

ESOPUS ZONING BOARD OF APPEALS

Date: July 16, 2024
1 Town Hall Way
Ulster Park, New York

PRESENT: Karl Wick, Chairman
Jim Tomassetti
Katie Zahedi
Guy Brought
Kathy Kiernan
Mike Pittner
Jim Tomassetti

ALSO PRESENT: Councilperson Kathy Quick
CEO Mark Jaffee
PB Member Chris Marta

EXCUSED: Gloria VanVliet

Chairman Karl Wick called the meeting to order with the Pledge of Allegiance to the Flag at 7:05 p.m. Roll call confirmed that a quorum was present.

Chairman Wick explained the ZBA review process.

INFORMATIONAL

No items.

PUBLIC HEARING

CEO Request for Interpretation – Definition of structures – CEO Mark Jaffee had previously provided documentation and the Town Code did have a “structural” definition. For the purpose of the Town Code, “structure” was anything above the ground. Catch basins, culverts, etc. required specific setbacks and if they were considered structures, it would be difficult to meet the setbacks. Signs and fences were defined in the Town Code which specified setbacks. For the purpose of the Town Code, structures were above ground and not anything below the subsurface including detention ponds, storm drainage culverts and septic systems. Septic systems had codes dictated by the Health Department.

Chairman Wick read the definitions from the Esopus Town Code, Planner’s Dictionary from Arizona, California, Illinois, and Maryland which all specified “on the ground.” Chairman Wick provided legal (dictionary) definitions found which he felt were vague. He would share items from his research with Members. The ZBA would review to discuss whether the Town’s definition should be amended or that it was already defined. The Public was called upon to provide comments relative to the definition of “structure” practically should be for the purposes of Town Law.

Jenna Ice – Provided result from her research from the 2020 NYS Building Code, Chapter 2 which defined a structure as that “which was built or constructed” and she felt a retention pond would qualify.

Chairman Wick noted that given that definition, would eyeglasses then be considered a structure.

Attorney Kenneth Stenger – Deferred comment until presentation was given with respect to actual design and locations of an applicant particular to a specific site which would provide concrete definitions against which to measure. Chairman Wick suggested the use of “constructions” or “improvements” rather than structures until a definition had been decided.

Attorney James Horan – With respect to “structure” there were many broader definitions including a general definition stating anything having a location on the ground and could include mailbox posts, fence and lampposts. The Esopus Code definition is not as broad and included items more targeted to a “building” which would include a roof and walls and seemed to omit items that were erected on the ground. He stated as pointed out by the Building Inspector, the definition of “structure” implied that it was something erected on the ground, not laid upon the ground. Driveways, roadways, and underground utilities would not be considered structures, as well as septic systems. With respect to drainage (culverts), under New York Highway Law, any drainage associated with a highway was considered to be part of a highway. For the purpose of clarification, Chairman Wick inquired if the State defined a highway as a publicly owned and did not include private roads. Attorney Horan confirmed and stated that private roads were not included. Attorney Horan added that driveways were covered in Zoning Codes separately, as well as signs and fences which had specific provisions within the Codes to establish setbacks.

Clarifying for the benefit of the public, Chairman Wick stated that setbacks were not based solely on roads, but also property lines.

Rich Ferry – Felt the zoning was being over-read and read an excerpt from the Code. Mr. Ferry struck similarities between in- ground swimming pools and parking lots, which had no profile and the Zoning Board should consider parking lots as a structure. Setbacks were necessary for to protect adjacent neighbors and the 100’ foot setback provided for the enjoyment of properties.

Matt Towne, P.E. – Reiterated statements of CEO Jaffee and stated that he had never professionally experienced a pond or septic system in another municipal Zoning Code being classified as a structure. Stormwater management facilities (ponds) were not structures but rather practices. The confusion may lay in that there was an engineered outlet that sits inside of a pond (essentially a catch basin) and in the engineering industry, it is called an outlet-controlled structure. Typical septic systems are 10’ from property lines.

Chapter 80 of the Town Code Flood Prevention stated that structures and buildings were one and the same so the question was, were flood regulations applicable to septic systems or pond

Chairman Wick requested clarification regarding the proposed stormwater management and sewage septic within 100’ of the boundary line to which Engineer Towne responded both were proposed within 100’.

Attorney Kenneth Stenger – Asking that the purpose of the Code be considered and what it is accomplishing with regard to the Karabec’s application. Attorney Stenger referenced his July 2, 2024 letter which stated a definition gives meaning to the purpose of the statute. Attorney Stenger read a portion of §123-13D(3)(a). Copies of the map of the Castlemore Holdings site plan were provided to the Members (previously provided to the ZBA via email). Attorney Stenger had circled the proposed improvements that were located within 100’ of the property lines. Discussion ensued with regard to the location of a path which resulted in Attorney Stenger inferring that the Agent for the Castlemore application may be a client of Member Tomassetti. CEO Jaffee asked if the argument was in support of a definition or if it was an appeal of the project. Member Tomassetti stated he did not know the Agent for the project, that Attorney Stenger was out of order and that he retract his statement. Chairman Wick informed Attorney Stenger that his argument was under the Planning Board prevue and the ZBA was discussing the CEO’s request for a determination of the definition of “structure.”

Attorney Horan – With respect to §123-13(b), the list talks about structures, buildings, parking lots (areas) and recreation facilities. By definition, parking lots are not a structure and by the fact that parking is listed, it strikes it off the list of what can be a structure. Septic systems are under the jurisdiction of the County Health Department which had its own regulations for setbacks and is beyond the purview of the Zoning Code.

Tony Brewer – The US EPA describes septic systems as an “underground wastewater treatment structure....” Her concern was that the project proposal was not for a single-family septic system and the safety of the neighbors was a concern. Her opinion was that septic systems should be considered as structures.

Joan Burroughs – Trails were structures and recreational facilities.

David Krueger – Opined that septic systems were structure given the use of tanks.

Lynn Hammerle – Supported comment of Tony Brewer. Certain home insurance policies will cover septic systems as long as the policy has coverage for other structures.

Attorney Horan – Inquired if the request for an interpretation of structure to be used as a definition without the Code or was to be specifically how structure was applied to Chapter 123. Chairman Wick stated that the definition was the purpose to apply to Chapter 123.

Chairperson Wick called for a motion to close the Public Hearing for the CEO’s request for interpretation of structure. Upon Motion of Member Brought, seconded by Member Pitter and the affirmative vote of 6 members, the negative vote of 0 members, the abstention of 0 member and 1 member being absent, the Motion was carried by the following vote:

Member:	Vote
Karl Wick, Chairman	Aye
Guy Brought	Aye
Gloria Van Vliet	Absent

Katie Zahedi	Aye
James Tomassetti	Aye
Mike Pittner	Aye
Kathy Kiernan	Aye

The Public Hearing was closed at 8:48 p.m.

Attorney Kenneth Stenger request for determination of “structure” –

Attorney Stenger had made requests to the CEO for a determination as to whether the use were permitted to exist as a right within the 100’ setbacks. Attorney Stenger was making application to the ZBA for the determination. Attorney Stenger referenced the map and noted the walking path which was within 100’ of the Karabec’s property. Mr. Stenger pointed out the proposed maintenance building which he stated was also within 100’ of the property line.

Engineer Towne stated that the map being used by Attorney Stenger was not to scale and the setbacks he was referencing were not correct. Chairman Wick requested a full-size map to scale which was provided by Engineer Towne.

Attorney Horan stated for the record that the maps that had been provided indicated the setbacks. Attorney Stenger agreed to take issue of the maintenance building and sauna off the table but not the walking path. Attorney Horan agreed to consider the walking trail a recreational facility and was willing to engage with the Planning Board as to whether it needed to be relocated, removed or required an area variance. The walking trail was pre-existing.

Attorney Stenger had prepared a chart of structures (improvements) with dimensions he distributed to the ZBA. He read the definition from the Town’s Code stating that it was an open-ended definition and applying it to an application for a summer cottage colony, drainage systems qualify as structures and needed to be made out of static construction building materials. Attorney Stenger read §123-13 D(3)(a) pertaining to swimming pools. Attorney Stenger proceeded to argue the location of the retention pond located within the setback and its allowance “as of right.” Attorney Stenger stated that the ZBA needed to consider, in the 100’ setback rule, was it specific to the use or was it governed by other Townwide standards and was suggesting that the ZBA needed to decide. Attorney Stenger argued classification of septic system as well and had submitted written comment in support. Member Kiernan inquired what did the septic system consist of and was it considered one unit. Engineer Towne stated that the leach field was part of the system.

Tom Maynard – Asked what was the soil type where the leach field would be located, what was the classification and how high the dam would be.

Chairman Wick stated that the questions were appropriate to be directed to the Planning Board and the Ulster County Department of Health and the discussion was straying from the topic of “structure.”

Member Zahidi called a point of order stating that allegations had been made against a Member and the CEO. The ZBA members needed to feel safe to listen and to respond and Attorney Stenger was requested to provide a written apology.

Derek Karabec – Distributed written comment to the ZBA Members with regard to retention ponds and his contention that retention ponds were structures. Mr. Karabec stated that the ZBA needed to consider whether septic fields and retention ponds were structures so that it may be determined whether the location of either was acceptable should they fail.

Attorney Horan – Septic systems were governed by Article 6 of the Ulster County Sanitary Code and promulgated through under the authority of the New York State Public Health Law through the New York State Department of Health and would preempt any local regulations. With respect to the stormwater facilities, Chapter 106 in the Esopus Town Code and were put into place to protect neighboring properties. There were design standards to protect against failures. There was nothing in Chapter 106 that required setbacks. There was nothing in the Code that regulated septic systems.

Derek Leung – Stated that when there is an ambiguity against a property owner, the determination needs to be in favor of the property owner. He could provide case law to support.

CEO Mark Jaffee – Noted that Attorney Stenger was requesting a definition for “structure” pertaining to R40 Zoning and camp cottage development and not the Code as a whole. The ZBA cannot create a ruling for a specific section of the Code. It was the duty of the Planning Board to apply definitions. Chairman Wick confirmed that he ZBA was aware that rulings could not be site specific.

Chairman Quick polled the Board relative to holding the Public Hearing open or close it. Hearing a majority of the ZBA desired to close the Public Hearing, Chairman Wick entertained a Motion to close the Public Hearing. **Upon Motion of Member Brought, seconded by Chairman Wick and the affirmative vote of 6 members, the negative vote of 0 members, the abstention of 0 member and 1 member being absent, the Motion was carried by the following vote:**

Member:	Vote
Karl Wick, Chairman	Aye
Guy Brought	Aye
Gloria Van Vliet	Absent
Katie Zahedi	Aye
James Tomassetti	Aye
Mike Pittner	Aye
Kathy Kiernan	Aye

The Public Hearing was closed at 9:52 p.m.

Attorney Stenger Appeal of 4/1/2024 CEO Letter of Determination – Seasonal

CEO Jaffee had issued a Letter of Determination which Attorney Stenger did not see until approximately 60 days after. Attorney Stenger contended that the CEO cannot make a determination after a decision by the ZBA. Attorney Stenger asked who had made the request for the April 1, 2024 determination and the language was not the same as that contained in the ZBA Decision that was filed with the Town Clerk. A FOIL had been submitted to the Town Clerk asking who had requested the determination and that the response indicated no request had been made. Attorney Stenger was asking that the ZBA make a finding that the April 1, 2024 Determination of CEO Jaffee was invalid and that he did not have the authority to render the Determination without a request.

Attorney Stenger requested that the Public Hearing remain open.

James Horan- Procedurally, the definition only applied to the definition of summer cottage colony and did not apply in the special use permit regulations. “Seasonal” now would be considered by the Planning Board and the Building Inspector had the authority to enforce if a special use permit were granted. Chairman Wick stated that the ZBA did not define “seasonal” specific to one small part of the Code and was not just for summer cottage colonies – the ZBA does not rule on specific projects with the exception of variances.

Chairman Wick stated in his experience, the CEO made determinations routinely as part of the job. Member Tomassetti noted that Attorney Stenger’s point was that no request had been made. CEO Jaffee responded that he has authority to make determinations based upon Code violations or for new information for the ZBA on previous determinations. The determination was based upon a new definition which was to be provided to the Planning Board.

Attorney Stenger stated that there was a process that needed to be observed and questioned the process that led to the April 1, 2024 Determination. CEO Jaffee confirmed that Attorney Stenger was appealing the April 1, 2024 Determination and presented documentation supporting his case. The original determination was never appealed and must stand. The April 1, 2024 Determination was confirming the definition created as a result of the ZBA Seasonal decision. Discussion ensued regarding the ZBA decision and the subsequent Determination of the CEO.

Attorney Horan – Agreed with CEO Jaffee stating the September 5, 2023 determination was clear and there was a reference from April 1, 2024 to the September 5, 2024 determination.

Lorraine Karabec – Seasonal does not apply all year. Member Tomassetti stated the key word was contiguous – not continuous – and allowed the Planning Board to determine operations.

Chairman Wick stated that the seasonal definition would not be revisited and that the current consideration was to review the CEO’s April 1, 2024 determination and decide its validity.

Rich Ferry – Referenced his recollection of the meeting which resulted in the definition of “seasonal” and his understanding of its implications.

The Public Hearing was held open.

Appeal of CEO 3/4/24 Determination (Clarification on 6/3/24) - ADU on pre-existing non-conforming lots

Planning Board Member Chris Marta read the referral letter presented to the ZBA. CEO Jaffee had provided documentation to the Planning Board and provided copies to the ZBA Members stating that the Code allows the ADU use without a variance. Chairman Wick confirmed that it was permitted with Planning Board approval but the Planning Board was questioning the size of the undersized lot.

Attorney Dylan Harris had stated the Code for the record when it was before the Planning Board and the Planning Board wanted additional clarification. CEO Jaffee stated the ZBA had no authority since the Code already allowed the use and a determination had already been made for the proposed use.

Christina Hill - Applicant before the Planning Board who was proposing the ADU on her property. Pursuant to the Code, her proposed was allowed.

Member Kiernan remarked that the Code allowed the use and no size limit should be required. The Planning Board could decide in the future if the proposed lots were considered too small.

Chairman Wick motioned that ZBA would take no action, the use was permitted by right with Planning Board approval and the ZBA would not set a minimum size standard, seconded by Member Kiernan and all in favor, the Motion passed by the following vote:

Member:	Vote
Karl Wick, Chairman	Aye
Guy Brought	Aye
Gloria Van Vliet	Absent
Katie Zahedi	Aye
James Tomassetti	Aye
Mike Pittner	Aye
Kathy Kiernan	Aye

PB Request for determination - apply seasonal and ridgeline definitions

Planning Board Member Chris Marta addressed the ZBA stating that a definition of ridgeline had been created but the Planning Board was requesting additional clarification of the definition. The Planning Board had also made a request to the Town Board for the creation of a ridgeline overlay map. CEO Jaffee stated that the request was being considered by the Town Board. Chairman Wick stated while being developed, the Planning Board should apply the definition in the interim.

The request to expand on the seasonal definition could be determined by the Planning Board.

Chairman Wick motioned to hold the Public Hearing open pending the Town Board’s decision, seconded by Member Tomassetti. All voting in favor, the Motion passed by the following vote:

Member:	Vote
Karl Wick, Chairman	Aye
Guy Brought	Aye
Gloria Van Vliet	Absent
Katie Zahedi	Aye
James Tomassetti	Aye
Mike Pittner	Aye
Kathy Kiernan	Aye

DECISIONAL

No decisions were made

Chairperson Wick called for a motion to approve the June 18, 2024 Minutes. Upon Motion of Member Brought, seconded by Member Tomassetti and the affirmative vote of 6 members, the negative vote of 0 members, the abstention of 0 member and 1 member being absent, the Motion was carried by the following vote:

Member:	Vote
Karl Wick, Chairman	Aye
Guy Brought	Aye
Gloria Van Vliet	Absent
Katie Zahedi	Aye
James Tomassetti	Aye
Mike Pittner	Aye
Kathy Kiernan	Aye

Upon Motion of Member Brought, seconded by Member Kiernan and all in favor, the meeting was adjourned at 9:48 p.m.

Respectfully submitted,

Lisa K. Mance, Administrative Assistant

Submitted on July 30, 2024
Approved: August 20, 2024