**Town of Brant**

**Planning Board**

**Town of Brant Board**

March 7, 2018

The Town of Brant Board, at their January 9. 2018 meeting, directed the Planning Board to research the situation regarding Transient Rental/AIRBNB. The Town Board requested the Planning Board to get input from the Town Attorney, the CEO and the public. The Town Board did not define transient rental or specify any time frame of what constitutes a transient rental.

Input from the public can only be obtained by way of a Public Hearing. The Planning Board is not empowered to convene a Public Hearing. In addition, such public input should be obtained by the Town Board, directly from the public, and not through a third party. The Planning Board meeting is an open meeting not a public hearing, no one has a right to speak, except board members unless requested to do so by the chair.

We have included for your review, various excerpts of supporting documents upon which we based our opinion.

**SOURCES FOR REVIEW**

1. Restrictions or authorizations within the zoning laws.
2. New York State authorizations or restrictions.
3. Erie County authorizations or restrictions.
4. Other municipality’s actions regarding transient rentals.
5. Local Waterfront Revitalization Program (LWRP)

**Restrictions or Authorizations within the Town of Brant Zoning Code**

Relevant sections of the Zoning Law are included in Exhibit A. Questions have been raised about short term rentals within zoning district R-2. The Town of Brant code, Section 161-15 (a-6), defines R-2 as seasonal residential. Permitted principle uses, subsection A (1) One family dwelling … This section does specify or restrict occupancy to the property owner. Section 161-4 Definitions defines a dwelling (a-2) as “a building used as the living quarters for one or more families, but not including a boardinghouse or rooming house, hotel, lodging house, motel or mobile home.” The definition is silent on transient rentals. Section 161-4 Definitions (a-3) defines a Hotel as a building operated for transient or more or less permanent occupancy by several individuals and providing dining rooms for its patrons. Section 161-4 Definitions (a-4) describes a motel as a building or group of buildings used primarily as sleeping or living quarter for transient automobile travelers and providing for accessory off-street parking but with no cooking facilities except in a restaurant or caretakers unit. The term includes auto courts, cabin courts, motor lodges, tourist courts, and similar appellations, but not trailer courts. A residence is defined in Section 161-4 (a-4) as a dwelling or building for occupancy in whole by one or more families. It does not specify property ownership. A tourist home is defined in section 1641-4 (a-5) as a dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

In Section 161-17 B (1).Commercial District (a-7, a-8) commercial is defined as Retail and general business establishments, such as but not limited to the stores etc. (H) Hotel, motel or lodging or boarding houses.

A fact that should be considered is that all of the above references to hotel, motels, etc. refer to multiple unit dwellings, available on a 365 day per year basis. None of these descriptions are concerned with the rental of a single family residence on an occasional basis.

Section 161-15 C, (2) (a-9) Special permit uses does allow campgrounds which are defined as a single parcel of land which has been planned or improved for the placement of recreational vehicles and/or tents for transient use. The inclusion of campgrounds as a transient rental could be construed as allowing transient rentals of any residence.

Section 161-4 Definitions (a-4) Nonconforming use. Lawful occupancy of a structure or land by a use or activity which was lawful prior to the adoption or amendment of this Zoning Ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption or amendment. It is my understanding that transient rentals (cottages) have been a practice in R-2 zones for a long time before the zoning ordinances were enacted. Serious consideration should be given to this matter.

A review of the Town of Brant Master Plan (Comprehensive Plan) Section 3.2, Land Use Regulations page 50, (Exhibit D) Seasonal Residential, states that one and two family dwelling as well as religious and other public uses, nursing homes and farms. **Campgrounds** and cluster residential development are allowed by special permit. It could be construed that short term rentals are allowed by special permit.

**New York State authorizations or restrictions.**

I was unable to find any legislation in NYS Town Law that addresses rental of a single family residence. I did find in New York Consolidated Laws Section 4 Definitions Exhibit B items 12 thru 14 as being multiple dwelling buildings used as a residence for a short time for a fee by numerous families.

An article in Curbed, Exhibit C states that most of the short term rentals are illegal under the ***NYS Multiple Dwelling Law***. Short term rental is defined as 30 days or less. However, it must be noted that this law applies to multiple dwelling buildings and not to a single family residence.

A New York Times October 2016 describes an ongoing lawsuit by AIRBNB against NYS alleging irreparable harm, if enforced. It is important to note that short term rentals are defined as 30 days or less.

Erie County authorizations or restrictions...

I was unable to find any provisions in Erie County Law regulating single family rentals in a seasonal residential zone. While there are regulations regarding landlord/tenant relations, all of them deal with health and safety and none deal with authorization or prohibition of rental of a single family residence.

Other municipality’s actions regarding transient rentals.

The Town of Grand Island has enacted a local law (Exhibit E 12/12) prohibiting the rental of a single family residence for transient occupancy. Transient occupancy (rental) is defined as 30 days or less.

I did speak with representatives from Erie County Environment and Planning, Town of Evans Planning Board, Town of Holland, Town of Concord, and the Town of North Collins, none of whom have had any complaints or inquiries about AIRBNB or any other short term rental agencies. The Town of Evans does require rental properties to be registered and inspected, however they did point out that enforcement is extremely difficult.

It should be noted that laws enacted by other municipalities are in no way binding on the Town of Brant.

**Local Waterfront Revitalization Program**

The Local Waterfront Revitalization Program (Exhibit F) contains a map (Exhibit F 1/8) showing the area covered by the plan which includes R-2 zone.

Page 2/8 defines a cottage as a building used for camping or seasonal occupancy. It also defines a dwelling as a building used as the living quarters for one or more families, but not including a boarding house or rooming house, hotel, lodging house, motel or mobile home.

Page 4/8, defines a hotel as a building operated for transient and more or less permanent occupancy by several individuals and providing dining rooms for its patrons. On page 5/8, the definition of a tourist home is a dwelling in which overnight accommodations are provided or offered for transient guests for compensation...

The definitions provided on pages 4 and 5 clearly indicate available lodging on a 365 day basis but do not address occasional seasonal rental of a single family residence. In addition, the definition of cottages indicates that camping is a transient rental which is allowed in R-2 zone. (See exhibit A2)

The area referred to as Lotus Bay is essentially a gated community without the benefit of security. That is, access is limited to property owners or their guests. It has a functioning Home Owners Association (HOA), although the function at this time is only to maintain the rights of way. Perhaps a solution to this complaint is to expand the role of the HOA to regulate rentals within the residents of Lotus Bay.

After careful review of the above source material it is the recommendation of the Planning Board that it is not the place of the Town Board to tell the residents what to do with their property. No codes have been broken. Transient rentals are clearly allowed with a special use permit. Transient rentals have existed in the R-2 district before any zoning laws were enacted.

As an additional consideration, New York State has legislation pending regarding AIRBNB hosts. Some of the provisions include licensing hosts and requiring payment of applicable hotel taxes.

It was also suggested that the Town Board consider holding a public hearing on this matter.

Respectfully submitted,

Joseph Ostrowski chairman