property line, including the inability to access them for maintenance without permission from the neighboring property owner. He stated that he would like to see the structure at least two if not three feet off the property line.

Ms. Snell clarified that the proposed structure will be 36 inches deep and asked how wide it would be.

Mr. Cooper stated that he is not sure the exact width.

Ms. Snell asked that the width be provided prior to the public hearing. She further advised Mr. Cooper that notices would be mailed to the neighbors and recommended that he speak with his neighbors prior to the notification.

Mr. Cooper stated that he has spoken with the Hyman Family who owns the neighboring property.

Mr. Sansevere asked why the roof structure requires a variance.

The board reviewed the required variance stating that the structure projects into the setback and that the stoop would not have required a variance as it is less than 4 feet in height.

A public hearing was set for Tuesday, July 7, 2015 at 5 PM or as soon thereafter as possible.

1 Atwell Road (Russ Tilley for MIBH) – Preliminary hearing for a height variance

Mr. Austin stated that the proposed structure will require a special use permit from the Board of Trustees. He explained that the structure is in a residential zone and therefore, even though the neighboring structures are all part of the hospital complex, the use will require review and approval from the BOT. He explained that in addition to the use permit the structure requires a variance from the ZBA for height.

Mr. Tilley reviewed the application and drawings which show the before and after of the proposed work.

Mr. Streek asked the height of the proposed structure.

Mr. Tilley stated that the proposed structure is a height increase of 13 feet.

Mr. Streek asked the maximum height of the structure.

The board discussed the proposed height and how height is determined for a structure.

Mr. Austin stated that the total proposed height, as determined according to the law, would be approximately 36 feet.

Mr. Sansevere asked the height of the tallest structure in this area.

Mr. Austin stated that the hospital building is about 70 feet in height.

Ms. Snell stated that some of the existing buildings are grandfathered and some have variances.

Mr. Steek asked the purpose of the proposed structure.

Mr. Tilley explained that the proposed structure will allow for the use of the elevators in the connecting building as an alternative means to access the upper floors.

Ms. Streek clarified that the proposed structure it is just a walkway.

Mr. Tilley stated that it would be a lift and a walkway.

Mr. Austin stated that the proposed project has received design approval from HPARB but still requires BOT and PB review.

Ms. Ayres arrived at 5:24 PM.

Ms. Snell stated that since the proposed work is in a residential zone the approval process is more complex requiring additional board approvals.

Ms. Tilley asked if having the heights of the surrounding buildings is necessary.

Ms. Snell stated that the additional information would be helpful, not only for the variance request but also for the BOT as they review the use request.

A public hearing was set for Tuesday, July 7, 2015 at 5 PM or as soon thereafter as possible.

124 Main Street (Altonview Architects) – Area variance for height

Ms. Snell reviewed the application for a height variance. She stated that a three page addendum had been provided and asked the board if they had all had a chance to review the addendum.

The board concurred that they had reviewed the addendum.

Mr. Ofer stated that the clearest way to illustrate the reason for the requested variance is to provide illustrations of what is allowed by law versus what is being proposed. He provided an illustration of the front façade as proposed versus what is legally allowed as well as a model of each. Mr. Ofer explained that the law will currently allow the property owner to build up to 42 feet with an addition of a 4 foot parapet, for a total height of 46 feet. He further explained that the proposed structure is for a structure which is 47 feet in height and therefore a modest variance. Mr. Ofer stated that volume may also be of concern and that each floor, as proposed, is 8,000 square feet. He explained that if built to the height of the law, an additional 4,000 square feet would be added to each floor on the rear of the building.

Mr. Ofer stated that as an architect there is always a balancing act going on when developing a building. He explained that that financial restraints, zoning regulations, visual components, etc. all play a role in the development of a project. He explained that when Altonview Architects began to work on this project they looked at a design which would not require any variances but this proposal created a long, low, flat structure with a strip mall feel. In addition, it would require building over the parking area, inserting more columns, and other structural difficulties. The structure as proposed with variances is a more sustainable option, using less materials creating a more green, energy efficient building, and it's more compact design creates a better "feel" for Main Street. Mr. Ofer stated that he hopes that the board will grant the variances which will allow a better building to be constructed.

Ms. Drerup stated that several members of the public have indicated that no variances have been issued for height on Main Street. She stated that she is curious to know how many variance requests have been applied for in this district and how many have been denied. Ms. Drerup further stated that in considering a variance request the board must consider the specifics of the property

location. She pointed out that this property is wider than many sites and that proportionality is an issue to consider.

Mr. Ofer stated that the proposed variance is modest.

Ms. Snell stated that there are eight variances to be considered. She reviewed the eight variances from the document she provided to the members of the board and the public at the May meeting. She asked that the board review the area variance test and the answers to the test provided by Altonview Architects.

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”* and the written response provide.

Mr. Streek stated that other height requests have been denied such as the Lakefront Hotel.

Mr. Austin stated that the Lakefront hotel did not apply for a height variance. He explained that their Special Use Permit had a height restriction included as a condition by the Board of Trustee.

Mr. Sansevere pointed out that the Lakefront Hotel is not is the same zone as the proposed hotel. He further pointed out that the request from MIBH will probably have no issue being approved and yet it is in a residential zone.

Mr. Streek stated that he is concerned that granting a variance may open Pandora’s Box. He stated that if a height variance is granted it would be more difficult to deny further requests in the business district.

Ms. Snell stated that any property owner has the right to ask for a variance. She continued to state that the board must look at the specifics of each request regardless of any previous decision.

Mr. Streek stated that he also has concerns with the use of the rooftop as a “story” and the activity, noise, etc. on the roof and its effect on the neighborhood.

Mr. Sansevere stated that the rooftop use could happen without a height variance.

Ms. Snell concurred that the rooftop use could happen without a variance and stated that the use is not in the purview of the ZBA.

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”* and the written response provided.

Mr. Streek stated that the applicant has shown that there is a viable option which does not require a variance.

Ms. Snell stated that in addition to the alternative provided by the applicant, a smaller hotel could be built on the property.

Mr. Sansevere stated that they are only looking at a 5 foot variance, whether the members of the board like the proposal or the people or the type of business or any other piece of the project, it is the ZBA’s job to look at the height variance and only the height variance. He stated that he does not feel that the requested variance will have a large impact on the neighborhood. He stated that people

have made reference to the “average” building height on Main Street but an average height has not been determined. He explained that he does not think, even at the proposed height with a variance, this structure will exceed “average”.

Mr. Leo stated that the question was can the benefit be obtain through another means and the answer is simply yes it can.

Mr. Ofer stated that when the plans were developed there was snow on the ground and he did take inside measurement of several buildings to get a “height” but actual height measurements can be provided if it would help in making a decision.

Ms. Snell read question number three, “*whether the requested area variance is substantial,*” and read the written response.

Ms. Schwartzman stated that since this structure is on Main Street she feels that the variance is substantial.

Ms. Ayres stated that it has been said that people don’t look up but people do look up and that height of the building will have an impact on the streetscape.

Mr. Austin stated that the board needs to consider whether the variance is substantial for the request or Main Street as a whole.

Ms. Snell stated that she feels that the request is substantial in that it is not just for 5 feet but for 5 feet over the entire property. She continued to state that this is not a tiny component but an entire expansion of substantial size. Ms. Snell further stated that the legally allowed number of stories is 3.5 and this request if for 4 or maybe you could consider it 5 stories. She explained that this is significantly more that what is allowed and will have a large impact on intensity of use.

Ms. Schwartzman stated that the request is substantial and being on Main Street it will be seen all the time.

Ms. Snell stated that she does not feel that it is substantial as you look at the front façade or as you walk down the street but as a whole building, the request is very significant.

Ms. Schwartzman stated that the height limit is 42 feet and the height with the variance will create a large variance due to the bulk of the building.

Mr. Sansevere stated that the board should only be looking at height.

Ms. Snell stated that the board does not just review the height on the front but the all of the structures sides.

Mr. Sansevere stated that the proposed structure with the variance is substantially nicer that the structure without a variance. He stated that he feels that the ZBA should grant the variance and let the other boards do their job. He explained that if they deny the variance than the project does not have the opportunity to move forward for other decisions. He stated that the front façade will not be substantially different and in general you will not see the rear of the building.

Ms. Ayres stated that the rear neighbors will be impacted.

Mr. Sansevere stated that he has been in the rear of the buildings on Main Street and the state of the property is very poor. He stated that the Village wants to control the Tourist Accommodations throughout the Village, specifically in the residential areas. He explained that the best way to control this use throughout the Village is to provide for them in the area where you want them to be. He explained that there is no place better for Tourist Accommodations than the business district. Mr. Sansevere again stated that the ZBA only has the ability to make a decision regarding height.

Mr. Ofer stated that the proposed structure is significantly more compact and will be less objectionable, even from the rear.

Mr. Austin asked the difference in the length of the proposed building versus the building built within the height requirements.

Mr. Ofer stated that the building which meets the height requirements will protrude approximately 40 feet further into the property.

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"* and the written response.

Ms. Sansevere stated that when looking at Main Street the topography increases as you move away from 124 Main Street. He explained that this is the lowest property on Main Street and where Willow Brook flows across Main Street. He stated that due to the topography a taller building in this location would not feel as large as one located farther up Main Street.

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"* and the written response provided.

Ms. Ayres stated that Mr. Dean has indicated that at no time since the development of the zoning law, 52 years ago, has a height variance been granted for Main Street.

Mr. Austin stated that in that time there has basically been no development in the business district.

Ms. Snell stated that there have been a lot of variances granted over the 52 years.

Mr. Sansevere stated that although there are eight variances, if the first one is denied than the other variances become irrelevant.

Ms. Ayres stated that she is concerned about the number of comments regarding the feel of the neighborhood if the height variance is granted.

Mr. Sansevere asked how it will change the feel.

Ms. Ayres stated that she is not sure if she likes the shorter version better but it is a story less and does not require a height variance. She continued to state that she understands that the shorter building will decrease the available parking but when you add the stair well and other mechanicals to the proposed structure the request is substantial.

Ms. Snell agreed that she feels that the request is substantial. She explained that she feels that the site is generally overbuilt and that to build this scale of a structure a larger lot is needed. She stated that she feels that there are too many exceptions to the law with this request. She explained that not

only are there several height variances required but it includes more stories than allowed and due to the overall mass of the structure the variances are significant.

Ms. Schwartzman concurred that she feels like the proposed structure requires variances which are significant. She stated that the applicant has indicated that they need 22 suites in order to be financially viable. She continued to stated that to give any heed to "needed" number of suites she needs something more significant than the word of the property owner. Ms. Schwartzman stated that the project could be scaled down to fit within the limits of the law. She further stated that she worries about setting a precedent.

Mr. Streek stated that the project fails the area variance test on several levels. He stated that the project can be achieved by other means, it will impact the neighborhood, the request is substantial and self-created. Mr. Streek further stated that the rooftop use would be more problematic if the applicant develops the structure presented tonight that does not require any variances but that he could not in good faith approve a variance that fails the area variance test in so many ways.

Mr. Leo stated that Mr. Ofer has a great argument and that he has considered the project in great length but he has not heard any argument that is enough to compel him to vote in favor of the variance.

Mr. Sansevere stated that the law was developed giving authority to the ZBA to go around the law when appropriate. He stated that the presentation regarding the variance was very nice and informative. Mr. Sansevere stated that visually Altonview has provided the best option which requires a variance. He stated that granting a variance would allow the project to proceed to other boards who would also guide the project in ways appropriate for the Business District. Mr. Sansevere stated that he does not want to hinder growth and that he feels it is appropriate to grant the requested variances.

Ms. Ayres stated that she does not feel that the board is trying to stop growth. She stated that if the board approves the height at 47 feet or a 5 foot variance they then need an additional 5 foot height variance for the mechanicals and an additional 9' variance for the other roof-top structures.

Mr. Sansevere stated that the mechanicals will not be visible.

Mr. Austin stated that even if the ZBA grants all eight variance requests the BOT could put conditions on the use permit which would void any or all of the variances. He pointed out that if the rooftop use is denied by the BOT then most of the rooftop structures would disappear.

Mr. Leo stated that he does not feel that the ZBA should pass the buck and approve the variances and let the other boards deal with it.

Mr. Sansevere stated that he does not feel that they are passing the buck. He clarified that he feels that granting the variance would allow more leeway for the other boards to work with the project.

Mr. Austin stated that the ZBA could choose to grant only one, some or all of the proposed variances.

Ms. Snell stated that all eight variances will be acted on separately. She explained that although the eight variances are part of one proposal they each have their own characteristics.

Ms. Schwartzman made a motion to grant a height variance of 5 feet for 124 Main Street to allow a maximum height of 47 feet to the top of the walking surface which would also allow for a 4 foot parapet. Ms. Ayres seconded the motion and the following discussion was held.

Mr. Leo asked if the total height was 47 feet or if there was an additional 4 feet.

Ms. Schwartzman explained that the total height with the parapet would be 51 feet.

A vote had the following results:

AYES: Sansevere

NAYES: Ayres, Leo, Schwartzman, Snell

Motion failed.

Ms. Schwartzman made a motion to approve the rooftop railing of 5 feet around the pool for 124 Main Street. The railing is not listed in section 300-29.A as exempt from the height limitation. Mr. Sansevere seconded the motion and the following discussion was held.

Ms. Snell stated that the pool railing would be in excess of the 47 feet requested for the structure.

Ms. Schwartzman stated that the pool railing would be required.

A vote had the following results:

NAYES: Ayres, Leo, Sansevere, Schwartzman, Snell

Motion failed.

Ms. Schwartzman made a motion to approve the rooftop east stair for 124 Main Street at the proposed height of 56 feet. This stairs are not listed in section 300-29.A as exempt from the height limitation. Ms. Ayres seconded the motion and a vote had the following results:

NAYES: Ayres, Leo, Sansevere, Schwartzman, Snell

Motion failed.

Ms. Schwartzman made a motion to approve the rooftop bathrooms for 124 Main Street at the proposed height of 56 feet. The restrooms are not listed in section 300-29.A as exempt from the height limitations. Mr. Sansevere seconded the motion and a vote had the following results:

NAYES: Ayres, Leo, Sansevere, Schwartzman, Snell

Motion failed.

Ms. Schwartzman made a motion to approve the rooftop warming kitchen and pool storage for 124 Main Street at the proposed height of 56 feet. The warming kitchen and pool storage are not listed in section 300-29.A as exempt from the height limitations. Ms. Ayres seconded the motion and a vote had the following results:

NAYES: Ayres, Leo, Sansevere, Schwartzman, Snell

Motion failed.

Ms. Schwartzman made a motion to approve the rooftop bar, planters, and lighting at an unknown heights for 124 Main Street. These uses are not listed in 300-29.A as exempt from the height limitations. Mr. Leo seconded the motion and a vote had the following results:

AYES: Sansevere

NAYES: Ayres, Leo, Schwartzman, Snell

Motion failed.

