

TOWN OF ESOPUS
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Zoning Board of Appeals

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TOWN OF ESOPUS ZONING BOARD OF APPEALS
Minutes of the June 18, 2013 meeting

CALL TO ORDER: Acting Chairman, Joe Guido, called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Vic Barranca, Sean Fitzgerald, Joe Guido, Kathy Kiernan, Karl Wick.

Excused: Don Cole

Also present: Gloria VanVliet, Alan & Laraine Goerlick, George & Linda Wagner, Iris Kimberg, John Moser, Ray Rice, Dick Wenzel, Laura Carello, and Lydia Gershey.

Joe Guido asked permission of the Board to fill in as Chair since Don is in the hospital. Motion by Vic, second by Sean, all in favor.

MINUTES

Karl made a motion to approve the May minutes as written. Seconded by Vic. All in favor.

VOUCHERS

Vic made a motion to approve the vouchers for secretarial work and the Daily Freeman. Seconded by Sean. All in favor.

INFORMATIONAL

06-18-13-01

John & Gabrielle Berry
54 Maple Street

area variance
71.30-1-3

John Berry was present and he described his project. Applicant would like to erect a pre-fabricated 30x30 foot steel structure to replace an old 2-car garage that was demolished last year. The new building will have two garage bays. It is a small lot and applicant needs an area variance because the 900 square feet will take him over the allowable coverage (of 1181 sq. feet).

Karl asked if applicant had an existing 20x23 building and Mr. Berry replied that it was demolished October of 2012 with a demolition permit.

Joe asked the size of the proposed building – applicant replied 30x30.

Kathy asked clarification of property lines of applicant's lots. Mr. Berry owns 54 and 56 Maple Street on adjoining lots. The 54 Maple Street lot is 75x105, the smaller of the two lots.

Joe asked if applicant lived at the residence – Mr. Berry replied that he lives at 56 Maple which is next door. Mr. Berry stated that his son is currently renting the house at 54 Maple.

Applicant stated that he owns 2.5 acres in total and the houses on these two lots are about 30 feet from each other. The houses were built around the turn of the century.

Joe asked applicant to submit the distances from the houses to each other and lot lines; applicant said he can supply that tonight. Joe wondered why applicant could not do a lot line revision to accommodate the proposed structure. Mr. Berry replied that the houses are too close for a lot line adjustment. Joe asked him to bring documentation to the public hearing next month. Mr. Berry stated that the residence on 54 Maple is about 13 feet from the property line dividing it from 56 Maple and the residence on 56 Maple is also about 13 feet from that property line.

Kathy asked about the property to the east of 54 Maple Street and applicant stated that the Small's residence is significantly further (than 13 feet) and there is a driveway in between the house and the property line.

Sean asked if the proposed garage was going to be seven feet off the Small's property line. Mr. Berry replied that he understood that the (setback) was five feet from the property line and that's what he will do. Sean asked how far the previous garage was from the property line. Mr. Berry replied that he was getting further away from the lot line.

Kathy asked applicant for a picture of the building. He stated he had drawings which included elevations.

Joe stated that the July 16 meeting will be a public hearing with neighbors notified. He asked applicant to bring a map showing the neighboring lots and how close the houses are. He also asked applicant to justify why he is asking for a garage of that size. Applicant replied that the building is a standard size and that a smaller size is not made "that would be affordable for me to put in that space for that purpose." It's a steel building from Robertson's, a Canadian company.

Joe asked if Board members could visit the property and asked that applicant put stakes out showing the proposed building site. Mr. Berry agreed and asked that Board members call before coming. He is usually working from a home office. Mr. Berry will submit copies of a survey.

INFORMATIONAL

06-18-13-02

Gary & Susan VanVelson
771 Broadway

2 area variances
64.03-5-19

Gary and Susan VanVelson were present. Ms. VanVelson explained that they are proposing to convert a residence from single family to a tourist home. Variance requests are for lot depth and setback of 50 feet (from a residential lot).

Applicant stated that the house will be a tourist home. Town law does not allow a B & B because applicants live around the corner and do not intend to stay at the home. There will be no cooking on premises except for coffee in the morning.

Joe asked if the parking plan was for five spaces. Mr. VanVelson replied that there is space for a lot more, but five spots were recommended. There will be five rooms. There is room for eight or nine cars.

Kathy asked if someone will be staying there permanently. Applicants replied not at this time. Ms. VanVelson stated that they live around the corner on Esopus Avenue and they have family in the neighborhood.

Joe said, "It will be like a bed and breakfast without the food and without you being there." Ms. VanVelson said that they intend to be there, just not all the time. They live at 113 Esopus Avenue. Their sister-in-law will probably be checking people in.

Vic asked how many occupants would be there at one time. Ms. VanVelson replied that there are four bedrooms upstairs and one bedroom downstairs. Eight occupants at one time – maximum 10.

Joe asked if the parking area was to be blacktopped and applicants replied that it is item 4. They widened the driveway and blacktopped the apron. The parking area is item 4 with cement blocks in front of each space.

Joe said the Board members would visit the site and Mr. VanVelson gave his cell number as a contact number.

Ms. VanVelson stated that they have visitors scheduled to stay at the house in July and she wondered if the process could be expedited. Joe explained that the law requires the Board to hold a public hearing and that is scheduled for July 16.

Karl asked if the survey was to scale and applicants replied that they thought it was. Joe asked if the property lines were marked and applicant replied that they were. Karl asked which setbacks were off and Mr. VanVelson replied, "Parking on the left." Ms. VanVelson added that it was too close to the neighbor. Karl stated that this was the north side.

PUBLIC HEARING

04-16-13-01

Trevor Schultz
219 Hardenburgh Road

3 area variances
71.01-3-25

Joe re-opened the public hearing for Trevor Schultz.

Mr. Schultz was present and he updated the Board on the changes that he had previously submitted in writing. These changes are in response to neighbors' concerns. He has reduced the retreat parking from 28 to 8. The location will be within the 100 ft. setback so that a variance will not be required from the Zoning Board.

Another change is that traffic is taken off the ridge and will be re-routed to a main road. Mr. Schultz pointed out the route on his map of the property. A maximum of three trucks a week will need to use the ridge to access the compost area.

The variance requests for the barn reconstruction in the front yard and keeping pigs and chickens less than the required 150 feet from a property line are still needed. Applicant is asking that the 150 foot setback be reduced to 75 feet.

Joe asked Mr. Schultz to formerly rescind the variance regarding parking in writing.

Sean asked for clarification about the keeping of chickens and pigs in pens and chicken tractors. Mr. Schultz replied that they will not roam freely; they will roam within the chicken tractor that is a fenced in area. Sean stated that applicant will be moving this area around the property as food supply determines. Applicant agreed.

Joe asked that members of the public address only the two issues before the Board: keeping pigs within 75 feet of property line and the re-construction of the barn.

George Wagner, 221 and 223 Hardenburgh Road, stated that he and his family are long-time Esopus residents. He expects the Town to protect his rights. Mr. Wagner stated, "Mr. Schultz purchased the property at 219 Hardenburgh Road fully aware that it was zoned R40 residential, but he had other plans. His plans were totally self-serving with no consideration for his neighbors or the neighborhood." He would like to see the new plans with applicant's changes. He stated that chickens in mobile pens can be placed anywhere and does not guarantee that they won't be moved close to the property lines. "Seven pigs within the setback of my property line are totally unacceptable due to the proximity of my potable water supply and the threat of e-coli contamination." Mr. Wagner stated that being on a plateau with a swamp, "any heavy rain or snow melt saturates the soil and leaches down onto my property where my wells are located". He wondered who is going to monitor the number of pigs when they start reproducing. After reading the master plan of Stonewall Farms and the web sites, Mr. Wagner is now against the reconstruction of the barn because it will not be used as a barn but as the hub of a business. "Stonewall Farms is soliciting food scraps, yard waste, food, sawdust, vegetable oil, as well as

waste from commercial businesses throughout the area. Along with the pig manure, chicken manure, the bio-char (from the charcoal-producing process) . . . the finished product for sale will be a highly nutritious compost for your garden, your homestead or your farm.” He is concerned with the amount of product that will be produced. He has the same concern regarding the production of wood pellets on the farm. Mr. Wagner expressed that the logistics of the daily operations of the farm will be run out of the barn. It will be an office, a meeting hall, an eatery for the farm, social hall, conference center. He stated that there is no detailed floor plan available regarding the use of the barn or input from Ulster County Health Dept. regarding the waste, gray water and the food service business that will be done in the barn. He finished with a request to the TOE Zoning Board to reject any variances.

Karl stated that applicant has a right to have an outbuilding behind the house. He asked Mr. Wagner if there is a different area of the property that Mr. Wagner would find acceptable for the barn. Mr. Wagner stated that he has no problem with a barn – the issue is that this will be a place to do business. He said that applicant has two outbuildings already for animals, hay and storage of material. He said there is no acceptable place for this barn to be used as a distribution center of goods, the hub of the farm’s operation. He has no issue with the barn being restored in its present location to be used as a (traditional) barn. Karl said the use of the barn is a Planning Board issue.

Iris Kimberg, 191 and 193 Hardenburgh Road, has lived at this location for 37 years. She is opposed to having pigs near her property line which will be eating garbage brought close to her property line. This garbage will be composed of the composting from restaurants and other places. She has the same concern about the chickens. She owns 121 acres, pays a “small fortune to this Town in taxes”. “I’ve done a lot of upkeep to my property, as have my neighbors, and to have this 501-C tax-exempt organization come in, to me is a slap in my face.” She has no issue with restoring a barn, but not to be used as a commercial entity.

Karl asked if Ms. Kimberg had a better place for the barn on the property. She replied, “Behind the house so that it is away from (the neighbors’) front road.”

Alan Goerlick, 230 Hardenburgh Road, asked the Board how a property’s zone is changed from residential to commercial. Karl responded that there are two ways. One is a long process involving the Town Board to change zoning. The other is a use variance, a shorter process that also requires a lot of review. Mr. Goerlick asked if this has happened already in this applicant’s case.

Joe stated that Mr. Schultz is before the Planning Board for a Special Use Permit. The only issues before the Zoning Board are the location of the barn and the location of the pigs. The other issues would be covered under a Special Use Permit. He noted that the Planning Board should take into consideration what degree of commercialism will be involved with this project.

Joe stated that the Zoning Code contains certain uses that are granted by Special Use Permits from the Planning Board.

Linda Wagner, 221, 223 Hardenburgh Road, read a section from Code regarding discontinued use and noted that this property hasn't been used as a farm in many years and the barn hasn't been there. Acreage of farm land has been sold off. She doesn't understand why it is acceptable to have a barn and then use it for commercial use. She noted that the size of the proposed barn will be bigger than the original structure. She questioned the ownership of the property – barn and land possibly having different owners. She feels that farming “by right” does not exist on this property. She is against having pigs so close to her property.

Lydia Gershey, 15 Suominen Road, is concerned about how this project is being “incrementally staged in.” She noted that there are “great disparities between the two items that are being decided upon tonight and what is posted on the website, and I quote, ‘We are planning to build a historic village. We bought Stonewall Farms to build a place in the country for the Rainbow community and their allies’”. Ms. Gershey stated that she is part of the Rainbow community and she would love to see this happen, but she feels that this location is not the appropriate place. She has personal experience with farms, farm animals and contamination of wells. She stated that the animals of this farm will be “animal machines,” eating food scraps and other materials to process manure and this doesn't belong in a residential area. Ms. Gershey believes that “this is the beginning of a very dangerous process for the area . . . ecologically (and) environmentally, and it's not appropriate.” She continued that these animals will be part of an industrial chain. She thinks that the movable coop will not be effective in keeping manure run-off from reaching Black Creek, the wetlands and the neighbors' wells. She asked the Board to see what is really happening here before a decision on the variances is made. She noted that the written material that she compiled off (Stonewall Farm's) websites and submitted to the secretary contains “a three-year plan that made my hair stand up and this is the beginning of that”.

Laraine Goerlick, 230 Hardenburgh Road, asked why the Planning Board, at their last meeting, said that they were waiting for the Zoning Board's decision before they made a decision. Karl stated that the ZBA needs to hammer out details before the Planning Board can look at the entire site plan as a whole. He reiterated that there are two issues before the Zoning Board, one of which is how close the pigs can be to the property line. Joe noted that animals are allowed with certain acreage. Ms. Goerlick asked if a variance is required for Mr. Schultz to have cabins. Joe replied that a Special Use Permit is required from the Planning Board.

Joe stated that to grant a Special Use Permit the Planning Board weighs the entire situation and the effects on the neighbors that their decision will have. They can put stipulations and conditions on the Permit and/or ask the applicant to make changes to the project.

Ms. Goerlick stated the plans that are on the website, that have changed from week to week, include plans for a much larger project than what has been presented by Mr. Schultz. She said that the plans “do not seem honest and totally forthcoming.” She is not in favor of any zoning changes because she thinks the entire story is not being given.

Laura Covello, 13 Suominen Road, submitted a packet containing a printout of the two Stonewall Farms websites with information highlighted. The disc is a download of the websites as they presently exist. She submitted a letter that goes beyond the scope of the Zoning Board issues and asked that the Board read it. Ms. Covello stated that she has concerns about where the animals will be and the wetlands, the cliff and the run-off. She noted that the 150 ft. setback (for animals) was probably set by someone who knew about pigs and was set for a reason. She is concerned about shrinking the area for pigs and the water table.

Linda Wagner asked how many barns are allowed on a property. Joe said it depends on the size of the property, the size of the barns, the area coverage. Karl noted that one is allowed to cover a certain number of square feet which is a percentage of the size of the property. The number of buildings does not matter. Ms. Wagner stated that if the Board takes into consideration all of the "footprints" that are being proposed for this property, that might make a difference as to whether the variances are granted. Joe stated that each building would need a building permit and eventually the owner would get to the point where no more buildings (coverage) are permitted.

Iris Kimberg stated that the TOE Highway Dept. was on Hardenburgh Road to repair partially collapsing road. The road is compromised and she thinks this is further reason not to increase the usage of the road by allowing this project. Karl clarified that he had been on Hardenburgh, and had spoken with the Highway employees. They were replacing an old culvert that had rotted out. It was not caused by traffic.

George Wagner questioned the ownership of this property. Ilona Schultz and Catherine Paplin are listed on the original paperwork for building permit.

John Moser, 6 Willow Court, asked if anyone had been consulted about rotating the pigs. He said the longer they stay in one area, the more waste there will be. He also said he has video of the run-off coming after 2 days of previous rain coming from the back of his hill. Joe asked if Mr. Moser could make that video available to the Board. Karl will provide Mr. Moser with his e-mail address.

Lydia Gershey noted that the scope of the project, as shown on the update from the applicant, includes a wind power well. She said, "You see what's happening here." Karl stated that the Board sees what's happening but they have no power to make decisions on any of that. Ms. Gershey stated, "I, like so many people here, am under the impression that when I buy a property here and invest a lot of money in renovating that property and using it for the purpose I bought it and I improve the community and I support this community through my taxes that I am protected from something like this that starts creeping in the way this is creeping in." She asked what other recourses are available beyond (attending the meeting). Karl said she should be before the Planning Board and Ms. Gershey replied that she was. She stated that they transfer everything to the Zoning Board. Karl noted that they don't transfer anything to us – they are waiting a decision on two minor legal points, or maybe major points.

Ms. Gershey asked if an environmental impact study is required by one of the boards. Joe and Karl replied, "The Planning Board."

Joe said the ZBA is responsible, by law, for the two issues that are before us, that he understands Ms. Gershey's frustration and that this project is more commercial that the Board was led to believe. He stated that the presence of all the neighbors at the Planning Board's public hearing did have an impact on the Planning Board. They are doing more diligence than they had previously. He noted that many things are permitted in R40 and that it would be a good idea for the neighbors to look at the Zoning code.

Ms. Gershey asked if there was a process by which they could forestall the project until the community can try and change those codes. Joe replied, "After the decisions are made, you have a right to appeal it." He explained there are legal procedures to go through if they don't like the way the Board rules. Those same options are open to them with the Planning Board.

Karl stated that they cannot give legal advice, but he has seen cases where "someone asked for an injunction to immediately halt something pending resolution."

Ms. Gershey asked if the Board has seen a code altered or modified. Joe replied that the Town Board periodically reviews zoning code and goes through a process to change certain codes.

Linda Wagner stated that this is a fragile piece of property – there are national wetlands on one end and people on the other end, and a lot of water in between. She asked that pollution from the pigs and from the food they eat be considered. There was discussion on composting and odors. Karl noted that a compost should not smell or attract rodents if it is limited to vegetable matter.

Ms. Gershey noted that if food scraps are being accepted from restaurants and outside sources it would not be possible for the owners to separate the animal products for the organic matter.

Secretary read a letter submitted by Rachel Levy.

Secretary's note: Written statements by members of the public are available for review at the Zoning/Building Dept. office at Town Hall between 8 am and 3:45 pm.

Joe asked Mr. Schultz what the barn would be used for. Applicant replied that it would be a meeting space, a feeding space, a kitchen, a workshop for the retreats. It will not be used for farm animals. Joe asked how many people will be using it. Mr. Schultz replied that he has put a cap on the retreat visitors – 24 adults or 36 children and 6 adults.

Joe asked who owns the property. Mr. Schultz replied that he is the owner. He is using his middle name.

Sean asked why the barn cannot be somewhere else on the property. Mr. Schultz replied that, as an architect, he favors restoring it on the original stone walls which are still stable. He stated that

it would be a nice project of historic reconstruction to use the old foundation. He is still looking for old pictures.

Sean asked if there was other space on the property where the barn could go with its purposes. Applicant replied, "Not really with the restrictions that we have." He is opposed to clearing trees to find another space for the barn. Also the stone foundation cannot be moved, so the barn can only be restored at the original site.

Ms. Gershey questioned the historic preservation mentioned on the website and noted that the website is soliciting a donation of a barn for relocating to the site. Karl stated that the preservation is preserving the foundation and original farm location. It seems to her that "collecting recycled everything and barns under the auspices of an historic village is a stretch."

John Moser asked if the word "barn" could be changed because this structure will not be used as a barn. Joe stated that to the Board, it is just a building. Mr. Moser said "barn" implies a certain use.

Mr. Schultz clarified that regardless of the website information, he is bound by his concepts that he is submitting to the Boards. He said that when there is a final decision, he will update the websites. The sites were built in March, he does not update them weekly, and he feels bound to the material that is being exchanged. He is still looking to re-locate a historic barn to the site.

George Wagner stated that the public still doesn't know what is involved in the restoring of the barn. There have been no floor plans or drawings submitted to the building inspector. He said that it says "eatery" on the Stonewall Farm plan. Will that mean a commercial kitchen, food service, bathrooms, composting toilets, grey water? Is there Board of Health approval? He wonders how the ZBA can give permission to build a barn without the answers to these questions.

Karl stated that the building of the barn is up to the Building Inspector. The Zoning Board's only issue is its location – whether it can be closer to the street than the principal structure.

Karl made a motion to close the public hearing. Seconded by Vic. All in favor.

Karl thanked everyone for coming and voicing their opinions. He said it was good to have an active participation.

Joe asked the Board if they wanted to stay and read all of the information that has been submitted or vote next month. The consensus was to wait until next meeting for a vote.

Vic made a motion to adjourn. Sean seconded. All in favor. Meeting adjourned at 8:30 pm.

Respectfully submitted,

Joan Boris, Secretary
Zoning Board of Appeals