

ESOPUS ZONING BOARD OF APPEALS

Date: December 19, 2023
Town Hall, 1 Town Hall Way
Ulster Park, New York 12487

Present: Chairman Karl Wick, Gloria VanVliet, Jim Tomassetti, Katie Zahedi, Guy Brought, Michael Pittner and Donn Avallone

Also present: Town Board Liaison Kathy Quick, CEO Mark Jaffee and Terresa Bakner, Esq.

Chairman Wick called the meeting to Order with the Pledge of Allegiance at 7:05 p.m.

For the benefit of the public, Chairman Wick explained the ZBA process. Generally, an informational meeting, than a public hearing which included public input and finally, a decisional meeting.

Chairman Wick called for a Motion to approve the November 20, 2023 Minutes. Upon Motion of Member Avallone, seconded by Member Brought. the affirmative vote of 4 Members and the abstention of 3 Members (Gloria Van Vliet, Karl Wick and Mike Pittner), the Motion passed 4-0-3.

INFORMATIONAL:

10-30-23-01 Derick & Lorine Karabec - Appeal of CEO's September 5, 2023 Determination

Present for the Appeal were Derick and Lorine Karabec and Kenneth Stenger, Esq.

Attorney Stenger addressed the ZBA relative to what "summer" meant to Esopus using a practical approach. Mr. Stenger had provided a photograph depicting a Town of Esopus road sign indicating for "seasonal use only." Mr. Stenger requested that the ZBA review the CEO's determination and possibly find an interpretation of the Code, other than the CEO's, and give meaning to "seasonal," "summer" and nature of the "housing." Attorney Stenger's arguments had been submitted in writing and were on file with the ZBA.

Attorney Stenger stated that he had reviewed the Planning Board's Planner Review notes of August 17, 2023, which indicated that operation time was needed to be determined.

Attorney Bakner requested that Attorney Stenger confirm the dates of the letters submitted. Mr. Stenger responded that there had been the October 27, 2023 Notice of Appeal, submission of December 5, 2023, December 19, 2023, and letter of December 11, 2023. Attorney Bakner reviewed dates of all letters to confirm that the ZBA and Ms. Bakner had all submissions.

Amy Lavine, Esq. introduced herself as attorney for Castlemore Holdings, Mima LLC. Attorney Lavine confirmed she had generated correspondence dated December 15, 2023 and a letter dated December 7, 2023. Attorney Lavine contended that the Appeal was untimely and governed by Town and State Law which required appeals to be filed within sixty (60) days. Relative to the language of the Code, Ms. Lavine stated that the classification was made as "tourist cabins" not "summer tourist cabins." Attorney Lavine agreed with Attorney Stenger and would like meaning

given to the Code. The language in the Code is ambiguous and “summer” was not part of the use classification at issue. It is clear in the New York State Law that, when the Code is ambiguous, it should be interpreted in favor of the property owner.

Chairman Wick inquired clarification relative to the intent for occupancy and the length of stay. He noted the intent of the Zoning Code needed to be considered in reviewing this application. Attorney Bakner felt that the application was ripe for interpretation and suggested that tools be reviewed to be utilized in making a decision.

Chairman Wick closed the informational session and noted the Public Hearing would be scheduled at 7:00 p.m. on the third Tuesday of the month.

Attorney Bakner stated that the ZBA clearly had the authority to make a determination and either adopt that of the CEO or make its own. Courts look at dictionary definitions when not defined in the Codes and Attorney Bakner provided definitions from Websters for seasonal and summer. She also recommended that the Code be looked at as a whole and note that the R40 Zoning District allowed hospitality uses with a special use permit. Attorney Bakner went on to recommend reviewing the definitions in the Code and she had tagged definitions she felt may be helpful. She suggested that Members review Local Law 8 of 2021 and would provide to Administrative Assistant to circulate.

Member Avallone inquired what supported CEO Jaffee’s determination. CEO Jaffee provided copies of the Schedule of Uses and Regulations. CEO Jaffee noted that the length of operation of project under a special use permit was a condition controlled by the Planning Board. Further, the Appeal did not stay the review currently before the Planning Board.

Attorney Bakner advised the Members to look at the interpretation made by the CEO and the requirements within which to timely file an appeal (60 days). Attorney Bakner would provide Case Law and Chairman Wick requested that only Case Law pertaining to “summer” or “seasonal” be provided. Chairman Wick encouraged the Attorneys to submit case law to the Members through the Administrative Assistant.

The Members thanked Member Donn Avallone for his service.

Upon Motion of Member Brought, seconded by Member Avallone, the meeting was adjourned at 8:17 p.m.

Respectfully submitted,

Lisa K. Mance

Dated: January 10, 2024

Approved February 20, 2024