

ESOPUS ZONING BOARD OF APPEALS

February 20, 2024
Town Hall, 284 Broadway
Port Ewen, New York 12466

Present: Chairman Karl Wick, Gloria VanVliet, Jim Tomassetti, Katie Zahedi, and Guy Brought

Excused: Mike Pittner

Also present: Town Board Liaison Kathy Quick, CEO Mark Jaffee and Dillon Harris, Esq.

Chairman Wick called the meeting to Order with the Pledge of Allegiance at 7:00 p.m.

Roll call was taken and a quorum was confirmed. Chairman Wick noted that there was a vacancy on the ZBA and encouraged members from the public to apply.

Minutes – Upon Motion of Chairman Wick, seconded by Member Zahedi, the Minutes of December 2023 were approved as amended by a vote of 5-0-1.

Voucher – Upon Motion of Chairman Wick, seconded by Member VanVliet, the voucher for the December 2023 services of Teresa Bakner, Esq. was approved by a vote of 5-0-1.

Chairman Wick provided an explanation of the ZBA process for the benefit of the public. He noted that the ZBA would not be making a decision on the application currently before the Board and there was a lot of information to consider as well as taking into account comments made at the Public Hearing.

INFORMATIONAL:

The Planning Board had made a referral to the ZBA to formulate a definition of “ridgeline” and there would be a public hearing in approximately thirty days.

PUBLIC HEARING:

Joe Hill – Mr. Hill provided personal background history noting that he was a longtime family resident. He stated that there were two definitional issues – “seasonal” which didn’t mean year-round and “summer” which was not considered by anyone in the northern hemisphere as November through January. Mr. Hill was not anti-business, nor development but he was against people coming to the area trying to “put one over.” Chairman Wick interjected to recommend the speaker to stay on topic. Mr. Hill stated that he knew of no precedent that defined the terms in his experience.

Toni Brewer – Longtime resident that supported the Karabec’s application. Ms. Brewer agreed with previous comments of Mr. Hill relative to seasonal. Ms. Brewer found that the Code Enforcement Officer’s determination did not make sense to her. She provided timeframes for the seasons taken from her research of parks in New York State. (Written comment provided for the record and distributed to the Members).

Lisa Jacobs (Brian Jacobs) – Read public comment letter into the record on behalf of herself and her husband. (Written comment submitted for the record, would be copied and distributed to all Members). Chairman Wick noted that “season” and “seasonal” may not be synonymous.

Jenna Ice – Supported the Karabec’s position and read letter in support which included a photograph of a “seasonal limited use highway” sign that had been taken in the Town of Esopus. Written comment was submitted for the record.

Elizabeth Stanzione-Doreo – Read written comment and submitted for record. Ms. Stanzione-Doreo stated that if the use was allowed year-round, vehicle lights would shine into her livingroom. Chairman Wick noted that would be a matter to address with the Planning Board.

Richard Ferri (Patricia Ferri) – Read statement (submitted and on record in the ZBA file). Chairman Wick noted that the job before the ZBA was to define the term “seasonal.” The definitions that had been provided did not define “seasonal.”

John Cappello, Esq. – Present on behalf of the property owners (Castlemore Holdings). Attorney Cappello stated there were three (3) principles that applied:

- 1) Deference be given to the code enforcement officer that made the determination and who works with the Code daily;
- 2) Determine what was the legal and legislative intent of the Town Board when the law was adopted, and;
- 3) ZBA was required to resolve any ambiguity in the Law in favor of the property owner whose rights were being affected.

Attorney Cappello read correspondence from Matt Rogers of LaBella Associates who had reviewed and drafted the Esopus Town Code revisions. “Tourist cabin” and “summer cottage” debate is not justified and has no bearing on the application which is a “tourist cabin.” Attorney Cappello provided his argument supporting his opinion.

Chairman Wick requested that a copy of Matt Rogers’ correspondence be provided for the record.

Tom Hermance - Supported the Karabecs. Mr. Hermance read definitions from the Miriam Webster dictionary for “year-round” and “seasonal.”

Attorney Harris noted to the ZBA that the correspondence of Matt Rogers was included as “Exhibit 7” of the January 15, 2024 letter.

Duane North – Read written comment (on file and made part of the ZBA record). Chairman Wick reiterated that issues raised were issues reviewed by the Planning Board.

Tony Marmo – Mr. Marmo recommended that the pending application be measured against the Town’s Comprehensive Plan and the existing Zoning regulations written by Matt Rogers and requested that the review be objective.

Kenneth Stenger, Esq. – Attorney representing the Karabecs. Attorney Stenger felt constrained to address Attorney Cappello’s comments and proceeded to do so. Attorney Stenger provided his opinions (not to be construed as legal advice), noting several times that the ZBA was a quasi-judicial Board. Attorney Stenger noted the correspondence for Matt Rogers and questioned the lack of signature and not addressed to the ZBA. Attorney Stenger stated that there was no ambiguity in the Code (but possibly the definition of “summer”). Attorney Stenger requested that the ZBA review the Memorandum of Law he had prepared on December 5, 2023. Reference was made to the referral response received by the Planning Board from the Ulster County Planning Board and an excerpt relative to a comment was read by Attorney Stenger.

Chairman Wick noted that the UCPB did not weigh in on ZBA interpretations and recommended that Members research information relative to any other precedents. Member Tomassetti suggested the Members review the Hutton Brick Yard development (and comments of the UCPB).

Bradley Borquist – Supported tourism in Ulster County. Meaning of “seasonal” to him, meant operation could be year-round for an eight-month maximum period and not consecutive.

Megan Bianco (Director of Community Engagement of Ulster Strong) – Spoke in support of the project. The use proposed is “as of right” and was supported by the determination of the CEO. The project would add substantial value to the Town while minimizing impacts. It was her opinion that the ambiguity in the law must be decided in favor of the Applicant.

Nathaniel Rahov – Weekend resident of the Town. Countered Attorney Cappello’s view that terms were not equivalent and were grouped together in the Code. Mr. Rahov read portions of §1233-13D(2).

Janeta Barton Middleton – Ms. Middleton was a business advisor speaking in support of the project. Ms. Middleton felt the applicants had adhered over and above what was required. Stated the Code indicated that there could be eight consecutive months of occupancy and the applicant had put parameters in place to restrict and regulate occupancy. Chairman Wick stated her opinion was respected but not relative to the matter before the ZBA.

Matt Towne, P.E. – The definition didn’t have specific time frames listed in the Code. The use was deemed seasonal and the special use regulations indicated “.....no more than 8 consecutive months.” The use had been confirmed by the Town’s CEO and a single unit could not be occupied by the same person or group for more than eight months to prevent people from living there for more than eight months. The Engineer contended that it was his opinion that the eight-month occupancy went with the occupant, not the site.

Derek Leung – Mr. Leung was the Applicant and stated that the previous 2012 Code did not include “8 consecutive months” and the spirit of the law was to prevent development such as that which occurred at Mirror Lake. The Code now supported occupancy restrictions which would prevent year-round occupancy.

John Capello, Esq. – Revisited the current Code and read excerpts, stating the eight-month occupancy of a unit was consistent with the email from the individual that had written the Code. Chairman Wick directed the Board to review in context. Year-round availability was the objective.

Kenneth Stenger, Esq. – Wanted to note for the record that the Hutton Brickyard development was in a commercial zone and the proposed development in Esopus was in an R-40 zone and comparison was “apples and oranges.”

Jenna Ice – Supported Attorney Stenger’s position that the projects were not the same and comparison to Hutton Brickyard was not the same.

Nathaniel Rahov – Concerned with enforcement of the occupancy and the managements’ capability to enforce.

CEO Mark Jaffee – Cautioned that what was before the ZBA was an interpretation only and should not be site specific. The Planning Board could determine what the seasons were under its review of the Special Use Permit. Cautioned that the determination could affect other sites and projects within the Town. CEO Jaffee stated that the Planning Board would determine the requirements of the operation and when/what seasons that operation could take place. Discussion ensued and CEO Jaffee confirmed that the ZBA was making a decision relative to the definition of “season.”

Lorine Karabec – Referenced section 123-61 and read excerpt of terms defined.

Jess Hicks – Inquired if there were other neighborhoods that allowed this use, noting that the Zoning had been amended in 2019.

Derek Leung – Wished to emphasize that the New York State Appellate Courts have ruled in favor of the Applicant when an ambiguity exists. Chairman Wick stated that that the comment should be directed to the Planning Board.

Aaron Jacobs – Inquired if seasonal was associated with “family,” would it be upon the Town to track the seasonal use. Chairman Wick remarked that it was something to be considered when making a determination – what does seasonal refer to – a particular cabin, a particular complex or particular individual.

Tom Baron – Occupancy versus term limits was the discussion.

Upon Motion of Chairman Wick, seconded by Member Tomassetti and all voting in favor, the Public Hearing was closed by a vote of 5-0-1 at 8:52 p.m.

Upon Motion of Member Zahedi, seconded by Member Tomassetti and all in favor (Member Brought had temporarily left the room), the meeting was adjourned by a vote of 4-0-2 at 8:58 p.m.

Respectfully submitted,

Lisa K. Mance

Dated: March 6, 2024

Approved: March 19, 2024