

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 December 16, 2014 Meeting

**CALL TO ORDER:** Chair, Kathy Kiernan, called the meeting to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

Present: Vic Barranca, Joe Guido, Kathy Kiernan, Melanie Marino, Frank Skerritt

Excused: Dick Wenzel & Karl Wick

Also present: Diane McCord, Gloria Van Vliet, Tim Keefe, Ron Porody, Michael Moriello, Keith & Lisa Lewis, Mike Ankrom, Susan Brisbois. Mike Santoro

**MINUTES**

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

**VOUCHERS**

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

Kathy noted that there were no new applications.

**PUBLIC HEARING (continuation)**

09-16-14-01	Eli Melamud 15 Rifton Terrace	zoning interpretation 71.30-2-25.200
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Applicant, his wife, Dale Schaeffer, and attorney Michael Moriello were present. Kathy asked that public comment be limited to new issues that the Board has not heard before and that speakers keep their comments to 1–2 minutes. She noted that Tim Keefe, the Building Inspector, was present for the public hearing, as well as Ron Porody, attorney representing the ZBA on this case.

Applicant addressed the Board and expressed the frustration and stress that he and his wife have been feeling for months because of the public perception that they did something wrong or tried to get away with something. He read a prepared statement that is attached to these minutes. Applicant also provided for the file a copy of a letter from Marilyn Coffey, former supervisor, who states that the boarding house owned by Robert Paton “carries a grandfather zoning clause” and that she fully supports applicant’s plan to continue its operation. This letter is attached to minutes.

Applicant believes that, because of poor record-keeping in the past, there is a possibility that the original Conditional Use Permit was retracted by the Planning Board and there is no record of it or perhaps the Town did away with issuing CUP's and there is no record of that either. There was no mention of the CUP in any of the transactions applicant had with the Town over the years. Mr. Melamud said that they have lost buyers (of his property) because of this on-going issue. He and his wife have faced hostility and humiliation from Town officials and in the newspaper.

Mr. Moriello read from original Zoning Law: "The Planning Board may require Conditional Use Permits to be periodically renewed. Such renewal shall be granted following due public notice and hearing and may be withheld only upon a determination by the Planning Board to the effect that such conditions, as may have been prescribed by the Planning Board in conjunction with the issuance of the original permit, have not been met or are being no longer complied with. In such cases, a period of 60 days shall be granted the applicant to full compliance prior to the revocation of said permit."

Mr. Moriello stated, "I would submit that this section on its face buttresses my client's entire submittal because it puts an affirmative obligation on the Town of Esopus to give notice and a hearing, not my client." This was never done by the Town. He also noted that there were no conditions imposed and that the revocation clause is unconstitutional – a Planning Board cannot revoke a permit.

Applicant reiterated that he bought the property and invested a lot of money in it without knowledge of the CUP. He had faith in the Town and now he can't sell it.

Mr. Moriello stated that it is incumbent upon the Town to find other individuals that have the renewal condition on a Conditional Use Permit and make them comply also.

Applicant stated that he called Fred Zimmer of the Planning Board who said, "You can come before us and if things work out for you, we'll renew it and then you can renew it again next year and we'll keep renewing it and we'll see how it goes." That is not a condition applicant can live with. He said that he would not have bought the property knowing of this condition, and no one else will buy it now. "It's not fair to stick us with this property."

Mr. Porcy asked how this Conditional Use Permit was discovered. Secretary stated that it was as a result of a FOIL request by one of the neighbors for all Building Department and Planning Board files concerning this property.

Mr. Moriello admits that the CUP exists, but claims that his client would never have known to look for it. This does not change the fact that there was never any notice given to applicant to come in for renewal.

Joe stated that notice has been given now. Mr. Moriello said, "You can't do it now, forty some years later and nobody did it. That's not how the law works."

Applicant stated that he should have been told when he came in to get a building permit in 1986 that there was a Conditional Use Permit on the property and that it had a condition to renew each year. He was assured by all Town officials that everything was fine (with the continuation of the boarding house).

Mr. Moriello re-stated that the revocation clause is unconstitutional. He does not want to subject his client to the possibility of the Planning Board revoking the Conditional Use Permit. Planning Boards, under State law, do not have the authority to revoke permits.

Kathy asked if there was anyone with new comments from the public.

Keith Lewis stated that he is sorry for everyone's stress and that he has never said anything that he didn't believe to be 100 percent true. He noted a discrepancy about boarding houses being allowed in the Town of Esopus and read "from the website": ". . . by Zoning Law adopted in 1995 does not allow boarding houses in any zone in the Town." He said the reason they have gone through all of this is because he feels that it is "the only chance to get something that will protect us." He agrees that people cannot be controlled, but he feels that situations where people are can be controlled. He feels this is an example. "Where there is a high concentration of people, it is different and it's not held to the same standard (as a private residence)." Mr. Lewis is hoping to get some kind of reviewable permit out of this situation which allows for problems to be brought up.

Lisa Lewis stated that if currently boarding houses are not allowed in Town, there must be a reason for that. She noted that the validity of the permit is in question because she believes that there was a period of time when the house did not operate as a boarding house. She said that the boarding house could be sold as a single family residence or a duplex. She stated that the property values on the street are being affected by the crime rate and police presence.

Kathy asked how long Ms. Lewis had lived on Rifton Terrace. She replied, "20 years".

Mike Santoro stated that, since this issue has started, the number of cars in the lot is half of what is was. He doesn't know how many people are living in the house. There have been fewer incidents. He believes the case should go back to the Planning Board to re-evaluate and perhaps reduce the number of people allowed to live there. He is still concerned about his property value and his kids. He hopes that future owners will have restrictions placed (on the use of the property).

Mr. Lewis asked if boarding houses are legal now in Esopus. Mr. Poridy replied that they were not here to answer that question. He noted that this one may be legal.

Applicant stated that this house has been operating continuously as a boarding house since 1972. Mr. Moriello said that there is no evidence that the use was ever discontinued. He stated, "The same laws that protect my client and his use of an approved conditional use under the Zoning law, protect everybody in this room from having a bunch of neighbors come in and say, 'In your residential house, there's too much traffic or your kids had a party and the kids got drunk.'

‘It shouldn’t be a house any more; it should be a barn’.” He added that the law protects the use of property. This is not the forum for arguing property values - that is irrelevant here. It is a Town Board issue. “This Board can’t be used, in my opinion, should not be used, politically in that manner, to respond to people that are complaining about things that are the Town Board’s responsibility to address.”

Ms. Lewis stated that April Paton has told neighbors that the boarding house was completely shut down before Mr. Melamud bought it. Applicant responded that this was before the use permit.

Mr. Moriello asked for verification that Tim Keefe, the Building Inspector did not say anything on the record. Tim replied that was correct.

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

Kathy stated that the Board would not make a decision tonight. Mr. Pordy said they were hoping for a decision by January 20, but he noted that technically the Board has until February 17, which is 62 days from the close of the public hearing.

#### **OTHER BUSINESS**

Kathy asked Board members if anyone was interested in taking over the Chair position since her one-year term expires December 31. Members expressed their wishes that Kathy continue as chair. Secretary will send Town Board a memo stating that the Board has appointed Kathy as Chair for another one-year term.

**Joe made a motion to adjourn the meeting in order to confer with counsel. Seconded by Vic. All in favor.**

Meeting adjourned at 7:35 pm.

Respectfully submitted,

Joan Boris, Secretary  
Zoning Board of Appeals