

**ZONING BOARD OF APPEALS MEETING
MAY 16, 2017**

PRESENT: Kathy Kiernan, Chairperson
Joseph Guido
Frank Skeritt
Karl Wick
Vic Barranca
Glen Kubista

Chairperson Kiernan called the meeting of the Town of Esopus Zoning Board of Appeals to order at 7:00 p.m. beginning with the Pledge of Allegiance to the Flag.

Chairperson Kiernan asked the Board if everyone read the minutes of the April 18, 2017 meeting and if there were any changes. There were no changes.

GLENN MADE A MOTION TO APPROVE THE APRIL 16, 2017 MEETING MINUTES, SECONDED BY VIC. ALL MEMBERS WERE IN FAVOR.

VOUCHERS:

April Oneto (secretarial services).....9 1/2 hours

GLENN MADE A MOTION TO PAY THE VOUCHER AS SUBMITTED, SECONDED BY KARL. ALL MEMBERS WERE IN FAVOR.

Chairperson Kiernan explained that there are three parts to the process. There is the informational portion, public hearing and decisional.

INFORMATIONAL:

**05-16-17-01 Harry & Gina VanVliet
(Gilpatric-VanVliet Funeral Home)
339 Broadway, Ulster Park, NY 12487
SBL: 56.76-2-33
Area Variance**

Applicant Harry VanVliet was present for this meeting. Chairperson Kiernan asked Harry to tell the Board for the record what he is requesting.

Harry stated that he is looking to put a gazebo in the front on the property of the funeral home. It would be located approximately 50-60 feet from Broadway and 15 feet from the boundary line. He wants to enhance the property and give a place for grieving families to

get away out of the funeral home. He has no space in the back of the funeral home because of parking for business is premium. He thinks that it would look nice in the front. He is looking at a high quality gazebo. He is looking at a vinyl octagon design 10-12 feet. Harry stated that he did contact his neighbors and they think it is a good idea.

Joe asked if there was a variance on this property already. Harry was not aware of it and he went before the Planning Board prior to opening the business. Harry submitted pictures of the gazebo that he is looking at.

Applicant was informed that there will be a Public Hearing for this at the next ZBA Meeting which will be held on June 20, 2017 beginning at 7:00 PM.

PUBLIC HEARING:

**04-18-17-01 Mark Repasky
11 Pendergast Pt. Rd.
Rifton, NY 12471
SBL: 63.17-2-9
Area Variance**

Applicant, Mark Repasky, was present.

Mark was asked by Chairperson Kiernan to repeat for the record what he is requesting.

Mark stated that he is here to request that a zoning variance be approved for a replacement porch and for the top balcony structure to be approved. He submitted the survey that was completed today and pictures of changes done to the porch that would bring it up to code. There are barriers 3 inches apart and he took the ladder down so there is no access to the upper balcony. Mark stated that the survey he received said that the boundary line is now one foot further away from his property. The distance from the new porch to the boundary line is a little bit further.

Kathy stated that a 20 foot side is required and applicant can only provide 7 feet but now he can provide 8 feet. Kathy stated that if/when we make the variance we need to know specifically what we are granting. Board reviewed the survey submitted. Kathy stated that the only variance that applicant is requesting is for the distance between the deck and the property line.

Mark stated that it is really an entrance way replacement for the cement porch that was there previously and the difference between the previous porch and the wooden porch that is there now is 5 inches. Mark stated that this also a fire exit from the back of the house. It provides access to the back yard. The previous cement porch faced the other way and ran into the bilco doors and the oil tank and could block your exit. This is a better layout.

Glen pointed out the one foot intrusion out from the deck on the porch level. Mark stated that it is a bench that sticking out and he will be removing that. Mark stated that with the new survey he has gained one foot. Karl stated that the neighbor lost 6 inches but gained 6 inches of setback.

GLEN MADE A MOTION TO OPEN THE PUBLIC HEARING FOR REPASKY, CASE #04-18-17-01, AREA VARIANCE, SECONDED BY VIC. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 6-0.

Chairperson Kiernan asked if any one would like to speak and if they would come forward and give their name and address to the secretary.

Ron Porly, attorney for the adjacent property owner, Frank Basile, 159 Green St., Kingston, NY. He stated that he just received some of the papers yesterday and has not had an opportunity to totally review them. He understands that the survey was just given to this Board today. He would like to ask that the Public Hearing be left open until June 20th so that he can look at the site plan and submit comments.

Mr. Porly stated that regardless of whatever the Building Department issues are in terms of legalizing the work being done without a Building Permit this is really about whether the area variance should be granted to the applicant. He submitted a copy of the code and in order to grant the area variance the applicant has to satisfy the balancing test that is in the Town Code. He stated that in listening to the applicant the first questions is whether or not this is a detriment to the nearby properties and they are going to make a case that there is a detriment. This is a multi story deck that overlooks the backyard of his client and there is a substantial infringement of 13 feet. He knows that there is a little dispute between the surveyors. Applicant used Brooks and Brooks and his client used Brinnier and Larios and there is a dispute over a few inches. In the big picture, this is almost irrelevant and this might be just a private boundary dispute between two property owners. These structures were built without a building permit and he thinks that the Board should always be reluctant to reward an applicant for doing something illegal. This has had a negative impact on the neighborhood. This is a very active property. It is rented out as an Air BNB during the course of the last three years.

He is asking that the Board take this applicant very seriously. He knows that area variances are somewhat routine, however, this one has some issues. He would like an opportunity to submit a written memo and they will come back on June 20th for a further discussion.

Joe asked what side his client's home was on. Ron stated that if you are facing the applicant's house his client is on the right side. Ron stated that the road is a private road and that his client owns the road. All the other property owners along this road only have access pursuant to a right-of-way. This is of some import because the other property owners are not allowed to park on the road. The road is only for access to their properties. With this large deck and all the extra activity that results from the way the property is being used it has a very negative impact on the community and on his client

who is at the end of the dead end road. His access to his property is blocked. He has to deal with the noise the elimination of his privacy with the deck.

He again requested that the Public Hearing be left open and stated that he will submit something days in advance of the next meeting on the 20th of June.

Glen asked if his client objected to the deck and the porch. Ron stated that he has not seen the site plan so it is not completely clear what the application is for. He knows that it is a two story deck. He will get into more detail once he has a chance to come in and look at the site plan. Joe asked if his client has been to his property. Ron stated that he lives right next door. Joe felt that he knows what it is because he lives right next door and the work has already been done.

Ron stated that what they are saying is that the Zoning Board needed to approve or disapprove the application prior to the work being done. He stated that his client has no control over what an individual does with his property. He stated that they can come and state their case with the Zoning Board or the Planning Board or take other legal action that is appropriate but it is not up to them to decide or make a determination to grant a variance. He hopes that the Board will take this case very seriously and deny the application. This is the goal.

Kathy stated that the Board will consider his request to hold the Public Hearing open until next month. Kathy asked if there was anyone else who would like to speak.

Katie Scarlet Rigby – 9 Pendergast Point Rd., Rifton

She lives right next door to Mr. Rapasky. She wants to make a short public statement and present the Board with (7) seven letters from neighbors in the area that have examined Mark's property and approve of the changes he has made. Documents submitted and made part of the record.

Katie stated that she previously submitted a letter on 3/3/17 to the Building Department and the Zoning Board which is part of the record. As a summary to that letter, she stated that Mark's exterior improvements to his home were made some years ago. She is curious as to why they are now an issue. She stated that with the late reporting by Frank Basile you must factor in the fact that Frank has many other complaints about Mark along with complaints about other neighbors and this has been the case for years. Katie stated that she does not think that there is one neighbor in the area that Frank has not had a problem with. Mark purchased his property from Frank in 2006. She stated that Mark pays his taxes and has the right to live and enjoy his property within the law. She stated that this is not how it is living next to Frank. Frank feels that he has the right to interfere with any of the neighbors along Pendergast Point Rd. and Sturgeon Pond and truly it has been that way since she purchased her property in 2001. Her goal in stepping forward is to stop Frank's attempts to control the lives in their community and to help a good neighbor, Mark, who has only ever beautified his property. She would like the Board to keep in mind that the small lots on Pendergast Point Rd. were subdivided in 1926 and this

is before the Esopus Town Code even existed. Thus the properties are pre-existing non-conforming. Mark's replacement back porch was originally legally permitted because of prior use. She contacted 13 neighbors and she has 7 neighbors' signature. One neighbor added a hand written note. The side entry way built over the previously decaying dangerous concrete back porch and the added level exterior side balcony are home improvements that are attractive, in style with the homes in the community and make Mark's property more valuable and it makes all their properties more valuable.

Joe asked Katie where her house was located. She stated that her house is 18 feet from Mark's property. His house is 5 feet from the property line because of the 1926 subdivision. Joe asked if she has a side entrance on her house. She stated that she has a concrete back porch. She stated that her house was built first in 1927 and the other houses were built in the 1930's. They were little bungalows that were only supposed to be used a summer cottages and then people moved in and winterized them. The first four houses pretty much have the same layout and plans. Frank's house was built in 1978 on a larger lot with the road included in it. She said that her side porch is about 2 feet if that from the property line and it has been there for a long time.

Mr. Porady asked the Board to disregard attacks on individuals that are expressed. He stated that this is about the law. When you build something you are supposed to get building permits. If there is a setback infringement, you are supposed to get an area variance before you start construction. This is what this case is all about. It is about whether or not an area variance should be granted based on the statutory criteria.

Dr. Paul Llobet – 1765 State Route 213, Rifton

He stated that Mr. Porady made a comment about the disruption of the community. He did not hear what the disruption was or if he was just speculating. Mr. Porady stated that under the statute it deals with detriment to nearby properties created by the granting of this variance.

Dr. Holly Llobet – 1765 State Route 213, Rifton

She lives in this neighborhood and they live on the lake. She stated that her house looks directly at both of the houses (Mark Repasky and Frank Basile). In looking at the aesthetic perspective, the back of Mark's house and the porch is no where near obscuring the beauty of the property. Her house looks at both of their houses. She said when the small porch and deck went up it is small and she barely noticed it. She feels that it is not ugly and that it only enhances the value of his property and hers as well. She has lived in her house for 3 ½ years and it was built in 1920. She stated that as far as it being an Air BNB she is shocked because she did not know this. Her house looks right on this house. She has not seen a lot of people in and out and there is not a lot of noise. She does not see what this has to do with anything. She definitely does not find it a detriment. She finds it an improvement. It is a very small neighborhood and the houses are very close together. She stated that she has lived here 3 ½ years and has been terrorized by this neighbor for the entire time. He has made false accusations against them. He complained that her dog barks incessantly which it does not. She is there part time and has had the dog catcher come to her house with complaints during times when they are

not even there. This has happened on multiple occasions. She heard that he has told other neighbors that he intends to force them to choose between their dogs and their homes. He has said that he does not want us to be on his lake. She stated that on a side note, Mr. Basile stated that he has more money than the rest of the neighbors and he will tie them up with lawyers and litigations and out win them all. She finds this incredibly offensive. She spoke to the neighbors all around her house and asked them if her dogs are barking while she is at work. They all said that they never hear her dogs barking. She states that she does feel terrorized by this person.

Kathy asked her to show the board where her house is. She said that it is like a "U" and she lives directly across from all of the houses on the other side. She is directly across from Repasky's house and Basile's house.

Karl asked about the details on the map that shows woods and shrubbery. He asked if it was woods or shrubbery and how tall it was. Mark stated that it is shrubbery and they vary. There are some tall trees and some medium height shrubs. It is lush in the summer and in the winter it thins out. Karl asked if that impeded his view of the lake. Mark stated that it does not but the two story garage that Mr. Basile built impedes his view of the lake.

Mark stated that the variance is new to him. He wanted to address the accusation that it is a multi-story deck. He is thinking that the top balcony is an abutment and the code says he does not need a variance for this and it is sticking out 4 feet. He is looking at the wooden entry way porch as a replacement porch for the cement porch that was there previously so they are not multi story.

Mark stated that he gets upset about Mr. Basile saying that he is noisy and it is loud because he is hardly ever there. He states that he comes there Friday, Saturday and Sunday and it is like his sleep away laundry camp. He comes there to rest and relax. He hardly has any visitors. He states that he receives constant barrage of complaints and negativity from Frank. For 8 years he has taken it and it is getting to be too much. In regard to the Air BNB, Frank made accusations at a Town Meeting. Mark stated that he had 12 visitors last summer. He stated that most of his guests are vetted by Air BNB and they are also vetted by him. They come to enjoy the great outdoor, the lake and hiking in the beautiful parks.

Kathy asked how the Board felt about keeping the Public Hearing open. Joe stated that we almost have to because we have not had time to read the material submitted tonight. Karl stated that he is not thrilled about waiting to retain an attorney until the day before the hearing and the attorney has not had the time to read the file. However, in all fairness we do need to give the counselor some time to review the file. Joe stated that we did not receive the survey until tonight and need time to review that and the other material submitted this evening.

Mark stated that he has to take time off to come to the meetings and extending the Public Hearing is a hardship for him. Mark stated that if he is not available to his clients it becomes detrimental to his financial security.

Someone in the audience asked what additional information the Board hopes to see in the next month. Kathy stated that we have not been able to read the letters submitted so the Board does need the opportunity to go over the material. She stated that the Board does not have the time to review the material this evening because we have another Public Hearing aft this one.

VIC MADE A MOTION TO EXTEND THE PUBLIC HEARING UNTIL JUNE 20, 2017 FOR CASE #04-18-17-01, MARK REPASKY, AREA VARIANCE, SECONDED BY FRANK. ALLL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 6-0.

Mark requested to be excused if he has to be at work and cannot attend that meeting. Kathy said that the Board understands this. Kathy asked if he has anybody who could attend in his place. Mark stated that if he cannot be here he will send someone in his place.

Joe questioned Mr. Pordy about when we will receive his comments. He stated several days prior to the meeting. He was told that the material has to be mailed to the Board members. The deadline date is June 6th. He asked if he could have until June 10th. He was told that anything received after June 10th will not be accepted.

Joe questioned if the house at the end of Pendergast Point Rd. had a variance granted a number of years back. Secretary will check the ZBA files and get back to the Board.

PUBLIC HEARING:

**04-18-17-02 Gary & Else Quist
62 Poptown Rd.
Esopus, NY 12429
SBL: 71.02-2-09
Area Variance**

Applicant Gary Quist was present for this meeting. Kathy stated that it does not look like there is anybody from the public regarding this application.

Gary was asked to explain what they are requesting. He stated that his wife and he are applying for an area variance so they may build a two bedroom, two bathroom house on their property that has an existing house. The variance is for an accessory apartment that is in excess of the 800 sq. foot.

Joe questioned the phone numbers given to the Board. He visited the house and wanted to know what the red flags were on the property. Gary stated that they were for the sanitary system that will be going there. Joe questioned him about the possible restriction regarding no further subdivision. Joe questioned if that property was already restricted for no subdivision. Gary stated not that he is aware of. Joe said that he thought that he saw paperwork from our consultant that there was a restriction on it. Karl thought the same thing. Gary stated that he has 17 acres.

Mr. Quist stated that he was before the Planning Board for a pre-submission meeting in the past. Following some discussion Mr. Quist stated that he would not have a problem with a restriction on the property for no further subdivision. Joe stated that the Building Department was concerned that in the future he might want to knock the smaller house down and make it a larger house so Joe felt that we needed to put something in the motion stated that if there were any changes to the buildings he would have to come back before the Board.

Gary submitted some photos of other properties in his area that have two properties on one lot. Kathy stated that there is nobody from the public here. She had two phone calls from neighbors and she told them what the applicant was planning on doing and they were fine with it.

KARL MADE A MOTION TO CLOSE THE PUBLIC HEARING FOR QUIST, CASE #04-18-17-02, ARE VARAINCE, SECONDED BY VIC. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 6-0.

DECISIONAL:

**04-18-17-03 Gary & Else Quist
62 Popletown Rd.
Esopus, NY 12429
SBL: 71.02-2-09
Area Variance**

KARL MADE A MOTION TO GRANT A VARIANCE TO SECTION 123-11G (3) OF THE TOWN CODE TO ALLOW THE CURRENT DWELLING OF 933 SQUARE FEET TO BE A LEGAL ACCESSORY APARTMENT FOR THIS PROPERTY AND SHOULD THE PROPERTY EVER BECOME SUBDIVIDED EACH DWELLING MUST HAVE A MINIMUM PARCEL SIZE OF 2 ACRES, SECONDED BY FRANK.

Glen.....yes

Joe.....yes

If it is every subdivided it will be at least 2 acres and that should be sufficient for a single family dwelling.

Kathy.....yes

She does not think that 933 sq. ft. is that much more than 800 sq. ft.

Karl.....yes

He thinks that this is a reasonable solution for this property. The variance is only for 15.4% and he does not think that it is a detriment to the neighborhood or that it changes the character of the neighborhood.

Vic.....yes

He approves for all of the reasons mention.

Frank.....yes

MOTION PASSED WITH A VOTE OF 6-0.

GLEN MADE A MOTION TO ADJOURN, SECONDED BY FRANK. ALL MEMBERS WERE IN FAVOR. MEETING ADJOURNED AT 8:09 PM.

NEXT ZBA MEETING: JUNE 20, 2017

SUBMISSION DEADLINE: JUNE 6, 2017

Respectfully submitted by:

April Oneto
Zoning Board of Appeals Clerk