

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 October 21, 2014 Meeting

CALL TO ORDER: Chair, Kathy Kiernan, called the meeting to order at 7:04 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Vic Barranca, Joe Guido, Kathy Kiernan, Melanie Marino, Frank Skerritt, Dick Wenzel & Karl Wick

Also present: Michael Ankrom, Keith & Lisa Lewis, Michael Santoro, Janet Hoye, Susan Brisbois, Diane McCord, Ron Porody & Sheila Pratt

MINUTES

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

VOUCHERS

Karl made a motion to approve the voucher for secretarial work. Seconded by Frank. All in favor.

Kathy explained the three-part process of the Zoning Board of Appeals.

INFORMATIONAL

10-21-14-01

Gabriel Cicale & Kathleen Nealis
4 Russett Lane

area variance
63.04-2-35

Both applicants were present. Mr. Cicale explained that they would like construct an RV port for their mobile home. They have lived at this address for 26 years and have had 5 RV's. The last one was parked at the end of their driveway. However, this RV is too heavy to be supported by the surface of the driveway. The original plan was for a concrete pad at the end of the driveway, but that plan evolved into a carport designed for an RV on top of the concrete pad. Mr. Cicale pointed out the photo he submitted with the application. The variance is required because the carport needs to be in front of the house because of topographical issues (leach field, septic system, sloping back yard). The house is approximately 120 feet from the road. The proposed structure would be about 85 feet from the road. Applicants met with Tim Keefe, Building Inspector at the site and Tim agreed that the only option for the location of the RV port was in front, but a variance was needed. Applicants feel an attractive structure to conceal the RV is a better option than

parking the vehicle in the driveway. They are sensitive to their neighbors' opinions and received a positive written response from all but one neighbor in the subdivision. Mr. Cicale expressed some urgency because it is late in the season and they would like to expedite this process.

Joe noted that a public hearing is required by law. This will be next month and the neighbors will be notified.

Applicant asked if he could put the concrete pad down (before the variance). Joe replied that was at the discretion of the Building Inspector. Mr. Cicale stated that Tim seemed to be agreeable to this. Applicant knows that he is taking a risk, because the variance request might be denied.

Applicant explained that his plan is to place the structure as far back into the pine trees as possible and screen it off with other trees when it is in place. The structure will hardly be visible from the road.

Joe asked that applicants provide the distance from the parking area to the road, distance to the side property line, and the height of the RV port for the public hearing.

Karl noted that the height requirement is 15 feet (maximum). That is the average height between peak and gable. He stated that a cross-sectional view of the structure would be beneficial. Joe asked that applicant provide the height of sides and to the peak.

Applicant stated that the shingles will be the same as those on his house, structure will be stained the same color as the house and the same block as the existing retaining wall will be used so there will be consistency.

Joe asked for phone numbers to call if Board members want to visit site. Applicant gave his cell and business numbers.

Karl asked if there was any reason why applicant couldn't place the structure, rotated 90 degrees, at the northern boundary of the property, past the edge of the leach field. Applicants both replied that area would not be accessible.

Joe asked Mr. Cicale to stake off the area where the concrete pad will be. Applicant replied that he will have the contractor to do that.

Applicants were asked to return for the public hearing on November 18.

PUBLIC HEARING

09-16-14-01

Eli Melamud
15 Rifton Terrace

zoning interpretation
71.30-2-25.200

Applicant and his wife, Dale Schaefer were present as well as his attorney, Michael Moriello.

Mr. Moriello explained that he and his client have submitted an appeal of the Building Inspector's notice of June 19, 2014, stating that the Conditional Use Permit on the property had not been renewed and therefore applicant had to appear in front of the Planning Board for review of a new application. Mr. Moriello and applicant do not agree with this notice and that is why they are appealing to the ZBA.

Mr. Moriello gave some background on the case. The rooming house, called the Holland House, was approved in 1971 and it had nine rooms. It pre-dated zoning law in the Town of Esopus. When the Zoning Code became effective in the Town, in 1972, the Holland House was approved and received a Conditional Use Permit. One of the conditions was, "the permit would be renewed annually." He noted that it did not say that the *use* would be reviewed annually. In 1972, the permit was renewed and then 41 years went by with no renewals or reviews. In 2007, by local law #2, the Town began to issue Operating Permits for the operation of (businesses and) multi-family residences. Applicant has complied with this requirement every year since then.

Mr. Moriello stated that it is "their contention that the permit condition that was granted in 1971 is a ministerial act, meaning that there isn't any exercise of discretion – you don't have to go back to the Planning Board every year and get a re-review of your project." "That would defeat the whole purpose of getting approvals and it would basically end up in chaos – nobody could rely on any kind of approval that was granted if they had to do that."

In 1986, applicant purchased the property and was issued a building permit to add three rooms to the rooming house. According to applicant, the Building Inspector at the time, Bill Barnes, told him he had a "pre-existing use" and he only needed a building permit. The three rooms were added and the rooming house has been operating with 12 rooms ever since. There was no added square footage to the building; the rooms were added by means of interior alterations. Mr. Moriello noted that this would mean that no site plan was needed.

Mr. Moriello stated that in his submission, he has given legal reasons why he thinks that the use should be permitted to continue without review. He also provided copies of all of the legal cases that he cited in the application.

Joe asked applicant if he got a title search and a mortgage when he purchased the property. Applicant replied that he did not get a mortgage, but he got clear title through a title search.

Regarding the issue of there being less acreage now than there was (when the rooming house began operation), applicant stated that the property was always separated by the street, Rifton Terrace. "It was always physically two properties." The side of the street that contains the rooming house didn't change when the property was subdivided. He continued that the subdivision that was done before his purchase was done with the approval of the Planning Board; it was a legal subdivision. He contends that that was a perfect time for the Planning Board to bring up the fact that the Conditional Use Permit hadn't been renewed for a long time. Applicant

purchased one side of the street and the owner of the parcel across the street went on to subdivide that property again.

Joe asked if the title search came up with anything about the (Conditional Use) permit. Mr. Moriello stated that wouldn't necessarily be part of title insurance. "They may say 'multi-family' based on the assessment records."

Ron Pordy introduced himself as the attorney hired by the ZBA in this matter. He asked applicant when the subdivision took place and applicant replied, "1986". Mr. Pordy asked the original size of the lot. Consensus was that it was four acres. Mr. Pordy asked who bought the other piece; applicant replied that the owner kept that piece. Mr. Pordy asked if it was legally subdivided and if there was an application to the Planning Board for the subdivision. Applicant replied that he believes that to be true. He spoke to the Assessor about the process and his understanding is that it had to be legal because it's on the tax map.

Mr. Pordy asked if the three additional rooms were added in 1986. Applicant replied that was correct and noted that in the notes of the Planning Board at the time of the CUP, the owner told the Board that he would have approximately 14 people. Applicant added that he has never had that many people and he is approved for 18 people by the Health Department. Mr. Pordy asked how many occupants there are when the house is full. Applicant replied, "Twelve."

Joe asked if the rooming house was the yellow house on left and applicant replied that was correct.

Mike Ankrom, 59 Rifton Terrace, asked why he didn't get notification of the public hearing since Rifton Terrace is a dead end and everyone has to go past the rooming house. Joe explained that only contiguous neighbors receive written notification.

Keith Lewis, 35 Rifton Terrace, stated that the situation is not good. He wants the Board to close the boarding house. "Eli has had full use of his investment for over thirty years and he's ready to end it; He's going to sell it." Mr. Lewis feels that if the Board allows the rooming house to be passed on to another owner, the Town will have failed to follow its own rules. "Boarding houses aren't legal now and they weren't allowed in 71 – that's when the Esopus Code was published in the paper." His understanding is that the Holland House had been closed for years when 15 Rifton Terrace was sold in (197?) and therefore had lost its grandfathered rights. "For some reason it was given a Conditional Use Permit with two stated conditions: it wasn't allowed to be a commune and . . . it had to be reviewed annually." Mr. Lewis realizes that housing is a problem, but doesn't think boarding houses are the solution if they cause bigger problems. He objects to the possible buyer of the property who may turn the boarding house into a "sober house" for recovering women. "I'm afraid that we could have three floors of people with drug addiction and alcohol abuse problems in single rooms on our dead-end street." He noted that the Town could face legal costs if something was to happen and the Town hadn't followed its own rules.

Mike Santoro, 26 Rifton Terrace, addressed the Board with his concerns for the safety of his family, security of his home and its valuables. His letter is an attachment to these minutes.

Janet Hoye, 34 Rifton Terrace, has lived there with her husband for 17 years. She explained that up until lately, the neighbors and the tenants of the boarding house have lived peacefully on the street. Recently the police have been called many times at all hours of the night. She feels that her family's safety and her property value are compromised. Ms. Hoye thinks that applicant's vetting process for new tenants should be improved. The neighbors have spoken with applicant about the tenants' activities and Ms. Hoye feels that he doesn't want to be bothered with these issues. She believes they have a right to live in a safe environment.

Susan Brisbois, 23 Rifton Terrace, grew up next door to the boarding house. She remembers when it was the Holland Inn and has never felt threatened by it. While she understands the concerns of the neighbors, she feels that there are problems everywhere. She feels that better communication could "make the wrinkles go away". Ms. Brisbois related that April Paton, who lives across the street, also does not have a problem with the boarding house. She was unable to attend the meeting. Ms. Brisbois believes that the few "bad apples" that come along have to be weeded out and that has been done by Mr. Melamud. She noted that there are concerns, but she doesn't fear for her life. Regarding the neighbors' fears about what the house could become, Ms. Brisbois stated, ". . . It's about change today and it's about the community growing and helping other people, no matter what they do, whether they're drug and alcohol addicted, whether they're old and elderly – we all need a place to go." "Every problem has a solution. You can either be part of the problem or part of the solution – it's your choice." Ms. Brisbois said she hopes it remains a boarding house and that the issues get resolved.

Karl asked Ms. Brisbois how many years the house had been vacant after the Holland House closed. Her recollection was that it was not that long. She said that people would come and stay at different times. It wasn't completely empty; "There were people in and out all the time."

Mike Santoro stated that Ms. Patton told him that she thought it was closed for "a couple of years".

Mike Ankrom stated that he has lived on Rifton Terrace since 1969. When he moved there the boarding house was called the Holland Inn. He doesn't recall anyone living there until Mr. Paton bought it. It seemed to him that the tenants were college kids who would come in September and leave in May. He noted that it's been a very quiet place. It has only gotten problematic in the last few years since a new manager has taken over. There was a meeting with applicant and neighbors at which Mr. Melamud said he didn't want to be called if there were problems. He told neighbors to call the manager.

Linda Lewis, 35 Rifton Terrace, noted that things have changed from the 60's and 70's. She has lived there for 20 years and said there have been problems for the last 10-12 years. In spite of applicant's best intentions to get good people as tenants, they don't feel safe. There have been approximately 24 sheriff calls, not counting State police, in the last year and a half. "What was

once appropriate in the 1970's isn't appropriate any more." She noted that the Town of Esopus had reasons why they no longer allow boarding houses. She mentioned the dangerous intersection of Rifton Terrace and Rte. 213 with the added traffic of tenants at the boarding house. Ms. Lewis does not believe it is a safe place to have a group home or a boarding home. She stated that, at one point, there was a man and a child living in a tent on the property for more than a month. "There are safety issues, not only to people on the road, but to people at the property itself."

The letters that were sent to the Board regarding this application can be read at the Zoning/Building Dept. office at Town Hall between 8-4 Monday through Friday. Kathy noted that the police reports that were submitted by Mr. Santoro are also available.

Vic asked for clarification on how the Conditional Use Permit was transferred to applicant.

Mr. Porady replied that the permit runs with the land. When applicant bought the property, the CUP went along with it. Vic asked if the definition of a CUP could change when there is a new owner. Mr. Porady replied, "No." Joe stated, "It depends on how it's written."

Mr. Porady stated that the role of this Board is very limited. The ZBA is not an enforcement agency. It cannot close down a business. The purpose (of this application) is to interpret what the Building Inspector's notice to the property owner means within the Board's interpretation of the zoning law.

Mr. Lewis expressed confusion and frustration about the correct board that he should be addressing about his concerns. Mr. Porady stated that the Zoning Enforcement Office, Tim Keefe, is the person who enforces zoning issues. He explained that "zoning" is a set of rules enacted by the Town Board. Karl noted that if someone needs an interpretation of a zoning code or would like to do something that is not permitted by zoning ordinance, they would come to the ZBA for a determination. Mr. Lewis contends that the boarding house is operating illegally and wanted to know the ZBA's responsibility in this matter. Joe stated the board interprets zoning law. "We take case by case and determine how it falls into the rules and the laws." Mr. Lewis said, "If it's illegal, it is your responsibility. . ." Mr. Porady stated, "The responsibility of the Board is to hear appeals from applicants who have standing to make an appeal to the ZBA." He explained the two instances in which a person would come to the ZBA: seeking a variance or an interpretation. The role of the Zoning Board is very limited. It does not enforce the zoning law. He explained that one cannot just come in front of the ZBA, there has to be some basis; the basis in this case is the notice sent to the applicant regarding the Conditional Use Permit renewal.

Mr. Lewis repeated his frustration with the ZBA not taking responsibility. He wanted to know who he should talk to if the ZBA decides to allow the boarding house to continue operating. Mr. Porady reminded him that that was not what the ZBA is deciding – that is not the issue before the Board.

Neighbors repeated their previously-expressed concerns and their frustration.

Mr. Pordy explained that the Board hears and understands the concerns and takes them seriously. However, this Board has a limited role: “To listen to the applicant’s appeal with respect to the notice from the Zoning Enforcement Officer and to try to interpret the applicable provision of zoning (law) to see if the owner has to go back to the Planning Board.” “It’s a very narrow issue before this Board.” The ZBA’s decision will be either to uphold the notice from the ZEO to the applicant or not. This Board does not issue permits to run businesses and it doesn’t have the authority to close a business.

Mr. Santoro asked what a Conditional Use Permit is and why it would be set up for annual reviews if the permit could never be taken away. Mr. Pordy replied that under zoning law some uses are permitted “as of right” and no permit is required for that use. In order to build something that is not permitted “as of right”, a variance from the zoning law is required. The Conditional Use Permit is granted by the Planning Board when a use is not “as of right” and certain criteria are met, as stipulated by the Planning Board. This permit “runs with the land.”

Mr. Pordy explained that in the case before the Board, there is language about returning annually for review. Since no one is around to help interpret what the Planning Board intended when they wrote this condition, it is still unclear to Mr. Pordy and the Board. He noted that typically a Board is not allowed to impose any time limitations on a Conditional Use Permit because it is forever. He continued that “If the conditions of the permit are not met going forward, there could be an enforcement action that’s brought by the Zoning Enforcement Officer.” “That’s different than what is going on here.” He used the example of a book store with a CUP which changes its use to a bowling alley. That is clearly a violation because the use has changed. It is unclear whether there is a violation in the application before the Board, but that is not the ZBA’s role to determine. It is up to the Zoning Enforcement Officer/Building Inspector, Tim Keefe to determine violations of zoning. The ZBA is charged with responding to the appeal brought by Mr. Melamud regarding the legality of the notice informing applicant to return to the Planning Board.

Mr. Lewis asked whether the Planning Board had the right to issue the CUP. Mr. Pordy replied that they did. The issue may be whether they had the right to impose the condition of an annual review. Mr. Lewis asked if the Planning Board could take away the CUP and Mr. Pordy replied that they could not just take it away arbitrarily.

Mr. Pordy stated that the system is intended to benefit everyone. The Board is still trying to figure out this case. There are a lot of documents to be read and interpreted. All the questions cannot be answered yet.

Mr. Santoro asked if the Planning Board could change the parameters under which the CUP was issued. Mr. Pordy replied that the Planning Board can’t go back and change the conditions capriciously. If they had the right to do this, none of their determinations could be relied on by the applicant. Mr. Santoro stated that since this property was subdivided and the house was altered by adding rooms, perhaps the Building Inspector at the time made a mistake in issuing the building permit. Maybe the (boarding house) needs to be re-evaluated considering the present size of the property and the size of the house.

Mr. Pordy replied, “We haven’t had a chance to figure out what it all means.”

Joe stated, “That’s why the Board wanted legal counsel.”

Mr. Moriello stated that from a legal standpoint he agrees with almost everything that Mr. Pordy mentioned. While he understands the concerns of the people in attendance, he respectfully submits that those concerns are not relevant to the legal question that is before the Board. Those concerns are enforcement issues and police issues.

Mr. Moriello summarized that his client bought the property in 1986 with the Conditional Use Permit attached to it and has followed every rule and regulation that he was asked to follow. “With respect to renewal of the permit . . . that can’t lawfully mean to go back and require a person to go through a discretionary review every year. That’s just unlawful.” “. . . It can’t subject your use to termination.”

Joe asked Mr. Moriello what parameters he used when choosing the cases he cited. He doesn’t see the relevance in some of them. Mr. Moriello replied that one could not find a case that would be identical to the one at hand, but lawyers take cases and, through the application of case law, find “holdings” that apply to the current case. He stated that the Board would be well served by having Mr. Pordy review the cases submitted.

Mr. Moriello stated that he and his client would waive the 62-day decision requirement if the Board wanted to close the public hearing.

Joe made a motion to keep the public hearing open. Seconded by Karl. All in favor.

OTHER BUSINESS

Kathy noted that the letter received from a resident, Janice Peterson, regarding a health and safety issue with her neighbor has been resolved and, therefore, will not be read.

Karl asked Mr. Pordy, “If a Conditional Use Permit is issued with conditions and the grantee agrees to those conditions, do those conditions run with the permit as the permit runs with the land?” Mr. Pordy replied, “Yes.” He said that at issue is whether or not the Planning Board at the time had the authority to even impose that jurisdiction.

Karl asked, since the CUP was issued in 1972, has the applicant’s time to protest the conditions of the CUP run out? Mr. Pordy stated that the threshold issue is whether or not the right to impose the condition existed. “If it could be and it was, well, that’s a condition.” He thinks Mr. Moriello is correct when he says it may be ministerial in nature –that you can’t be required to keep going back to re-apply. “That is a key issue here.” He noted that the correct version of the law that was in place at the time needs to be found. He repeated the threshold issue: “Did the Planning Board at the time have the right to impose a renewal requirement and, if it did, what is the nature of it? What does the owner have to do to comply with that?” He believes there might have been some confusion at the time the CUP was issued.

Karl asked a theoretical question: “If they did not have the right to impose this condition, is there a limitation on time that someone can protest that illegal condition or has that time run out? Mr. Pordy replied that the mechanism for protesting is an Article 78. Thirty days is the usual time frame, so that time has passed.

Mr. Pordy re-iterated that he has not completed his review of the case. There are several issues and there is a lot of case law to read.

Joe asked if the Board members should go through Kathy to ask questions of Mr. Pordy. He agreed that he would prefer only one or two contacts.

Joe made a motion to adjourn the meeting. Seconded by Melanie. All in favor.

Meeting adjourned at 8:37 p.m.

Respectfully submitted,

Joan Boris, Secretary
Zoning Board of Appeals