

MINUTES OF THE ZONING BOARD OF APPEALS THE TOWN OF KINGSBURY

Minutes of February 27, 2020

MEMBERS PRESENT:

Hank LaFountain, Chairman
Brian Heasley
Katherine Henley
Bill Whipple

MEMBERS ABSENT:

(Excused)
Sondra Michaud
Scott Winchell (Excused)

ENFORCEMENT OFFICER/ZONING ADMINISTRATOR:

Todd Humiston

TOWN ATTORNEY:

Jeff Meyer, ESQ.

The meeting was called to order by Chairman LaFountain at 7:00pm.

Roll call of all members.

Chairman LaFountain entertained a Motion to Approve the Minutes of July 25, 2019.

ON A MOTION BY MR. HEASLEY, seconded by Ms. Henley, the minutes of the July 25, 2019 meeting were approved.

AYES:4

NAYS: 0

ABSTAIN: 0

MOTION CARRIED

1. Steven and Tammy Chase, owners of Tax Map # 146.14-1-9 commonly known as 18 Birchwood Avenue, Hudson Falls, Town of Kingsbury, located District, LDR-25, Low Density Residential are appealing the August 7, 2019 determinations of the Town Code Enforcement Officer determination of the Special Use Permit obtained by Kenneth Collette, owner of 143 Vaughn Road, Hudson Falls, NY. Plans for proposal are available at Kingsbury Town Hall, 6 Michigan Street, Hudson Falls, New York during regular business hours.

Chairman LaFountain opened the Public Hearing.

Chairman LaFountain introduced Steven and Tammy Chase and Claudia Braymer, ESQ, Braymer Law PLLC who will be representing Mr. & Mrs. Chase to address the Board.

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Ms. Braymer stated she is representing Steven and Tammy Chase, 18 Birchwood Avenue, Hudson Falls. They own the property bordering the property in question regarding the August 7, 2019 letter of determination of the Enforcement Officer.

Ms. Braymer gave a history of the ongoing issues with the neighbor's property. They do not agree with Mr. Humiston's findings and are appealing his decisions.

The reason they are appealing this action is because the Chase's home is in a Residential area as well as the property in question. This area is primarily used for homes.

Ms. Braymer showed the Board pictures that were downloaded to her laptop of the Chase's backyard.

Ms. Braymer stated Mr. Collette cut the buffer zone down between the yards in 2017. He did replace the trees. What they are looking at now is not what they were looking at before Mr. Collette cut the trees down.

Mr. Whipple questioned where the pictures were taken from as they looked like they were from aerial pictures.

Mr. Chase stated they were taken from his backyard.

Ms. Braymer stated Mr. Collette has been using the property for his construction business. He has a Special Use Permit for storage sheds.

Ms. Braymer stated if Mr. Collette had gone through with the storage buildings like he had received the Special Use Permit, this would have mitigated any activities that are happening on Mr. Collette's property.

Mrs. Chase stated without the buffer zone being there the truck traffic and airplane traffic is much louder now.

Chairman LaFountain stated for clarification there is not a time limit as to when Mr. Collette can put up the storage buildings. He still has an open permit on this.

Ms. Braymer stated there is no indication that Mr. Collette is going to put up the storage buildings. They are asking to reverse Mr. Humiston's determination that Mr. Collette can do whatever he wants as far as activities concerning his construction company. He was given permission to have storage buildings not to run a construction business.

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Mr. Whipple questioned the difference between Mr. Collette and Collette Construction that Ms. Braymer keeps referring to.

Ms. Braymer stated she believes Collette Construction has no ability to be located here.

Mr. Whipple questioned Ms. Braymer if she knew who owned the property and is rented to anyone.

She stated she believes Mr. Collette owns it personally and has no idea if Mr. Collette is renting the property to anyone.

Mr. Humiston, Enforcement Officer stated he spoke to the previous Code Enforcement Officer and was told the previous owner Mr. LaPan, LaPan's Foundry had a use variance allowing commercial use on the property in 1995. When the property sold the variance goes with the property. That clears up the Collette Construction issue. The Special Use permit is a secondary use on the property. The construction equipment has nothing to do with the Special Use Permit.

Ms. Braymer stated she does not agree with this. She believes Mr. Collette is not following the Special Use Permit approval.

Michael Crowe, ESQ, Fitzgerald Morris Baker Firth stated he is representing Mr. Collette.

Mr. Crowe stated essentially between Ms. Braymer and the Chases are doing is an old trick. Mr. Collette received his approval in October 2015. One of the first things Attorney Braymer talked about is the approval of a Special Use Permit in October 2015. The time to challenge that decision was in 2015. You have thirty (30) days to challenge. What you do when you run into a situation two or three years down the road is you get a determination from the Code Enforcement Officer to see if he is using the property within the Special Use Permit.

A special use permit is just that a special use permit. Mr. Collette applied for a special use permit to store vehicles on this property. The application shows that he was asking for outside storage area as well as inside storage.

Mr. Crowe stated the applicants asked Mr. Humiston to go to the property and check for violation of the use. The object of that was so they could appeal his findings and come before the Board to argue the Special Use Permit.

Mr. Crowe stated a Use Variance does not go away it stays with the property. The Special Use Permit can be modified. A Use Variance cannot be modified. This is a New York State Law.

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Mr. Crowe stated to the Board is here tonight to determine if Mr. Humiston had any basis to make his decision. He used his expertise in making his decision.

Discussion ensued among the Board with questions addressed by the Applicants Representative.

ON A MOTION BY MR. HEASLEY, and seconded by Mr. Hogan the Kingsbury Zoning Board of Appeals declares lead agency status and having reviewed the short form SEQRA submission and having taken a hard look at the potential environmental impacts finds that there are no potential negative environmental impacts anticipated from this project and the Board issued a negative declaration on the project.

Chairman LaFountain closed the Public Hearing.

The Board then reviewed the proposed resolution.

**ZONING BOARD OF APPEALS OF THE TOWN OF KINGSBURY
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution No. 1 of 2020
Adopted February 27, 2020

Introduced by WILLIAM WHIPPLE
who moved its adoption

Seconded by BRIAN HEASLEY

**RESOLUTION AFFIRMING THE DETERMINATION
AND INTERPRETATION OF THE
ENFORCEMENT OFFICER**

WHEREAS, pursuant to the Chapter 280 of the Code of the Town of Kingsbury, the Town of Kingsbury Zoning Board of Appeals (hereafter the “ZBA”) is authorized and empowered to interpret the Town Code, in accordance with said Chapter 280 of the Code of the Town of Kingsbury and Section 267-b of the Town Law;

WHEREAS, Mr. and Mrs. Chase, residing at 18 Birchwood Ave, Town of Kingsbury (hereafter the “Appellant”), is appealing the determination of the Enforcement Officer of the Town of Kingsbury relative to Mr. Ken Collette’s use of the real property located at 143 Vaughn Road, Town of Kingsbury, Tax Map No. 146.-1-21.3 (“Collette Property”) is permissible; and

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WHEREAS, the Collette Property having previously obtained use variances in 1995 and 1998 permitted the property to be used for fabrication and casting of materials as part of an industrial business operation located on the premises; and

WHEREAS, in 2015 the Code Enforcement Officer confirmed that the Collette Property could continue to be used for the fabrication and casting of materials as part of an industrial business operation, located on the premises; and

WHEREAS, also in 2015, Mr. Collette applied for a Special Use Permit to also locate a water recreation and storage facility at the Premises, which was approved in October of 2015 and is a separate and distinct approval; and

WHEREAS, by written correspondence dated August 7, 2019, the Enforcement Officer determined that the current use of the Collette Property was permissible based upon the prior use variances that were obtained for the property; and

WHEREAS, by application dated October 7, 2019, the Appellant's are appealing the interpretation and determination of the Enforcement Officer relative to the current use of the Collette Property; and

WHEREAS, in accordance with the State Environmental Quality Review Act (hereafter "SEQRA"), the requested interpretation is a Type II action; and

WHEREAS, a public hearing was duly held on the requested interpretation at which time the Applicant and members of the public were entitled to comment on the requested variances; and

WHEREAS, the ZBA has reviewed the Application and supporting materials, the existing record for the property, and has taken into consideration the comments from the public, and has reviewed the criteria found in Town Law Section 267-b.

NOW THEREFORE BE IT

RESOLVED, the interpretation and determination of the Enforcement Officer is affirmed as the Collette Property is presently being used as an industrial business operation in line with the prior discussions and approvals obtained for the premises; and be it further

RESOLVED, this resolution shall take effect immediately.

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ROLL CALL VOTE

Henry LaFountain, Chair – Aye

William Whipple – Aye

Brian Heasley – Aye

Katherine Henley – Nay

Motion Fails

With no further motions having been offered or seconded, the appeal is denied by default.

ON A MOTION BY MS. HENLEY, seconded by Mr. Heasley all in favor, the meeting was adjourned at 8:15 P.M.

Michelle Radliff
Secretary