

**ZONING BOARD OF APPEALS MINUTES
OCTOBER 16, 2018 MEETING**

PRESENT: Kathy Kiernan, Chairperson
Karl Wick
Glen Kubista
Vic Barranca
Joseph Guido
James Banks
Frank Skerritt

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 and confirmed quorum was in attendance.

Chairperson Kiernan noted that there was no Secretary present for the Board and she would be taking notes and there was a recording of the meeting. The approval of the Minutes of September 18, 2018 was postponed.

VOUCHERS:

None

INFORMATIONAL: - NONE

PUBLIC HEARING:

**05-15-18-01 Jess Hicks
15 Broadway, Port Ewen
SBL: 56.044-1-1.1
Change in Non-Conforming Use (Section 123-30(B)(3))**

UPON MOTION OF KARL WICK, SECONDED BY VIC BARRANCA AND THE AFFIRMATIVE VOTE OF ALL MEMBERS, THE MOTION TO RECONVENE THE PUBLIC HEARING FOR JESS HICKS VARIANCE, CASE #05-15-18-01 PASSED BY THE FOLLOWING VOTE:

Kathy Kiernan	Yes
Karl Wick	Yes
Glen Kubista	Yes
Vic Barranca	Yes
Joseph Guido	Yes
James Banks	Yes
Frank Skerritt	Yes

Applicant Jess Hicks, together with his attorney, Urs Broderick Furrer, Esq., was present.

Prior to taking Public Comment, Member Joseph Guido addressed the ZBA, stating that he had been asked by the Town Board to recuse himself due to his attendance at the Ulster County Planning Board (hereinafter referred to as UCPB) meeting and his representations to the UCPB. It had been indicated that his comments to the UCPB could be interpreted as prejudicial and although Member Guido did not concur, he recused himself.

ZBA Attorney Barnett acknowledged for the record his Memo of October 16, 2018 in response to the October 3, 2018 letter of Urs Furrer, P.C., attorney for the Applicant, which documents are both maintained as part of the file in the ZBA office. Attorney Furrer indicated that whether it was necessary for him to review the case citations and respond was immaterial in the long run. While the tanks were not removed until 2015, the evidence in the record indicated efforts were made by the Applicant to rent the property and the property was not abandoned. The tenant leaving the site did not constitute abandonment by the Applicant. Attorney Barnett asked if the argument being made was that, if the applicant maintained the property in some manner but was then unable to lease the property beyond 5 years, was that Applicant still grandfathered? Attorney Furrer responded that, at a minimum, the Code provided for 5 years and only 3 years had elapsed. Attorney Barnett inquired as to who the prior occupant was, to which Attorney Furrer responded it was the prior owner "Leemilts."

Chairperson Kiernan called for public comment.

Harry VanVliet, Port Ewen – opined that discontinuance of use would be when use stopped. He indicated tenants were ordered out in December 2013 and that would be when the use of the property stopped and that should be the date when determining date upon which nonconforming use stopped, it didn't make sense to allow non-conforming use years after the tenant had stopped operating;

Gloria VanVliet – believed it was 2010, not 2013, when the tenants left the property, documented by letter;

Marian Zimmer, Port Ewen – indicated that if final decision was to grant non-conforming use, she noted that property was waterfront property subject to Zoning for the local waterfront revitalization plan, water dependent, which could provide economy to the Town, and that a time limit could be placed on the Special Use Permit rather than a permanent permit;

Jay VanVliet – Sleightsburgh - expressed opinion that he felt there was no issue with the proposed use and property owner should be allowed to do as they wished;

Diane Vancook – referenced historical significance of area;

Harry VanVliet inquired as to whether the City of Kingston had been notified. Chairperson stated that variances were subject to referral and Attorney Barnett indicated that was erroneously placed on the application and the current applicant was not for a variance but rather, a continuation of a non-conforming use which was not subject to referral;

Dale Wolfeild, Port Ewen – commented that the property could be potentially created for public access and that grant money was available for revitalization of the property;

Sharon Jones – Public access was not desirable given her past experiences indicating that she preferred private business being conducted which promoted less traffic, pollution and loitering;

Attorney Furrer stated that certain deed restrictions were in place that he was certain the owner would enforce. He added that his client owned the roadway from the bulkhead to the first driveway that it was not public and access to the water if application was denied would not be automatic.

Attorney Barnett stated that the argument that was being made, which was supported by opinion of the Ulster County Planning Board (UCPB), was that the buildings currently on property have not been occupied and used since 2010. He asked if there was contrary information to provide same.

Mr. Hicks stated that he had agreed to clean the property up but that he was not being as aggressive as possible until a determination has been made as to what was going to be allowed. He noted that restrictions contained in the Deed prohibited certain actions to be taken relative to the property which made it less attractive.

Chairperson Kiernan called for a motion to close the Public Hearing **UPON MOTION OF MEMBER KARL WICK, SECONDED BY MEMBER VIC BARRANCA, AND THE AFFIRMATIVE VOTE OF ALL MEMBERS, THE PUBLIC HEARING WAS CLOSED. MOTION PASSED WITH THE VOTE OF 6-0 AS FOLLOWS:**

Kathy Kiernan	Yes
Karl Wick	Yes
Glen Kubista	Yes
Vic Barranca	Yes
Joseph Guido	Recused
James Banks	Yes
Frank Skerritt	Yes

UPON MOTION OF KARL WICK, SECONDED BY FRANK SKERRITT AND THE AFFIRMATIVE VOTE OF ALL MEMBERS, THE MOTION TO OPEN THE PUBLIC HEARING FOR THE ROBERT AND MARYJO WILTSHIRE USE VARIANCE, CASE #09-18-18-01 PASSED BY THE FOLLOWING VOTE:

Kathy Kiernan	Yes
Karl Wick	Yes
Glen Kubista	Yes
Vic Barranca	Yes

Joseph Guido Yes
James Banks Yes
Frank Skerritt Yes

Robert and Maryjo Wiltshire were present for the application.

Chairperson Kiernan asked the applicants to restate the purpose of their request to which they responded that there was limited space in the yard for a shed. The Chairperson called for public comment and hearing none, called for a Motion to close the Public Hearing.

UPON MOTION OF JOE GUIDO, SECONDED BY FRANK SKERRITT AND THE AFFIRMATIVE VOTE OF ALL MEMBERS, THE MOTION TO CLOSE THE PUBLIC HEARING FOR THE ROBERT AND MARYJO WILTSHIRE USE VARIANCE, CASE #09-18-18-01 PASSED BY THE FOLLOWING VOTE:

Kathy Kiernan Yes
Karl Wick Yes
Glen Kubista Yes
Vic Barranca Yes
Joseph Guido Yes
James Banks Yes
Frank Skerritt Yes

Chairperson polled the Board as to whether they were amenable to voting on the application. All in favor, **MEMBER VIC BARRANCA MOTIONED TO APPROVE THE VARIANCE, SECONDED BY MEMBER KARL WICK AND THE AFFIRMATIVE VOTE OF ALL MEMBERS, AND THE AFFIRMATIVE VOTE OF ALL MEMBERS, THE MOTION PASSED BY THE FOLLOWING VOTE:**

Kathy Kiernan Yes
Karl Wick Yes
Glen Kubista Yes
Vic Barranca Yes
Joseph Guido Yes
James Banks Yes
Frank Skerritt Yes

Chairperson Kiernan commented that the information on the Town website relative to zoning was somewhat misleading and that the approval of the members of the ZBA was necessary for the Chairperson to have a discussion with the Town Board to possibly reword same. Attorney Barnett provided his interpretation of the wording on the website and redrafting of same may be considered. **UPON MOTION OF MEMBER FRANK SKERRITT, SECONDED BY MEMBER GLEN KUBISTA, THE MOTION FOR CHAIRPERSON KIERNAN TO APPROACH THE TOWN BOARD TO DISCUSS THE POSSIBLE REWORDING OF THE INTRODUCTION REGARDING THE DUTIES OF THE ZONING BOARD OF**

APPEALS CONTAINED ON THE TOWN WEBSITE PASSED BY THE FOLLOWING VOTE:

Kathy Kiernan	Yes
Karl Wick	Yes
Glen Kubista	Yes
Vic Barranca	Yes
Joseph Guido	Yes
James Banks	Yes
Frank Skerritt	Yes

The Board determined that they were going into attorney/client discussion that wherein no decision were to be made.

UPON MOTION OF JOE GUIDO, SECONDED BY MEMBER KARL WICK, AND ALL MEMBERS BEING IN FAVOR THE MEETING WAS ADJOURNED.

NEXT MEETING: NOVEMBER 20, 2018

DEADLINE DATE: NOVEMBER 7, 2018

Respectfully submitted:

Lisa K. Mance, Administrative Assistant (not present at meeting)

Prepared: November 15, 2018

Approved: December 18, 2018