

Village of Cayuga Heights Planning Board  
Meeting #71  
Monday, April 24, 2017  
Village Hall – 7:00 pm  
Minutes

Present: Planning Board Members Chair F. Cowett, G. Gillespie, J. Milder, R. Segelken  
Attorney R. Marcus, Deputy Clerk J. Walker, Mayor L. Woodard, Trustee M. McMurry,  
Alternate E. Quaroni  
Members of the Public

Item 1 – Meeting called to order

- Chair F. Cowett opened the meeting at 7:07 pm.
- Chair F. Cowett informed Board members that Code Enforcement Officer B. Cross is absent with illness and that Trustee M. McMurry has replaced Trustee J. Marshall as the Planning Board liaison to the Board of Trustees.

Item 2 – March 27, 2017 Minutes

- The Board reviewed the minutes of the March 27, 2017 meeting.

**Motion:** G. Gillespie

**Second:** R. Segelken

**RESOLUTION No. 215**  
**APPROVING MINUTES OF MARCH 27, 2017**

**RESOLVED**, that the written, reviewed and revised minutes of the March 27, 2017 meeting are hereby approved.

**Aye votes** – Chair F. Cowett, G. Gillespie, J. Milder, R. Segelken

**Opposed** – None

Item 3 – Public Comment

- P. Bottorff, 2109 N. Triphammer Rd, asked about proposed changes in the new zoning law and whether they would adversely affect his property.
- Chair F. Cowett briefly explained the proposed changes and replied that, based on his familiarity with P. Bottorff's past concerns with zoning, he did not think they would adversely affect his property.

#### Item 4 – Planning Board Review of Zoning Revision Draft

- Chair F. Cowett reviewed for the Board the changes made to the Zoning Review Committee (ZRC) draft of the new zoning law dated 3-20-2017 based on feedback from the Board at its March meeting:
  - § 3.2. Controlling Regulation – text amended to include elements contained in § 13.2 and § 13.2 has been deleted.
  - § 3.3 Definitions added for “Easement,” “Phosphorus Fertilizer,” and “Recreational Vehicles.”
  - § 4.4 through § 4.9 have been added to deal with nonconforming uses of land, nonconforming structures, and nonconforming uses of structures.
  - § 5.3.L.1 through § 5.3.L.8 have been added to articulate provisions and conditions associated with elder cottages.
  - Article 9 Natural Resources Overlay Zone has been extensively rewritten, in particular § 9.3, § 9.4, and § 9.6. Changes include addition of § 9.3.C; in § 9.4.A reducing streamside buffers from 100 to 50 feet for perennial streams and from 50 to 20 feet for intermittent streams; in § 9.4.C.8 prohibiting the application of phosphorus fertilizer in streamside buffers pursuant to New York State Environmental Conservation Law § 17-2103; revising the first three sections of § 9.6 to make clear that disturbance of wetlands is discouraged and specifying types of regulated activities causing said disturbance; stating in § 9.6.D that site plan review is required to conduct a regulated activity in a wetland area greater than 1/10th of an acre and an associated 50 foot buffer area; and the addition of § 9.3.G which gives the Planning Board flexibility in requiring a wetland delineation.
  - § 10.5 and thereafter – references to “days” have been made specific to either calendar or business days where appropriate.
  - § 12.2 – Recreational vehicles added to scope of off-street parking.
  - Intermittent Streams Natural Resource Map. Intermittent streams are still mapped, but buffers have been deleted since their location varies in relation to the width of the streambank.
- Attorney R. Marcus stated that he had reviewed the changes referenced above and suggested several revisions:
  - Amending language in the definitions of “Easement” and “Recreational Vehicles.”
  - Amending language in § 4.8 concerning nonconforming use.
  - Consulting Bolton Point as to whether water connections between an elder cottage and a principal residence would be permitted.
  - Increasing the timeframes for terminating an elder cottage special use permit and removing an elder cottage in the event of death or permanent change of residence of an elder cottage’s original occupant or occupants.

- J. Milder suggested increasing these timeframes still further to facilitate greater flexibility.
- J. Milder recommended eliminating the 1/10th of an acre threshold in § 9.6.D since this amounted to nearly 4,400 square feet, an area sufficient for building a house.
- G. Gillespie concurred with eliminating the 1/10th of an acre threshold.
- J. Milder submitted to the Board a memo concerning short term rentals.

# memo

To: Village of Cayuga Heights Planning Board  
 From: Jeff Milder, Planning Board Member  
 Date: 4/24/17  
 Re: Zoning provisions related to short-term rentals

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The draft revised Cayuga Heights village zoning law as of 4/18/17 includes provisions limiting short-term rental of properties. Specifically, Sec. 5.3[K] limits the rental of dwelling units for periods of less than 30 days to a maximum of 15 days total annually. Sec. 5.3[I] regulates the approval of bed-and-breakfast facilities offering short-term accommodation under scenarios that meet the definition of "bed-and-breakfast."

Any regulation of short-term rentals should be designed to fulfill the stated purpose and intent of the zoning law without unduly burdening property owners or restricting economic uses of property in the village. To find the right balance, it is important to consider three different scenarios:

- 1) Rental of a primary dwelling unit (e.g., a single-family house) or an entire premises
- 2) Rental of an accessory apartment
- 3) Rental of room(s) within a dwelling unit, with or without the provision of meals

For each scenario, it is important to identify clearly the impacts or risks that any restrictions are intended to mitigate, and then to stipulate zoning provisions that would address those impacts or risks without undue restriction.

As currently written, the draft law does not fully or appropriately address each of these scenarios. As a result, certain provisions significantly disadvantage Cayuga Heights property owners without advancing a clear public purpose or good.

I therefore advise that the Planning Board develop a clear analysis and set of recommendations related to each scenario, and that the Zoning Review Committee and Board of Trustees utilize this analysis to refine the draft zoning law to better meet its objectives and protect the interests of Cayuga Heights residents with respect to the issue of short-term rentals.

Following is a preliminary analysis of each scenario to help seed additional discussion by the Planning Board.

## **Rental of a primary dwelling unit (e.g., a single-family house) or an entire premises**

**Risk or impact of concern:** A stated concern is that, without a restriction on short-term rentals, residential properties in Cayuga Heights could be bought up and turned into de-facto hotel land uses, facilitated by services such as Airbnb. There may also be a concern that short-term rentals could result in more "comings and goings."

**Analysis:** It is not realistic to expect that properties would be bought up for short-term rentals without owners' expectation of being able to rent such properties for many days of the year. Even with a high threshold limit such as 120 rental days per year, it is very unlikely that prospective buyers would see an attractive investment in purchasing a property to turn into short-term rentals for only a fraction of the year. To my knowledge, the village does not presently face a significant problem related to serial short-term rentals of primary dwelling units that would warrant tight restrictions on such rentals. A restriction of 15 rental-days per year prohibits certain short-term rental scenarios that are likely to have little or no impact

on the neighborhood but may be attractive to the property owner – for instance, a homeowner renting out their premises on one occasion, for three or four weeks, while away on vacation.

**What is the right balance?** These considerations suggest that a limit of 15 short-term rental days per year is lower than necessary to address the putative risk or impact of such rentals and therefore constitutes an undue restriction on village property owners. While it is appropriate to establish a limit, this limit should be higher.

#### Rental of an accessory apartment

**Risk or impact of concern:** Accessory apartments are allowed in the village, and may be occupied as rentals by a family or by a limited number of unrelated occupants. It is not clear that there is any incremental risk or impact associated with short-term rentals as opposed to longer-term rentals.

**Analysis:** There is no credible reason to expect that short-term renters of accessory apartments would be more impactful than long-term renters. If anything, short-term renters carry a lower risk profile: they typically pay a higher daily rate; typically move only suitcases, not furniture or other personal effects; and, if they are poorly behaved, typically can be expelled more readily without protracted process. The possibility of short-term rentals affords greater flexibility and, potentially, increased opportunities for income for property owners that have such apartments. This flexibility facilitates the ability of village property owners to “age in place” or otherwise afford to stay in their homes in the face of life changes such as losing a job, divorce, etc.

**What is the right balance?** These considerations suggest that restrictions on short-term rental of accessory apartments are not warranted and would harm village property owners by unduly restricting their utilization of accessory apartments. To the extent that short-term rentals are regulated by Sec. 5.3[K], it should be clarified that these provisions apply only to primary dwelling units or entire premises, not to accessory apartments.

#### Rental of room(s) in a dwelling unit

**Risk or impact of concern:** While there could be potential risks to neighborhood character associated with regular rental of room(s) – depending on the form, manner and scale of such rental – it is unclear to me what risks or impacts related to this scenario the ZRC intended to address. The regulatory framework in present draft contains some areas of ambiguity.

**Analysis:** My understanding of the present draft is as follows:

- Rental of rooms within a dwelling for up to two unrelated occupants – of any duration and to any extent – is permitted by Sec 5.2[A][1], unless such accommodation includes one meal in a single, per diem rate, in which case such use is regulated as a bed-and-breakfast.
- “Regular” rental of accommodations in a manner that meets the definition of bed-and-breakfast is regulated as a bed-and-breakfast. The term “regular” is not defined.
- It is not clear whether the simple act of offering accommodation on a regular basis constitutes a bed-and-breakfast, or whether the premises needs to be managed as such – for instance by having an exterior sign, business name, or website.
- It is unclear whether a B&B must offer a meal, or whether rental of rooms within a dwelling to more than two unrelated occupants without the provision of food could be permitted as part of a B&B use.

**What is the right balance?** If the above interpretation is correct, the balance seems generally reasonable in that it affords property owners some opportunity to take in renters or boarders, but not to a degree that is likely to be harmful to neighborhood character or negatively impinge on other residents. However, the language should be adjusted so that it is clear which regulations apply under any given scenarios.

- J. Milder stated that the new zoning law draft does not strike the correct balance between regulation of short term rentals and affording property owners the use of their property; short term rental of a primary residence should be treated differently than the short term rental of an accessory apartment; the three different scenarios outlined in his memo provide needed flexibility; the proposed 15 day annual limit on short term rentals is arbitrary and too stringent and does not facilitate short term rentals to scholars who may be visiting between 16 and 29 days.

- Mayor L. Woodard stated that, if a residence is rented for 14 days or less annually, its primary function is not considered by the IRS to be rental and the rental income need not be reported; if a residence is rented for 15 days or more annually, rental income must be reported to the IRS on Schedule C (Form 1040), Profit or Loss From Business; if the new zoning law contains an annual limit on short term rental days, she believes 14 days is more appropriate than 15 days since it emphasizes that the rental is not associated with commercial use.
- E. Quaroni, a member of the ZRC, stated concern about the potential impact of short term rentals on the character of her neighborhood and that too little regulation might allow an unwanted situation to develop.
- J. Milder replied that short term rentals shouldn't be considered guilty of causing problems until proven innocent; property owners deserve fair use of their property; short term renters often cause less disturbance than long term renters since they come and go with a suitcase or two rather than with moving trucks; while property owners are typically absent when entire houses are rented, they are more likely to be present when accessory apartments or bedrooms are rented; accordingly, regulation of short term rental of accessory apartments and spare bedrooms should be less stringent than rental of entire houses.
- Chair F. Cowett thanked J. Milder for breaking down short term rentals into three scenarios; doing so revealed that, while the draft of the new zoning law addresses the short term rental of dwelling units, it overlooks the short term rental of portions of dwelling units, such as bedrooms or shared bedrooms; the ZRC will revise the draft to take care of this and will also consider the comments made by the Board.
- J. Milder suggested that the Planning Board might want to make a more formal recommendation to the ZRC concerning short term rentals.
- Chair F. Cowett asked J. Milder if he was requesting the Board to pass a resolution recommending specific changes.
- Attorney R. Marcus stated that a resolution was not necessary; recommendations made by Planning Board members to the ZRC in the Board's March meeting did not require a resolution and none was required now.
- Attorney R. Marcus further stated that, with regard to the new zoning law, the Planning Board's role is purely advisory, the ZRC has been tasked with drafting the new zoning law, and the Board of Trustees had only requested the Planning Board to provide feedback to the ZRC.
- The Board proceeded to discuss an email from Board member J. Leijonhufvud who was unable to attend the meeting.

My main comments are centered on (surprise!) encouraging pedestrian-friendly design and landscaping guidelines in the commercial district. Imagining a day in which a significant structural change or redevelopment effort might be made within the commercial zone, I would like to see the zoning requirements provide greater guidance to ensure a more pedestrian friendly environment would be the outcome of such redevelopment. The required minimum set-back of 25 feet within the commercial zone is not necessarily great for encouraging a pedestrian-friendly environment, nor is limiting lot coverage to 25% and the lot size to a minimum width of 125'. I think that the goals of mitigating negative impacts to adjacent residential zones might be better met through buffer zones, versus the idea that commercial buildings need to be set back far from sidewalks, and far from each other. I fear these restrictions (in conjunction with unroofed parking lots being completely exempt from lot coverage limits) serves to encourage a continued development form of large surface parking lots and a less walkable commercial environment, which is not in line with the stated goals of the camp plan.

In short I would love to see zoning language requiring the provision of pedestrian and bicycle facilities in any development or use change within the commercial zone, some limit on surface parking lot coverage, and requirements for provision of landscaping. The latter could be in the form of requiring that some percentage of the construction budget for any project be spent on landscaping, including street trees. I believe 2% of construction budget is somewhat standard. This could be subject to a waiver from the planning board as part of site plan review if there were a case for which this would not be feasible or considered too onerous for some reason. In general I think our commercial district will most likely undergo major changes in the next 25 years, and if we want redevelopment here to be of a more walkable and inviting character we need to be specific about requiring that.

- R. Segelken stated that the existing setbacks are part of the look of the Community Corners area; he has trouble imagining the buildings situated close to the sidewalks.
- M. McMurry, a member of the ZRC, stated that a redevelopment scenario for all of Community Corners would be required to properly implement the suggestions made by J. Leijonhufvud.
- J. Milder agreed that, without an overall redevelopment scenario, any changes suggested by J. Leijonhufvud would be implemented piecemeal.
- G. Gillespie stated that many of the suggestions made by J. Leijonhufvud already fall within the purview of site plan review.
- The Board agreed not to recommend to the ZRC that any changes should be made to the new zoning law on the basis of the suggestions made by J. Leijonhufvud.

#### Item 5 – Other Business

- The next meeting of the Planning Board is scheduled for May 22, 2017.
- G. Gillespie stated that he will be unable to attend a meeting on that date.

#### Item 6 – Adjourn

- Meeting adjourned at 9:31 pm.