

MINUTES OF THE ZONING BOARD OF APPEALS THE TOWN OF KINGSBURY

Minutes of September 27, 2018

MEMBERS PRESENT:

Hank LaFountain, Chairman  
Brian Heasley  
Katherine Henley  
Bill Whipple  
Scott Winchell

MEMBERS ABSENT:

Michelle Wood  
Rich Hogan  
Sondra Michaud

CODE ENFORCEMENT OFFICER/ZONING ADMINISTRATOR:

Francis Cortese

TOWN ATTORNEY:

Mary-Ellen Stockwell, 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 26, 2018.

**ON A MOTION BY MS. HENLEY**, seconded by Mr. Winchell, the minutes of the July 26, 2018 meeting were approved.

AYES: 5

NAYES: 0

ABSTAIN: 0

MOTION CARRIED

**1. Joseph Mabb, Jr.** owner of the property known as 41 Wait Road, Hudson Falls, NY and Town of Kingsbury located in Zoning District RA-1A (Residential-Agricultural) and Tax Parcel ID # 146.-2-18 is seeking a Special Permit to use property as a Home Industry/Automotive Repair Shop. Plans for proposal are available at Kingsbury Town Hall, 6 Michigan Street, Hudson Falls, New York during regular business hours.

Attorney Stockwell asked Mr. Heasley if he was an alternate member for the meeting tonight.

Mr. Heasley responded yes he is the alternate member.

Attorney Stockwell stated because there is not a full Board tonight, if Mr. Heasley is going to speak or vote tonight she recommended the Board make a motion to accept Mr. Heasley to act as a voting member.

**ON A MOTION BY MR. WINCHELL** seconded by Mr. Whipple all in favor, to accept Mr. Heasley – Alternate Member to act as a voting member.

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AYES: 5  
NAYES: 0  
ABSTAIN: 0  
MOTION CARRIED

Chairman LaFountain introduced Mr. Mabb to address the Board.

Mr. Mabb stated he would like to start a business from his home. He does not see an increase in traffic by opening a vehicle repair shop. He doesn't want to start a salvage business. He would like to work on vehicles at this location. Mr. Mabb stated the hours would be from 8:00am to 5:00pm and no weekends.

Mr. Winchell questioned if his garage had lifts in it.

Mr. Mabb stated there is only one lift in the three bay garages.

Mr. Winchell asked if there was electric, septic, water or drainage located in the garage.

Mr. Mabb responded there is 200 AMP for the electric, there is no water, septic or drainage in the garage. When Mr. Mabb bought the house the garage was already there with a 13 foot ceiling.

Mr. Heasley asked Mr. Mabb if he was going to be doing mechanical work or body work.

Mr. Mabb stated mechanical work only. At this time Mr. Mabb is working Jerry Brown's Auto Parts and has permission to dispose of any liquids there.

Mr. Whipple questioned if this would be a licensed garage.

Mr. Mabb responded in order for him to apply for a license he needs an approval from this Board first.

Mr. Whipple questioned if Mr. Mabb has been doing any kind of this work at his home prior to the meeting tonight and has there been any issues.

Mr. Mabb stated yes he has been repairing vehicles and he has not had any issues so far.

Mr. Heasley questioned what kind of increase in traffic Mr. Mabb projected.

Mr. Mabb stated he doesn't feel there would be any more traffic than there is at the present time. There may be 4 to 5 trucks added to the traffic on Wait Road. Depending what needs to be fixed it may take a couple of days to get the job done.

Mr. Heasley questioned if Mr. Mabb would be the only employee.

He stated yes he would be the only one working in the garage. He would be working Monday through Friday and no weekends. At this time he is working a full time job as well as working at night. He wants to work one job with weekends off. He would like to work 8 hours a day and be able to enjoy the weekends.

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Mr. Winchell asked where the well was located and what Mr. Mabb's plan for a fire compression system was.

Mr. Mabb stated his well is on the other side of the property. For the fire compression he will be using a fire extinguisher. He has been told you need 1 fire extinguisher for every 2500 square feet. Mr. Mabb is planning to have at least four fire extinguishers. His intentions are to run water to the garage in the future.

Mr. Winchell questioned the age of the garage.

Mr. Mabb stated he believes the garage was built around 2012. The floor has nine inches of concrete.

Mr. Winchell question how many vehicles could be parked at the garage if need be.

Mr. Mabb stated no more than five (5). Three would be in the garage and two would be outside.

Chairman LaFountain questioned the noise from the air compressors.

Mr. Mabb had the Board listen to a recording of the air compressor running with people talking in the back ground. Mr. Mabb stated he bought a rotary compressor so that you could have the compressor running and have a conversation at the same time.

Mr. Mabb stated if he is in the garage at night the doors are shut because his front neighbor has children that are in school. This is why he went with the quieter air compressor.

Mr. Mabb stated he works on diesel trucks, a lot of head gasket work and items of this nature.

Chairman LaFountain asked if there were any air guns being used.

Mr. Mabb responded he has one air gun and if you are sitting in his living room you do not hear it running in the garage.

Mr. Heasley stated if you are working on diesel trucks that means there will be more traffic on Wait Road.

Mr. Mabb stated he works on pickup trucks. He may work on cars as well but his plan is to work on diesel pickup trucks only. He will not be working on any large trucks or large equipment.

Chairman LaFountain opened the Public Hearing.

Richard Barlow, 57 Wait Road stated he is opposed to this project. He stated he lives at least 75 feet kitty-corner, diagonally from Mr. Mabb, he moved to his home 24 years ago to get away from noise and pollution at 4:00 am. He enjoys seeing the wild life (deer, turkeys, geese) in his back yard. As far as he is concerned this isn't newly being proposed as it is already going on. He knows someone who has had work done there already. This is a farm country and residential area. He feels if this is approved that opens the door to more businesses being allowed. He values his peace and quiet and would like to continue it that way. He feels there are enough vacant buildings in the Town of Kingsbury that are already zoned for this kind of work that are not in residential area.

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Thomas Cummings, 51 Wait Road, stated his house has been there for over fifty years, his mother still resides there. He works in a mill and they have diesel equipment there. He knows when they get older the diesel leaks and accidents do happen. They do have a diesel mechanic at the mill and have had to have DEC involved because of spills.

Mr. Cummings stated the property at his home does have wells. It is a concern for him with vehicles being parked outside waiting to go into the garage. He isn't taking this to the scale of what happened on Burgoyne Avenue with the neighbors having their wells contaminated. He is not saying they will have this kind of situation on Wait Road but it is something that could happen with the leakage. In talking with other mechanics they have said to be careful of the ground water and leakage.

He is not there during the day but his wife is and they have a concern with the noise levels. He is opposed to this project.

Mr. Cummings stated when he received the notice he went to the neighbors showing this notice and had them sign a paper against. Out of 21 homes he has 16 signatures. At three of the homes there was not anyone answering the door. Mr. Cummings submitted a list of names to the Board. He is asking when the Board votes to take this into consideration and vote no.

Katherine Barlow, 51 Wait Road, asked for a definition of a Home Industry/Automotive Repair Shop.

Chairman LaFountain read her the definition of a Home Industry from the Town of Kingsbury Code Book.

Mrs. Barlow stated she thought she understood the definition. Her objections are similar to her husbands. They moved out of the village to get away from the noise and racket. She is already hearing the noise from the flatbed trucks going in and out of Mr. Mabb's property. She doesn't want to smell the exhaust fumes. She is extremely, extremely concerned with the fluids that the Board has already mentioned. They all have wells and do not have the option of town water. If the wells get contaminated there will be big problems, not only health issues but safety as well. She is concerned about the property value going down. They have invested a lot of money into this property in the last 24 years.

Mrs. Barlow stated she is very upset and quite insulted that this is going on already. She doesn't understand how this can be happening. To her Mr. Mabb should have checked out the zoning before purchasing the property. He is already doing business there, and she finds it very insulting they are even asked to be at the meeting.

Mrs. Barlow submitted a letter sign from herself and her husband.

Mike Mabb, 53 Massachutes Avenue, Queensbury, spoke in favor of this proposal.

Discussion ensued among the Board with questions addressed by the Applicant.

Mr. Whipple questioned if he had heard correctly that Mr. Mabb has been doing this kind of work for a while and has anyone called the Town prior to this meeting.

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Mr. Cummings stated he tries to mind his own business. They do have a hot tub in his back yard and they can hear the noise when they in it.

Mrs. Cummings stated she doesn't know exactly what the Mabb's are doing but she can hear the noises at night. They were told by someone this is what Mr. Mabb was doing. She is home during the day and does hear the noise. Also, there are vehicles running up and down the road.

Chairman LaFountain asked if the Board had any more questions. The Board did not have any other questions.

Chairman LaFountain entertained motion to close the public hearing.

**ON A MOTIION BY MR. HEASLEY**, seconded by Mr. Winchell the Public Hearing was closed.

AYES: 5  
NAYES: 0  
ABSTAIN: 0  
MOTION CARRIED

The Board reviewed the Short Environmental Assessment Form (SEQRA) and made the following comments.

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?

The Board stated no it would be a small impact of the existing community.

2. Will the proposed action result in a change in the use or intensity of use of land?

The Board stated no it would be a small impact of the existing community.

3. Will the proposed action impair the character or quality of the existing community?

The Board stated it would be a moderate to large impact may occur.

4. Will the proposed action have an impact on the environmental characteristics that cause the establishment a Critical Environmental Area (CEA)?

The Board stated no it would be a small impact of the existing community.

5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?

The Board stated no, it would be a small impact of the existing community.

6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?

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The Board stated no, it would be a small impact of the existing community.

7. Will the proposed action impact existing:

a. public / private water supplies

The Board stated yes, it would be a moderate to large impact of the existing community.

b. Public / private wastewater treatment utilities?

The Board stated yes, it would be a moderate to large impact of the existing community.

8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?

The Board stated no, it would be a small impact of the existing community

9. Will the proposed action result in an adverse change to natural resources?

The Board stated yes, it would be a moderate to large impact of the existing community.

10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?

The Board stated no, it would be a small impact of the existing community.

11. Will the proposed action create a hazard to environmental resources or human health?

The Board stated no, it would be a small impact of the existing community

There were three questions answered that moderate to large impact may occur.

The Board explained why they determined questions 3, 7a, 7b and 9 were moderate to large impact.

**Question 3:**

Mr. Whipple stated working on diesel engines could impair the air quality to the neighborhood from exhaust smells.

Mr. Winchell stated working on diesel engines could impair the noise quality to the neighborhood.

**Question 7a and 7b:**

7a Mr. Winchell stated the neighbor's have private wells that could get contamination from spillage of diesel from the vehicles he is working on.

7b. Mr. Whipple stated the neighbor's have private wastewater treatment utilities that could get contamination from spillage with the diesel coming from the vehicles he is working on.

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**Question 9:**

Mrs. Henley stated due to the ground water table an adverse change to the natural resources could change.

**ON A MOTION BY MR. WINCHELL**, and seconded by Mr. Whipple 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 positive impacts and that further environmental studies would need to be done if requested by the board.

After further discussion among the board the following resolution was put forward.

**Resolution No. 1 of September 27, 2018**

**ON A MOTION BY MRS. HENELY**, seconded by Mr. Heasley the Kingsbury Zoning Board of Appeals **denies** the special use permit to Joseph Mabb, Jr. at 41 Wait Road in the Town of Kingsbury to establish a home industry for an Automotive Repair Shop.

ROLL CALL VOTE

Hank LaFountain, Chairman - Aye  
Brian Heasley - Aye  
Katherine Henley - Aye  
Bill Whipple - Aye  
Scott Winchell - Aye

AYES: 5  
NAYES: 0  
ABSTAIN: 0  
ABSENT: 3 (Sondra Michaud, Michelle Wood and Rich Hogan)  
MOTION CARRIED

**ON A MOTION BY MR. WINCHELL** seconded by Mr. Whipple all in favor, the meeting was adjourned at 8:15 P.M.

Michelle Radliff  
Secretary