

TOWN OF ESOPUS
P.O. Box 700
Port Ewen, NY 12466
Zoning Board of Appeals
845-339-1811 ext. 125 Fax 845-331-8634

APPROVED
3/15/16

TOWN OF ESOPUS ZONING BOARD OF APPEALS
February 16th, 2016 Meeting Minutes

CALL TO ORDER: Chairperson Kathy Kiernan, called the meeting to order at 7:05p.m

PLEDGE OF ALLEGIANCE: All present stand for the Pledge.

ROLL CALL:

Chairperson: Kathy Kiernan

Board Members Present: Vic Barranca, Melanie Marino, Frank Skerritt, Karl Wick, Joe Guido

Excused: D. Wenzel

Secretary – Sheila Pratt

Guests: Miles Putman –Planning Board

P. Graham – Town Of Esopus Attorney

A. Oneto – Planning Board Secretary

Applicants: Maryanne Staccio
C. Wellsley – Old Stockade Development
Art Creek, LLC. 850 Old Post Rd., New Paltz, NY
RSS/C Cole – staff and legal representatives

MINUTES

Chairperson Kathy Kiernan asked for a motion to approve the January minutes as written, Vic B. made the motion, second by

Karl W. All members voted in favor to approve the January minutes.

VOUCHERS

Kathy asked if all had seen the voucher for secretarial work. Karl W. made a motion to approve, second by Vic B., All members vote in favor to approve the voucher for payment.

INFORMATIONAL – NO NEW APPLICATIONS

Kathy advises everyone present the three phases of the process. She then advises everyone there are no new applications for the Informational part of the hearing and the board will move on to the Public Hearing phase.

PUBLIC HEARING

02-19-16-01 Variance
564 Broadway, Ulster Park, NY

Judy Shapiro/Old Stockade Development
SBL# 63.02-3-10

Chairperson Kiernan asks if anyone from the public is present for the application of Judy Shapiro/Old Stockade Development. No responses from the public, Mr. Wesley steps forward to the microphone to address the audience as their representative and states why they are asking for the four variances. He describes the plan in detail noting 11,000 sq. Ft total, addresses time business will be open to the public, drainage of excess water,

parking area and access points to the facility. Mr. Wesley asks the public if they have any question or concerns related to the project as described, there are no responses so he then turns to the board stating he has researched the property extensively and this proposal would be the best fit for the parcel as nothing else had been proposed to his knowledge. Kathy responds that a memo was received by the Planning Board relating to this project and reads it aloud. The Planning Board has requested that the ZBA look at the scale of development for this site and requests that the plan be scaled back She then asks if the project can be scaled back, Mr. Wesley responds that they are panelized and that it could be scaled back but then it would be questionable if it would be economically feasible for Old Stockade, as the size relates to the financial return that it is based on.

Mr. Wesley continues that he has researched in depth the storm water runoff concerns for this area, it is not in a flood zone but should it be required they will be able to control this with an additional drainage system which would have to be added to the project. But at present this is not included in the planned budget.

Kathy asks if anyone from the board has any questions, Joe Guido asks why so many variances for such a small piece of property. Mr. Wesley acknowledges the board's position regarding the variances and reminds the board of his statement at last month's meeting that this was the best feasible use for this parcel given its size and location and mainly the reason it has remained vacant all these years. Joe G. asks if he has looked at the project so that this many variances wouldn't be required. Mr. Wesley responds that he had played with it for a couple of weeks and that the present proposal is the best design to accommodate Old Stockade.

Kathy asks the board if anyone else has any other questions, Joe G. states that just for the record I know I asked last month also about the office, Mr. Wesley states that the office shown is for record keeping only, not to have someone on site full time. Stephan from Old Stockade states that all rentals are done on line by credit card and reservation only through their Kingston office.

Kathy states if there are no other questions she asks for a motion to close the Public Hearing, Karl W. makes the motion, Vic B. seconds. All board members vote in favor to close the Public Hearing.

Kathy then advises them the next meeting is on March 15th and it will be the Decisional phase of the hearing. She advises them they will receive notification and Mr. Wesley adds if there are any questions that need to be answered please call him.

DECISIONAL

10-20-15-01 Zoning Interpretation
141 Prospect St., Port Ewen, NY

RSS – Representing for Christopher Cole
SBL#56.59-1-6

Chair Kathy Kiernan then advises the public we are moving on to the Decisional phase for the RSS/Cole application and that there is a statement of findings that will be read by board members and that it is quite lengthy, so the board asks for patience during the reading.

Per request of the Supervisor this section of the minutes is being submitted by the Planning Board Secretary – April Oneto.

ZONING BOARD OF APPEALS MEETING
FEBRUARY 16, 2016
ADDENDUM

DECISIONAL

APPLICANT: **Rehabilitation Support Services (RSS), Timothy J. Fogarty,
Director of Operations
c/o Freeman and Howard, PC as Agents**

**Zoning Board of Appeals Application No. 10-20-15-01
Zoning Interpretation
Christopher A. Cole – 141 Prospect St., Port Ewen
SBL# 56.59-1-6**

Kathleen Kiernan, Chairperson, stated that the Board has a Statement of Findings which will be read and asked for the audience patience since it is quite lengthy.

Melanie Morino read the Statement of Findings Page 1 – Page 3. Carl Wick read the Statement of Findings Page 4 – Page 7.

See attached Statement of Findings.

Kathleen Kiernan, Chairperson, read the **Resolution of Interpretation of the Zoning Local Law.**

Request to Reverse Determination Made by the Code Enforcement Officer on Use Classification, for a Proposed Sober Living Residence; Lands of Christopher A. Cole; s-b-1 56.059-1-6.

See attached Resolution of Interpretation of the Zoning Local Law.

JOSEPH GUIDO MADE A MOTION TO ACCEPT THE RESOLUTION AS READ SECONDED BY FRANK SKIRRITT.

The vote of the Town of Esopus Zoning Board of Appeals being as follows:

Zoning Board Chairperson Kathleen Kiernan	s
Zoning Board Member Vic Barranca	Yes
Zoning Board Member Joseph Guido	Yes
Zoning Board Member Melanie Marino	Yes
Zoning Board Member Frank Skeritt	Yes
Zoning Board Member Richard Wenzel	Absent/Recused
Zoning Board Member Karl Wick	Yes

See attached Resolution of Interpretation of the Zoning Local Law.

Board members offered the following:

Chairperson Kiernan

In the matter of interpretations, the Court of Appeals, New York State's highest court, has held that a zoning board of appeals performs a "quasi-judicial function" and, as such, should act according to its own precedent. Where there are no prior decisions to rely on, the board of appeals should attempt to determine the governing board's original intent in enacting the provision in questions. In reviewing the 1971 minutes of the Town Board of the Town of Esopus and the Notice of Adoption of Zoning Ordinance published in The Daily Freeman on May 8, 1971, the intent of the Town Board was to establish the R12 zoning district as one where "one and two family residences (are) permitted". (Helen Oberkirch, member of the Zoning Commission, – March 24, 1971 minutes page 83 in the archive book). Under Section 3.2 R-12 One and Two Family Residence District, the zoning ordinance adopted April 12, 1971 states as permitted uses, "Any use permitted in the R-40 Residence District" which in turn states as a permitted use, "One-family detached dwellings, not to exceed one dwelling on each lot." The ordinance defines the terms as follows:

Dwelling, One family – A detached building containing one dwelling unit only.

Dwelling Unit – A building or entirely self contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises and have no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other "dwelling unit."

Family – One or more persons occupying a dwelling unit as a single non-profit housekeeping unit. More than five persons, exclusive of domestic servants, not related by blood, marriage or adoption shall not be considered to constitute a family.

The proposed facility does not comply with the definitions and original intentions of the governing board. It is for this reason and those stated in the resolution that I vote in favor of upholding the determination of the code enforcement officer that the proposed structure is not a single family dwelling unit.

Vic Barraca – Board Member

Vic does not think that it is compatible in the R-12 Zoning District. It would not fit in with the neighborhood and feels that it would jeopardize the character of the neighborhood. He is in favor of the resolution and his vote is yes.

Joseph Guido – Board Member

Joe is in favor of the resolution and his decision is based upon based on the fact that there is paid help being paid by a corporation and has no real relationship with the people living there, the size and design of the building, the transient nature of the people there. He admits that some families may have some of these aspects in their house but it is the sum total of all of these that makes him feel that it is not a single family dwelling as was intended when the Zoning Ordinance was enacted.

Melanie Marino – Board Member

Melanie is in favor of the resolution. She stated that the original zoning ordinance of the Town of Esopus clearly defines family as what was read by Chairperson Kiernan, “One or more persons occupying a dwelling unit as a single non-profit housekeeping unit. More than five persons, exclusive of domestic servants, not related by blood, marriage or adoption shall not be considered to constitute a family.”

Frank Skerritt – Board Member

He votes in favor of the Resolution since it does not fit with the character of the neighborhood in any way that he can see.

Richard Wenzel – Board Member

Excused

Karl Wick – Board Member

Karl stated, “taking into consideration:

- The evidence presented by the applicant
- The evidence presented by members of the public
- The evidence presented by Myles Putman and Peter C. Graham, Esq.
- Personal research
- Statement of Findings dated February 8, 2016
- Legal definitions and other definitions of the term “family”
- Legal precedent in New York State and other States

The “Statement of Findings” is incorporated by reference.

Some of the above items are more explicitly presented below (see attached).

This Board member’s opinion is that the proposed project does NOT meet the definition of “single family” residence or dwelling.”

Carl further stated “the contention fails on a preponderance of the evidence including, but not limited to these items:

1. Definition of Family in Black's Law Dictionary.
2. Legal Memorandum LU05 NYS Department of State, General Counsel
3. City of White Plains v. Ferraioli 34 N.Y.2d 300, 357 N.Y.S. 2d 449 (1974)
4. A single housekeeping unit
5. A more or less permanent living arrangement (non transient or short term)
6. A stable, rather than transient living arrangements (except where the handicapped are affected)
7. A group headed by a household caring for a reasonable number of children
8. Size of Facility
9. Number of Participants
10. Requires a State License
11. Residents pay Rent
12. Organization wishes to be tax exempt."

Excerpts from Reference Attached

WHEREUPON, the Resolution was declared adopted by the Zoning Board of Appeals of the Town of Esopus on this 16th day of 2016.

**Kathy Kiernan, Chairperson
Town of Esopus Zoning Board of Appeals**

Resolution and Finding Statement signed, dated and initialed by Chairperson Kiernan and ZBA Clerk Oneto. Both will be presented to the Town Clerk for signature, date and time stamp and certification.

As requested, copies will be forwarded to Matthew J. Griessemer, Esq., Freeman & Howard and Timothy Fogarty, Director, Facility Services Rehabilitation Support Services Inc.

This portion of the ZBA Minutes for February 16, 2016:

Respectfully submitted by:



April Oneto
Clerk

Chair Kathy Kiernan advises the public that the board will be moving on to the Decisional phase for the next application, Mrs. Maryanne Staccio. Board member Karl Wick asks to make a statement; he has a partial interest in an adjoining property to the Staccio property and will recuse himself if Mrs. Nerone wishes.

She states she didn't hear the beginning of Mr. Wick's statement, Secretary Sheila Pratt informs her, she gives approval for him to vote, and the board moves forward.

DECISIONAL

12-15-15-01 Variance
81 Union Center Rd, Ulster Park, NY 12487

Maryanne Staccio
SBL# 63.4-1-8

Ms. Nerone her attorney; and the surveyor Mike Pattera are present to represent for Mrs. Staccio to explain their intentions for the sale of 60 acres a displays the tax map of her property. This area was previously known as the Kingston Commons. The surveyor states that he wasn't present for the previous meetings so if there are any questions the board has please direct them to him.

Kathy asks the board if they have any questions and Karl W. would like to know does it meet the slope specification of a 14% grade and the surveyor agrees that it does, that the improved width of the road is 12 feet, with sufficient turnaround area. The Surveyor continues that these lands were deeded in 1802 and are landlocked parcels; and if you read these deeds it says that "prudent with any right of way or easements which may benefit these lots," he continues "you can't have lots of this size and not expect to have development on them and as such they need access, you can't just have land locked parcels." He continues that Mr. Staccio is complying with building the road to the specifications required by the town, he has a lot of experience doing it and he hopes the board will see this and grant this variance. Karl W. asks about the Hussey Hill Road access and he states that there was an original dirt road there but one of the adjoining property owners built a garage there and negated the access possibility. Karl W. presents an example of language used in Kingston Commons Lot Boilerplate deeds to assist the board in understanding, reading aloud the second paragraph. Karl continues that this has been disputed in many court cases; the language of this exception in relation to these parcels, and he believes that Mr. Staccio has followed previous stipulations, and is doing the proper/best thing in granting the easement.

Kathy asks Karl if he would like to make the motion:

MOTION

Karl states that he will make a motion to grant a variance from: **Section 123-21 E (2) Supplementary Regulations on Area and Bulk**

E. Frontage and Access

(2) Access

No building permit shall be issued for the construction or alteration of any building upon a lot without access to a mapped street or highway as stipulated in Section 280-a of the New York State Town Law.

I make a motion to grant a variance to allow this access road from Union Center Road to the parcel in question to be approved as shown on the maps presented to this board. Joe Guido adds that the only stipulation to this decision is that this is for only one house that the driveway will have access to, and if Mr. Staccio should want to divide this property he would have to come back before the ZBA again.

Kathy asks the board if they are ready to vote, and we proceed:

MOTION: Karl Wick
SECOND: Melanie Marino

VOTE: Vic Barranca - IN FAVOR – No jeopardy of character to the neighborhood
Frank Skerritt – IN FAVOR
Melanie Marino - IN FAVOR
Joe Guido IN FAVOR
Kathy Kiernan IN FAVOR
Karl Wick IN FAVOR – Doesn't affect the character of the neighborhood.

The board votes IN FAVOR of granting the variance to the Staccio driveway application.
Ms. Nerone thanks the board on behalf of the Staccio's and departs.

Kathy asks if we have any other business, Joe reminds her of the Art Creek LLC / Victor and Laura Klimenchenko issue and she asks the board to take a moment to read the following letter:

To: ZBA of the town of Esopus
From: Laura Klimenchenko
Re: 850 Old Post Road – Art Creek LLC

Date: February 5, 2016

Dear ZBA members,

On Jan 12, 2016 ZBA held a meeting. I was told that at this meeting decision would be made on my request for variances for 850 Old Post Road. The property has 10.4 acres of land and has the status of a summer colony. It should have at least 10 acres of land and only one full time residence. We asked to give us any of 2 variances:

1. Subdivide a lot of 1.4 acres and allow a summer colony to have only 9 acres;

OR

2. Allow to build a second full time dwelling on this property without subdivision. At this meeting on Jan. 12 Mr. Miles Putman stated that the Planning Board needed to see the maps before the ZBA votes on this request. He also told that we should have started with the Planning Board, not with ZBA. It was absolutely unexpected turn of events. And this is why. When we considered a purchase of this property in the early spring of 2015 our intention was from the very beginning to have 2 families live full time at this property to be able to manage it properly. We are friends for more than 20 years and have similar interests. One family would occupy existing old farm house and the other would build a new dwelling. So to get a sense if this is possible prior to purchasing this property we have had a meeting with Mr. Tim Keefe from the Esopus Building Dept. We showed him the map by Neckles Builders with proposed house, well and septic locations.

He told us to bring this proposal to the pre-submission meeting On May 20, 2015 we had the pre-submission meeting with Mr. Mike Minor and Mr. Miles Putman. Our understanding after this meeting was that we have to get variance from ZBA first and then to discuss our plan with the Planning Board. It sounded very logical and we proceeded this way. It never was our intention to avoid the Planning Board. Then we have 3 ZBA events. On Oct 20, 2015 meeting we presented our request with engineered maps containing well, septic and house proposed locations. On Nov 17, 2015 ZBA Public Hearing was held. No one came forward from the public. We were asked to bring the signatures from members of LLC concerning permission to represent them at these meetings. On Dec 19, 2015 ZBA meeting the requested documents were presented and I was told that decision about variances would be made on the next ZBA meeting on Jan 12, 2016. Mr. Putman was present on some of these meetings and neither he nor anybody else has mentioned that we should go to the Planning Board first. This is why it was a shock and a sad surprise for me to hear it on Jan 12, 2016 at the meeting that should have produced a final decision on my request of variances. After 8 months of preparing and collecting documents and spending a lot of money to get them we are facing additional expenses to go the Planning Board without having a variance, without any assurances that if the Planning Board does in fact approve our plan the variances will be issued. Talking about subdivision Mr. Putman stated during the last meeting that previous owners applied for subdivision and that their request has been rejected many times. We are sorry if the Planning Board had a hard time with the previous owner.

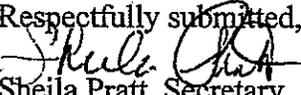
We also had a difficult time with her when purchasing the property. We can assure you that our intentions for this property have no connection to the previous owner whatsoever. Talking about building the second full time residence on this lot Mr. Putman stated that second residence has already exists. We profoundly disagree. We are talking about the one-bedroom summer cabin that was partially winterized. It shares a well and a septic with the existing full time residence. It shares the same electric meter and the same TV/Internet cable with the existing full time residence. To be wired and to have a separate electricity and TV account the cottage needs an additional pole to be installed by Hudson Central. So by no means it can be counted as a full time residence. At best it is an auxiliary apartment or a stand-alone addition to the farm house. Taking all above mentioned into consideration we ask you to reconsider your decision to send us to the Planning Board without an answer regarding our request for one of the variances. After receiving your answer we will be happy to proceed to the Planning Board and to comply with all their requests as we did with all ZBA requests. Thank you very much for your consideration.

Sincerely,
Laura and Vladimir Klimenchenko

Joe Guido advises Sheila to put them on the March ZBA calendar if they wish and send them a letter noting they are on the calendar for March and that the board will vote on the variances of the application, not on the subdivision aspect of the application, and to please update their phone number as the given contact number is no good.

Kathy asks if there is anything else, with no response she asks for a motion to adjourn, Joe makes the motion, second by Vic Barranca. All board members vote in favor to adjourn. Meeting adjourned at 9:00 pm.

Respectfully submitted,


Sheila Pratt, Secretary

Zoning Board of Appeals 2/28/2016