

**ZONING BOARD OF APPEALS MEETING
NOVEMBER 21, 2017**

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

EXCUSED: 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 August 15, 2017 meeting and if there were any changes.

VIC MADE A MOTION TO APPROVE THE AUGUST 15, 2017 MEETING MINUTES SECONDED BY KARL. ALL MEMBERS WERE IN FAVOR.

VOUCHERS:

April Oneto (secretarial services)..... 3 hours

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

INFORMATIONAL:

**11-21-17-01 Christopher Carfora
50 Chambers Road
Esopus, NY
SB L: 80.1-3-27
Area Variance**

Christopher Calfora and Michael Vetere, III and Frank Galli were present for this application.

Chris stated that they went to a Planning Board Pre-submission Meeting in 2009 and was told that he could file for a Building Permit. Since 2009 until this date he never filed for a permit. He now has someone who wants to buy the land and put a house on it. He said that he told the person that it could not be subdivided but if they want to put a house on it they can. He went to see Sal, Building Inspector, who informed him that they cannot build a house without going to the ZBA for a variance because they do not have 50 feet of road frontage and only have a 30 foot right-of-way on a private road. The parcel in question is 3.8 acres. In 2009 he came to find out

about doing a subdivision. He was told at that time that it could be costly and he may not receive approval for the subdivision. He then stated that he asked the Planning Board about just building one house on the lot and was told that he could do that and just needed to obtain a building permit. He never pursued anything after this meeting.

(Note: Following some research it was discovered that Mr. Carfora came to a Planning Board Pre-submission Meeting to discuss the possibility of a subdivision. He was told that 50 ft. road frontage was required for a subdivision.)

Mr. Vetere showed the Board where Chambers Road was located and stated that they have a 30 foot right-of-way down to the lot and the Town is saying that they require 50 feet. Frank stated that there is a deck protruding into the right-of-way and asked how far the deck protruded. Mr. Carfora stated probably 10 feet but they are not asking to widen the right-of-way. They are just asking for the rights over it and to continue to use the road. Kathy stated that this Board cannot give them the right to use the road. Mr. Vetere stated that they have written and unwritten rights to use the road. He stated that in terms of the law they have the right to access and does not think they would ever be denied in terms of a Supreme Court Hearing. They also have unwritten rights in terms of a prescriptive easement in terms of the fact that the road has been travelled over for nearly 100 years and the clause to the Article 1500 says that they can continue to use it. They are here tonight for the Zoning Board to tell them that they can use it in terms of the Zoning Law because they want to build a single family home on that lot.

Joe asked how many parcels they are crossing to get to the lot at the bottom. It travels through Carfora property on the top and then travels through the lands of Karnath. They are not asking for Mr. Karnath or Mrs. Karnath to allow them to widen the right-of-way they are asking for the rights to continue to use the right-of-way with the current zoning law and build a house down there.

Kathy asked how long they owned the lot at the bottom. Mr. Vetere stated since the Knickerbocker Ice House. The access was through Chambers Road to the Ice House. NYS gives them the tacking clause for entrance so in terms of them having legal rights they have the right to enter. In terms of the Town of Esopus, they do not have the right to enter there because the Zoning Law says 50 feet. Kathy clarified that the access they are talking about is just for the purpose of building a house and that is why this is in question because applicant wants to build a house down there.

Mr. Vetere stated that in terms of a civil matter they have the right to enter that 30 foot right-of-way but in terms of the Town they need a 20 foot variance in order to build a house on the lot at the bottom. Vic asked who maintains the road. Mr. Carfora stated that he is the only one that does any maintenance on that road. Mr. Carfora stated that in 1989 the trade off was that he accesses one area through Karnath property and he access his property below through his property.

Mr. Vetere stated that it boils down to whether the Town can deny access to a parcel that has been accessed for years by the same road. We are taking into consideration that there will be a

house down there. Mr. Vetere stated that we are talking about a valuable piece of property that will not be able to be built on without this variance.

Vic asked what they would be doing for the egress. How will they be able to turn an emergency vehicle around? Mr. Vetere stated that it would have to be built to town specification with the Building Department. Right now we are looking at a raw piece of land. When a house is on there as part of a site plan it would be shown. For this purpose right now, there is nothing but dirt and trees and there is no need for an emergency access. He stated that if this is a stipulation that the town needs to have in terms of a building permit or site plan it would become the Building Department or Planning Boards issue. Mr. Vetere was given a copy of the Building Inspector's memo dated 11/21/17. He stated that there are no contours on the plans at this time so he cannot speak to the 12% grade. He stated that at this point in time they are just seeking rights over the right-of-way. They are not seeking actual site plan approval. He stated that if this is something that will be brought up in terms of seeking a building permit it will need to be addressed at that time. They would have to do a topo map, road profile and this is totally different than what they are proposing at this meeting.

Joe informed the applicant that before the next ZBA Meeting he will have to meet with Sal Morello, Building/Zoning Enforcer and do it in time before our next meeting before the Public Hearing notices go out so that he knows exactly what variances they will need since it needs to be in the notice.

Applicant was informed that the cut-off date for the next ZBA Meeting would be December 5th in order to have the letters mail out and notice to the Daily Freeman by December 6th. Joe informed the applicant that if he cannot have these issues resolved by December 3rd he will need to call and ask for an extension of the Public Hearing until January.

Frank informed the applicant that on the original proposal submitted to the Building Inspector there was no mention of a house being built on that lot. Whether they are building one house or a number of houses on a lot the requirements are the same. Mr. Carfora stated that he is selling the lot and he told the prospective buyer that all he had to do was apply for a building permit. When he contacted Sal and told him that he wanted to build a house and that is when Sal told him about the right-of-way and the 50 foot requirement. He has copies of the emails. He felt that he needed to resolve this issue. He went to see Sal and told him that he met with the Planning Board (pre-submission) and they basically told him that all he had to do was fill out an application for a building permit. Sal told him that they would need a variance for the 50 foot right of way. Mr. Carfora stated that the individual who wants to purchase the property is an engineer. He wanted to come before this Board but Mr. Carfora felt that it was his responsibility. This deal could fall through and the property would still be his. He stated that all he needs is for the Zoning Board to tell him that he can build a house. We just wants the board to grant the rights to build a home and that is his obligation. The purchaser needs to do the engineering and all the other things required.

Applicant does not want an automatic extension until the January meeting. He will meet with Sal tomorrow and get back to the Board. Joe told Mr. Carfora that he needs to bring anything that he may have showing that he has a legal right-of-way.

Discussion took place between Board members regarding the memo dated 11/21/17 from the Building Inspector. Karl stated that he does not believe that this would be a flag lot and therefore 123-21 D (5) does not count and 123-21 E (2) does not count. Karl stated that in order for it to be a flag lot it has to be owned in fee simple touching the road. This is a lot without road frontage with a legal codified right-of-way written in the deed. Karl stated that this application is a little misleading. It is not a question of access because he has access. It is a question of whether they can build a house. It is felt that items 1, 2 and 4 on the memo from the Building Inspector dated 11/21/17 do not apply. The Board will need to investigate this further.

JOE MADE A MOTION TO ADJOURN SECONDED BY KARL. ALL MEMBERS WERE IN FAVOR. MOTION PASSED WITH A VOTE OF 6-0. MEETING ADJOURNED AT 7:40 PM.

NEXT ZBA MEETING: DECEMBER 19, 2017

CUT OFF DATE: DECEMBER 5, 2017

Respectfully submitted by:

April Oneto
Zoning Board of Appeals Clerk