

**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***

TOWN OF ESOPUS ZONING BOARD OF APPEALS  
December 15th, 2015 Meeting Minutes

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

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

Chairperson: Kathy Kiernan

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

Sheila Pratt – Secretary

Present: D. McCord, Town Board Member, members of the Public

Applicants: Christopher Cole/RSS- Albany, NY representing 141 Prospect Street, Port Ewen, NY  
Art Creek, LLC. 850 Old Post Rd., New Paltz, NY  
Maryanne Staccio, 81 Union Center Rd., Ulster Park, NY

**MINUTES**

Chair Kathy Kiernan asked for a motion to approve the November minutes as written; Karl Wick motions to approve, Vic Barranca seconds, all members vote in favor. Joe Guido asks that the corrections for the October minutes will be addressed at the January 19<sup>th</sup> meeting and asks for a motion to wait on approval; Vic seconds the motion, all board members vote in favor.

**VOUCHERS- Secretarial duties- 26.5 hours Nov 18 -Dec 15, 2015**

Kathy asked if all had seen the voucher for secretarial work. Joe Guido made a motion to approve, seconded by Dick Wenzel. All members vote in favor to approve the voucher for payment.

**INFORMATIONAL**

12-15-15-01 Zoning Variance

Maryanne Staccio

81 Union Center Rd., Ulster Park, NY 12487

SBL# 63.4-1-8

Chairperson Kathy Kiernan advises audience there are three parts to the meeting, the first being the Informational portion and asks the applicant, Mrs. Staccio to step forward. She steps forward with her attorney to answer any questions the board may have. Her attorney advises the board that she would like to sell a 60 acre parcel that adjoins her 45 acre parcel. This parcel does not have frontage on a town road so they are requesting a variance for access from Union Center Road to the parcel. The parcel has a buyer wishing to build a single family home.

Kathy then asks the attorney to show the board members on the map provided where the parcel is and the adjoining Staccio lot. All members gather to review the map. Dick asks how they access it now, Mrs. Staccio replies that they cross her driveway and the attorney continues to describe the variance request. Joe Guido states we would need a better map with all descriptions listed to be clear.

Her attorney states that the properties have been surveyed. Kathy asks how the utilities will reach the new parcel and the attorney states via Mrs. Staccio's driveway. There would be a common driveway easement maintenance agreement and access for utilities upon conveyance of the acreage. Kathy states that it appears to be a "flag lot" to which the attorney agrees.

Kathy asks the board if they have any questions, Joe Guido and Dick Wenzel reply that better maps are needed with specific boundaries notated. Karl asks if they were originally part of the Kingston Commons. Miles then steps forward because he recalled this coming before the ZBA previously in 1994, (he will check his records for exact date) requesting a subdivision and reviews that information with the board. Kathy advises Mrs. Staccio that the board will need new maps prior to the January 19<sup>th</sup> meeting and Mrs. Staccio and her attorney thank the board and depart.

Kathy advises the audience that we will be moving forward with the continuation of Public Hearing. The first case on the agenda is the following:

### **PUBLIC HEARING**

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

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

Zoning Interpretation for Christopher Cole, 141 Prospect St., Port Ewen, NY. She advises that we are accepting written comments only that will be made available within the next week at the Town Clerk's office for review. A neighbor; Kristy Nelson specifically requested that her letter be read into the minute's which the secretary will now read. Sheila then begins to read the following letter:

Dear Holly, Joan, and ZBA members,

I am forwarding this email to Holly and Joan in hopes that they can get it to the ZBA members for Tuesday's meeting so it can be read into the minutes for the Cole/RSS public hearing and be taken into consideration.

Unfortunately, due to a prior commitment, I cannot attend the meeting.

As a life-time citizen of the Town of Esopus, who was raised in the neighborhood surrounding the property on Prospect Street in Port Ewen which is being considered for a 7,300 sq. ft. 16 bed facility, I would like to express my concerns against this facility.

This area has always been a residential neighborhood that was developed in the early 50's. My parents built their home on Horton Lane, which connects to Prospect St., in 1954 because it was safe, family friendly, residential neighborhood where they could raise a family, live their lives, and retire They still reside in this house.

Is it fair to generations of families of Esopus citizens from this neighborhood, and there are many, to now be put in a position where their property will be devalued and possibly their safety endangered. Will these homeowners, many of whom are on fixed incomes, now have to consider spending money on alarm systems, cameras, etc. to protect themselves and their property? Not to mention, the construction disruptions and increased traffic to this residential area if this proposal is granted. Prospect Street is a very narrow street and this property is just after or before, depending which way you are coming from, a large curve in the street. How will the refuse incurred at this facility be handled in this residential neighborhood? Will there be dumpsters? Won't constructing such a big facility with infrastructure and parking affect the drainage of the area to the surrounding properties?

I realize the property owner is trying to make some money, but how would he like a facility of this type by his home. I am sure his father would not have voted for a facility of this type when he was a member of the ZBA. This also brings up the question of what is next for the large acreage of surrounding properties that is still owned by the Cole family - Other facilities of this nature or additions to this proposal? Will the ZBA be setting a precedent for things to come in this neighborhood if this proposal is granted?

This neighborhood has always been zoned residential. It's in the heart of the hamlet of Port Ewen. It does not seem to me that a "7,300 sq. ft. facility" is residential? I also own a 2 acre residential parcel of property in the Town of Esopus. Would the Town and my neighbors have an issue if I put in 12-16 parking spaces on my property? I betting this would not be allowed under the zoning code.

I also do not agree with RSS's attorney stating that the facility is classified as a one-family residential structure. This seems to be stretching it. How many one-family residences in the Town of Esopus house 16 individuals?

In this day and age, with the economy like it is, there must be many other Ulster County properties in non-residential areas available for sale that would better fit this facility.

Thank you for your consideration

KRISTY L. NELSON  
PO BOX 926  
172 Lindorf Street  
Port Ewen, NY 12466

The letter was read into the minutes and will be listed on the Exhibit sheet along with other letters received during the day on December 15th, prior to the meeting. Kathy then reads aloud the letters received by the Town Clerk's office and presented for the Cole application. They are as follows:

Fred Rogers	Rodger Brandt
Jamie L. Rodgers	Stephen Hudler
James Lamb Sr.	Michael Last name not legible– 167 Prospect St.
Jacqueline Marks	Lisa Colon
Timothy Scoffield	Laura Petit
Patrick Ward	Nicole Petit & family
Robert Karlsbarch	Zachary Petit
Scott Craig	Walter Gilman
Shawn Brandt	Evelyn Gilman
Gia Rowan	Nicole Downey
William & Cynthia Haber	Rebecca Dunne
Michelle Higgins	Alan Craig
Peter Graham, Esquire	
Mile Putman	

These letters will be available for public review upon request in the Town Clerk's office. Kathy then asks if anyone has a comment that was not previously presented to the board at the December meeting.

Mrs. Cynthia Haber steps forward to share comments from a letter she received Assemblyman Kevin Cahill; "After speaking with Dr. Carol Smith, Commissioner of the U.C. Dept. of Health, I have learned that the department is opposed to locating the facility at 141 Prospect Street because it will conflict with local zoning laws. So I just wanted to submit my letter with opposition along with my husband Bill's. Thank you."

Chair Kathy Kiernan again asks if there is any other public comment, Mr. Freeman stands acknowledges the board to speak.

Mr. Freeman asks about a memorandum of law that was submitted as an exhibit which he didn't receive a copy noted on his list of exhibits, so he just wanted to be sure it was received and marked, Kathy asks the secretary if the document received and she states that it was and displays the copy. He also states that the smaller site plans will be submitted at this meeting and distributes them to the board. He then begins his

comments. “I also just wanted to address for the board’s benefit a couple of the comments that were raised last time; to make sure that we are in fact focused the issue at hand and not some extraneous issues which have been brought up in the context of this process and as you know the single issue the board is being asked to address is whether or not the Building Department in making their determination; in reversing themselves essentially, committed error; and one of the primary focuses of comments of the public and the issue before this board represents what in fact a “family” is and there have been a number of statements made by the member of the public that they do not feel that what’s proposed is in fact a “family” and I want to point out to the board that this town’s code; the Town of Esopus’ Zoning Code; does not define the “family”; and so without a specific definition of what “family” is; the interpretations of other codes who have attempted to restrict the definition of family become very pertinent to what this board should consider in terms of making their determination. Back in 1978, one of the codes in another town near here tried to restrict the definition of family to exclude aunts, uncles, and grandparents and the Supreme Court of the United States struck that down and said; “You cannot do that; an extended family is no different than members of an immediate family living together.” The next step in that process came in 1974 when another town tried to again restrict what the definition of “family” is; and in so doing; tried to hold that four people unrelated or more were not in fact a “family” living in a residence together; and the challenge to that statute came when there were ten unrelated foster children living with a mother and father and two natural children; there were fourteen people living in the house; ten of which were unrelated; and the Court of Appeals, New York’s highest court; said “the town in trying to limit the number of people in the residence, the number of unrelated people in a residence; has established an unconstitutional restriction on what a “family” is, the court held that this family fourteen people, living together only four of which were related was the functional equivalent of a family.” Four years later another group home setting; New York’s highest court again, so this goes back to 1978; a similar challenge; seven emotionally disturbed and four related people, eleven people living in the house; another challenge to a code also trying to limit what the definition of family is and the court struck down the code again as unconstitutional. Then in Oyster Bay in 1985;”

Chair Kathy Kiernan interjects “Mr. Freeman I’m sorry to interrupt, are these cases that we already have in the application?”

Mr. Freeman responds “No not all of them, no these are additional cases, these are specifically related to the definition of family and so that is why I am just trying to provide you with that backdrop. We addressed some of this but not all of this in our memo and I just wanted to make sure that the board was fully familiar with this; I mean at the end of the day, in the Oxford House case which is in fact in our brief (page 8 second par.), they found a facility and community residence substantially similar to the one that we are proposing to be a functional equivalent of a family. And it was a facility specifically for purposes of having community residents be those suffering and recovering from drug and alcohol substance abuse. And so again getting back to your definition of “dwelling house” it does in fact constitute “one family including any domestic staff employed on premise” and based on the case law interpreting what a functional equivalent of a “family” is, coupled with the fact that this town has no code; which limits in a manner what a family can be; coupled with your definition of what a “dwelling unit” is in fact which includes domestic staff employed on premise. It’s our position that we are in fact a “single family residence” community residence, which will be operated in the functional equivalent of a family. Thank you.”

Joe Guido asks “Do you have a copy of the law suits you stated?”

Mr. Freeman, “Yes I do and I will hand that in as an exhibit.” He then approaches the table and submits a copy of “Memorandum of Law in support of application for Zoning Interpretation” to the secretary and it is marked received.

Stacie Hudler approaches the front table to sign in to speak and then approaches the mike disagreeing with Mr. Freeman's statements regarding the foster children family case he quoted. She states "first of all foster would be somewhat of a family because they are taking care of these children; second of all they were in the process of adopting them and ended up adopting them all so that has absolutely no bearing. And please do your research on what he said because some of the stuff that he just said is not right." Ms. Hudler then sits down.

Michelle Higgins then approaches the table to sign in. "Hi, I'd just like the board to consider that we have so many properties that are off the books and not paying taxes to the town far more than so many other towns and villages in the area. The other thing is that I live on New Salem Road very close to the Hommell House and over the last fifteen years we've had a tremendous variety of people who are in a rehabilitation stage either drug, alcohol, mental illness, and some of them very severely mentally ill and it's not unusual to see someone walking in your back yard that you don't know, or there was a fellow died because he had wandered off and died of exposure, constant police presence, shouting and yelling late hours of the night; and really just to illustrate that if there is no supervision, no owner occupation it can be very, very, disruptive to the community no matter how much we want to see people rehabilitated the fact of the matter is if there is no supervision it's not benefiting them and it's certainly disruptive to our lives. Thank you."

Tami Urban then approaches to sign the list and speak. "Hi, I'm Tami Urban and I live on Hasbrouck Avenue and I have a few things that I would like to add that I have not heard addressed. As you're aware we have 13 units, 9 units at the end of our road that are handicap accessible and when that came in I was opposed to that, I still am. Here are some of the reasons: My quiet home; you're welcome to come sit on the front porch, around 4:00, between 4 & 7, and watch the steady flow of back and forth traffic on my quiet dead end. At 4:00 am you can come and hear the dumpster be unloaded, whether or not that's the time you have to wake up or not. You'll also hear many taxis up and down, because they're not driving themselves. You're going to hear food delivery, and let's admit the Domino's guy doesn't drive a great car with a very awesome muffler."

Board member Joe Guido then advises Mrs. Urban to address the board not the audience.

"Address the board sorry, fire and ambulance will be down the street often. The street is narrow and sometimes it's a problem for the fire truck or rescue, to come back and forth down our narrow street. You may have to go out to and move your car off the street so they can get through. It happens. It will change the neighborhood, it will change it. It will be like living in the city not the quiet neighborhood you are used to. Thank you."

Tony Urban steps to the table to sign in and speak. "My name is Tony Urban, I'm Tami's husband. The only thing I would have to say that if you look at the definition in the Zoning regulations of "dwelling unit" and single dwelling unit it seems to address this situation with a pretty clear statement that this would not be a dwelling unit in that respect and that's all I have to say."

Chair Kathy Kiernan "Thank you. Is there something that was not mentioned?"

Nicole Petit approaches the sign in sheet and then begins speaking at the microphone; "My name is Nicole Petit and I live at 143 Prospect Street, and I did speak last week and I submitted another written statement so I won't waste anybody's time with repetition. I wanted to point out that Mr. Freeman's examples of a family have absolutely no bearing like Mrs. Hudler said on what we're doing here today. The examples of the family that he gave were still permanent situations. Foster care that led to adoption, the Oxford House which was a permanent situation. Last month when we spoke and the month before that at the Informational Session regarding the length of residency at the house they are proposing; the facility

they are proposing; was from six to nine, five to eight or four to seven months. That by definition is not permanent, that's a very temporary situation; it's transitional at the very best and our law, our zoning law for the Town of Esopus says that social services both the way they are describing and; "social services not elsewhere classified; or other services not elsewhere classified are not permanent in an R-12 neighborhood." And it's all referred to by document, thank you. She then approaches the desk to submit her documents.

Mr. Haber approaches the table and signs in. "Bill Haber, one thing that was addressed last week or last meeting and I think Mr. Freeman may have mentioned that each of these individuals would pay rent, and if that's the case I was wondering if each one of these individuals are they going to have a contract or a lease with the house, or who do they pay? Ok who they pay, if they are a lease, then they are 16 individual families they are not one. I rent houses; I have a family of five living in my house. I don't go to the son "You owe me rent", or the daughter "you owe me rent", the individual family of five gives me one check, that's a family. Now if these are 16 individual people giving rent, then that is 16 different families and I'd like to know how that is set up, do they have a contract? Does each of them have a lease? If they do then they are not a family, its one individual as a family itself. I think at that you have got it and say its 16 different families it's not a single family residence, thank you."

Chair Kathy Kiernan : "Okay other letters received, Rebecca Dunn, I have no idea, can't read this name, Rachel Jacob, Jennifer Meyer, Robert Karlsbarch I believe we had before, Alan Petit Jr., Zachary Petit, Jennifer Meyer I believe, and Gia Rowan.

Kathy asks the board "Do I have a motion to close the Public Hearing?"

Member Vic Barranca "I'll make a motion."

Kathy "Do I have a second?"

Member Joe Guido, "I'll second."

Chair Kathy Kiernan "All in favor?"

**All board members vote in favor to close the Public Hearing.**

Kathy, "So the Public Hearing for the Christopher Cole – RSS Interpretation is closed, and we'll move on to the next part of the hearing."

Member Joe Guido advises the audience, "At the Decisional meeting we can ask questions but we won't take comment unless we want it from the public, I just want to make everyone aware of that. The other thing I'd like to make you aware of is this is not a variance; this is for the interpretation of what is the definition of "family" basically; and does our zoning give us enough to say that it is or is not a single family dwelling. A lot of the facts that you brought up are all interesting but many of them, how much people make and stuff like that pertaining to it really doesn't have anything to do with this case."

Chair to Joe Guido, "Okay?" Joe responds yes. "So we'll move on to the next part of the Public Hearing for Art Creek LLC."

The audience leaves and Mr. Freeman approaches the desk to confirm the next month's date.

Chair Kathy Kiernan "Excuse me; before you leave I just wanted to bring up one thing and I'm not sure if you want to stay for this or not, but when we get to the "Other Business" part of our meeting we do have to go through the record to make sure that all of us have the same paperwork to make sure that we all have the same thing."

Mr. Freeman responds, "Okay, thank you."

## **PUBLIC HEARING**

10-20-15-02

ART CREEK, LLC. /

Variance – Section 123-13L - Subdivision of Lot - Laura & Vladimir Klimenchenko

Variance Section -123-11A - Construction of second single family dwelling

850 Old Post Rd., New Paltz, NY

SBL#71.02-1-05.100

**ART CREEK, LLC.** – Kathy apologizes to the applicants and asks them to come forward.

Joe asks if all board members have copies of the new requests to what the variances are.”

Karl asks when they were issued, and states that he doesn't. Sheila then leaves to make copies of these documents. Mrs. Klimenchenko advises that these are the latest copies of the prints. All members move closer to view the print.

Miles Putman then approaches the front desk to view the prints and discuss with Joe Guido about the previous owners request. Miles, Joe and Kathy review the apartments listed.

Kathy asks where the two houses are located again and why Bungalow #1 listed this way if it is actually an art studio and never is intending for it to be an apartment. She states it will not be an apartment.

Dick Wenzel asks about the county response regarding the driveway and using the existing drive.

Joe asks “What was the alternate plan?” Mrs. Klimenchenko responds, “The alternate was not to subdivide and to ask for a variance for a second dwelling.”

Dick asks if the water and sewer have been approved, she responds that they have had the engineer draw prints proposing the septic and well, do we have to have approval on that plan though before we can vote on it?”

Miles Putman responds that it would be a Planning Board review and decision.

Joe asks for clarification on the setbacks, and if the art studio could be moved. She responds that they're old bungalows and she's not sure they would survive. Kathy and Joe ask for clarification on the bungalows as to which is seasonal or year round occupants; and that they are not being rented. She responds anyone using the bungalows is from the Art Creek LLC group only.

Kathy asks the board members if they have anything else, no members have any questions. She apologizes and advises Mrs. Klimenchenko that she needs to return on January 19<sup>th</sup> for the final phase of the hearing; and that she'll receive a letter regarding this. Joe and Kathy both advise her that the board will be making a decision that night on the application. She thanks the board and departs.

**Joe Guido makes a motion to close the Public Hearing. Second by Dick. All vote in favor to close the hearing.**

## **OTHER BUSINESS**

Chair Kathy Kiernan states that we received a SEQRA Notice of Intent; for the Planning Board to serve as lead agency, this is on the Tapper property. Joe and Kathy review and read through the document, Kathy asks if any member has any objection to the Planning Board being the lead agency, no one objects.

**Joe then makes a motion for the Planning Board to serve as lead agency on the SEQRA Notice for the Tapper parcel, second by Dick. All members vote in favor.**

Kathy signs off on the document to forward to the Planning Board.

Kathy asks Mr. Freeman to stay so that the board can review the documents in the file and those that had been received at this meeting to assert that all members have the same materials. The secretary then goes to retrieve the original file from the Building Department.

Please refer to the included excel spreadsheet for the list of documents submitted for this case.

**Kathy asks for a motion to adjourn. Vic Barranca makes a motion, Frank Skerritt seconds it. All board members vote in favor to adjourn.**

Meeting adjourned at 9:05 pm and the next meeting is at 7:00 pm on January 19th, 2016.

Respectfully submitted,

Sheila Pratt, Secretary  
Zoning Board of Appeals 1/15/2016