



Town of Esopus Zoning Update

Zoning Task Force Meeting #3

November 20, 2019

Summary Meeting Notes – APPROVED

Attendance

Zoning Task Force (ZTF) Committee Members Present:

Committee Chairman Jared Geuss, Councilman; Shannon Harris, Supervisor; Jim Banks, Zoning Board of Appeals (ZBA); Susan Barbarisi, Environmental Board (ZTF Alternate); Don Carragher, Environmental Board; John Cutrone, Economic Development Committee; Darin DeKoskie, Planning Board; Diane Hull, Resident (Connelly); Sal Morello, Building Inspector/Code Enforcement Officer; Laura Petit, Ulster County Legislator; George Post, Water and Sewer Board; Mercedes Ross, Waterfront Advisory Board.

Also Present (Signed In):

Alex Dean, Town Community Outreach Coordinator; Bill Brovold, Resident; Cynthia Frary, Resident; Patty Kowatch, Real Estate Agent; Fred Zimmer, Planning Board; Cynthia McVay, Resident; Matthew Rogers, Senior Planner-Laberge Group; Joshua Westfall, AICP, Planner-Laberge Group.

Committee Members Absent:

Robert Wells, Recreation Board; Kathie Quick, Councilwoman; Karl Wick, ZBA (ZTF Alternate); Alan Sorenson, AICP, Town Planner.

Call to Order:

The meeting was called to order by Chair Jared Geuss at 4:34 PM. Chairman Geuss indicated that the Committee would hear members of the public who are interested in speaking about topics on the evening's Zoning Task Force agenda.

Public Comment Period:

1) Bill Brovold, Ulster Park-Resident:

- a) Mr. Brovold stated he was present to speak on noise issues. Throughout the comments he explained he was a musician and that noise affected his livelihood as he could not record in his home because of noise disruptions from neighbors. He stated that he had measured sounds caused by neighbors at 100 decibels.
- b) Mr. Brovold further stated that an adjacent resident was operating a loud tractor as early as 6:00 am, and that he has been disturbed by dynamite from the same property. More recently, and at another adjacent

property, a dog has been barking beginning at 5:15 am. Lastly, he cited property owners using maintenance equipment such as lawn mowers and leaf blowers for long periods of time “hours” causing disruption. Due to this reason he would go to a location in Brooklyn in order to accomplish work due to the loud noises he experienced in Esopus.

- c) Mr. Brovold discussed different State and Ulster County noise ordinances [unclear which laws] he has researched, and reported these noise issues to the Ulster County Sherriff. Brevold stated that the Sheriff’s Office failed to act on these reports due to lack of local regulation and penalties.
- d) Mr. Brovold reiterated that not enough was being done to assuage noise issues, that very few individuals cause this noise, and that he feels that [updated] zoning should address this.
- e) Matthew Rogers responded to Mr. Brevold stating that draft noise regulation were on the agenda.

2) Patty Kowatch, Real Estate Agent

- a) Ms. Kowatch stated she was selling two quarter-acre parcels on Tilden St., in the R-40 Zoning district, and that she had concerns as to how the Non-Conforming [Uses, Buildings and Lots] regulations in the Town Zoning Code (§123 Zoning, Article VII) were written. Particularly her concerns were in §123-34 (E). She read the portion of code aloud and stated that this only addresses those lots in R-12 and not R-40.
- b) Darin DeKoskie noted that the Planning Board has noticed this and that they would like to evaluate possible changes.
- c) Matthew Rogers indicated that this will be examined as part of the zoning update process and that the language may have been worded incorrectly and perhaps the flexibility for pre-existing lots should not be limited only to R-12.
- d) Supervisor Shannon Harris felt that this was specific and that the Committee should examine the “broader principle” of what Ms. Kowatch’s concerns were.
- e) Mr. Rogers asked the Committee if they felt that the subpart E, which Ms. Kowatch was concerned about, should be struck from the code.
- f) Mr. Zimmer stated that about 90% of the lots in Port Ewen were substandard and that variances such as this were common.
- g) Mr. Rogers advised Ms. Kowatch to Coordinate with Sal Morello to discuss this.
- h) The Committee generally discussed striking the sub-part E as brought up by Mr. Rogers.
- i) Ms. Kowatch stated she will call Mr. Morello to discuss the variances and process.

3) Cynthia Frary, Resident:

- a) Ms. Frary stated she was in attendance to speak on the AirBnB’s [Short Term Rentals]. Ms. Frary raised concerns on neighborhood safety, noise, and dogs and gave instances of specific poor short term tenant behavior. She also raised concerns of people with additional outbuildings on their property and/or constructing additional outbuildings having the potential to be used as additional units for short term rentals.
- b) Mr. Rogers stated that per the short term rental regulation draft, owners would be required to provide short term tenants with relevant town laws, including noise, and that the draft was to be reviewed by the Committee that evening. Mr. Rogers further stated that some of the specific issues Frary raised would be difficult to include in a short term rental law and that these were more along the lines of personal behavior not necessarily specific to short-term rentals.
- c) In response to the line of discussion, an unidentified woman, not on the Committee, asked about limitations on occupancy. Mr. Rogers confirmed to her that regulations on occupancy were included in the draft to be reviewed that evening.

- d) The same unidentified woman further went on to express that she feels these should be considered commercial establishments if not owner occupied.
 - e) In response to the line of discussion, Cynthia McVay, attending as a resident, stated that AirBnB helps the local economy and defrays property tax costs. Ms. McVay indicated that she personally operates an AirBnB and that she would be interested to hear feedback regarding any issues that arise with the tenants of her AirBnB. She further went on to say that the AirBnB was a good alternative to long-term rentals and if negative issues arose with a tenant they would only be there for a few days as compared to a longer period of time, citing individual personal bad experiences with long term tenants she has had.
 - f) Ms. Frary stated that she doesn't want them necessarily next door to her, and raised the issue that if all neighbors in a neighborhood began to short-term let their homes that ultimately the character of the community would change.
 - g) Mr. Brovold, stated he has a cabin on his property he uses for short-term rentals and has had good experiences and that AirBnB has stringent regulations against poor behavior and that there were consequences for this poor behavior.
 - h) Ms. Frary commented that in her neighborhood, AirBnb lessor's keep their buildings immaculate.
- 4) Letter from Frank Basile, Resident
- a) Alex Dean read to the Committee a letter from Mr. Basile relating his experience living next to a short-term rental.

Mr. Rogers ended the public discussion period.

Approval of ZTF Meeting #2 Notes

Mr. Rogers noted one change was necessary – adding Diane Hull as being in attendance. Mr. Rogers asked for approval of the meetings notes. The Committee agreed and the notes were approved.

Meeting Discussion

1) Draft Short-Term Rental Regulations Review (Draft Date 10/23/19)

a) Introduction of draft regulations and general discussions:

- i) Mr. Rogers explained that the Short-Term Rental Regulations were modeled after the Town of Woodstock's Short-Term Rental Law. He proceeded to summarize the law.
- ii) Mercedes Ross stated that she was not in favor of limiting the number of non-owner occupied short-term rentals to one per person – a requirement in the current draft.
- iii) Darin DeKoskie stated that the owner occupied short-term rental requirements should be relaxed, allowing more rental time and that owner-occupied distinction and regulations attached to those may be unnecessary to address.
- iv) Fred Zimmer stated that non-owner occupied short-term rentals should be classified as a hotel and that hotels are only permitted in certain districts.
- v) Laura Petit, asked about the current definitions and if those two were differentiated [owner occupied v. non-owner occupied]. Mr. Rogers said yes and then summarized specific requirements for each definition.
- vi) Mr. Rogers described the Designated Host definition and stated that the distance requirement could be modified and asked if the designated host requirement was reasonable. The Committee agreed that it was desirable to include.

b) Concerns that short term rentals are businesses.

- i) Don Carragher felt that there were major problems with non-owner occupied AirBnB's and that it took a house off the market, was vacant for census counts, and that the property was essentially a business. Mr. Zimmer supported these statements and reiterated that he felt the uses should be classified as hotels.
- ii) Mr. Rogers stated that some communities limit the amount of short term rentals as this use may be considered commercial and can limit the amount of available homes both of which, if done at a high enough rate, could increase property values and limit homes available for year-round residents. He also noted that the Town does get taxes from the use while generally providing less services; but noted that this could increase complaints to the property and add to code enforcement workloads. He noted Woodstock's limit on the total number of non-owner occupied short term rentals.
- iii) Mr. Zimmer again felt it should be categorized as a hotel for short term rental properties. Mr. Rogers understood that these uses could be interpreted as commercial uses.
- iv) Supervisor Harris stated that she did not consider non-owner occupied short term rentals as commercial uses and further urged that the Committee focus on the draft and discuss what they do and do not like in the context of known problems. [Editor's Note: Comprehensive Plan Recommendation H-16 recognizes the potential economic benefits of short-term rentals and recommends the Town evaluate options for allowing them while ensuring neighborhood impacts are avoided and proper safety considerations are taken into account.]

c) Maximum number of days.

- i) Ms. Ross questioned the maximum day duration provision of the regulations. Supervisor Harris felt that this issue needed discussion and that a local host might resolve concerns that people have been bringing to the Town.
- ii) Mr. Dekoskie felt that the owner occupied short term rentals should be relaxed in terms of day per year limits but that maybe non-owner occupied could be limited.
- iii) Chairman Geuss also questioned that specific provision of the regulations and asked Mr. Rogers if it is done so that commercial entities did not begin buying houses up.
- iv) Mr. Rogers reiterated that the Town of Woodstock was used as a draft model and that the number of days came from those regulations and having limits is one method to distinguish it from a commercial use.
- v) Chairman Geuss had concerns about enforcement of regulations, particularly the 180 day duration and how it could be looked up. Rogers stated that county hotel tax list could be reviewed on an annual basis.
- vi) Mr. Rogers asked the Committee to discuss and make a decision about the 180 day requirement.
- vii) Chairman Geuss discussed State requirements about temporary occupancy.
- viii) Mr. Banks felt this was unduly restrictive. Discussion ensued.
- ix) Decision: Mr. Rogers asked for a decision by the Committee on the 180 day limit for non-owner occupied short term rentals.
 - (1) The Committee agreed to remove 180 day duration restrictions.
 - (2) The Committee also decided that language should be added to the law that substantiated complaints could lead to permit revocation.

d) Maximum number of guests.

- i) Mr. Rogers discussed the bedroom requirements for short term rentals and guest limits. He asked the Committee if a reasonable number of guests per bedroom was two. The Committee agreed with this number.
- ii) Mr. Zimmer stated that occupancy should be based on amount of bedrooms.
- iii) Supervisor Harris brought up sofa beds and other accommodations not in bedrooms.
- iv) Mr. Rogers asked if it should be two per bedroom or max of ten people, whichever is less.
- v) Mr. Dekoskie suggested that two occupants per bedroom was logical or setting a maximum number of guests to 10 to 12.
- vi) Rogers suggested that there could be an additional one or two for other areas of the house above any beyond occupancy based on bedrooms. Rogers stated that a predictable number of occupants may be important in order to assuage issues heard earlier in regard to impacts on neighborhood.
- vii) Decision: Mr. Rogers asked for a consensus on the 2 guests per bedroom or max of ten, whichever is less, plus an additional two guests.
 - (1) Supervisor Harris and Mr. Zimmer agreed that aside from bedrooms, host could have an additional 2 guests.
 - (2) The Committee confirmed children under 12 years old are not included in this calculation.
 - (3) The Committee agreed with the count of 2 per bedroom plus an additional two guests be permitted.
 - (4) They felt no maximum was necessary and that number of guests permitted will be clearly marked on the registration.
 - (5) The Committee agreed that guest limits should be as follows: no more than 2 persons per bedroom, plus 2 additional guests. There would be no upper limit.

e) Parking concerns.

- i) Cynthia McVay (public) was permitted to speak and suggested parking be limited for this use.
- ii) Susan Barbarisi cited an example that her neighbor has five cars.
- iii) Mr. Rogers stated that lawn parking should not be permitted.
- iv) Chairman Geuss wanted to be sure that this would blend into the neighborhood and said if it was a two car driveway no more than two cars should be permitted.
- v) Mr. Rogers discussed that additional regulations could be added to include no parking on private roads. Site plan review would address parking problems and the amount of guests permitted may be limited by the amount of parking.

f) Number of non-owner occupied short term rentals.

- i) Mr. Rogers asked the Committee to consider provision in the regulations about an owner having multiple properties.
- ii) Supervisor Harris stated that this may be problematic and suggested it is too restrictive in going from no law currently with no specific complaints, to this law, feeling that the host provision would solve any problems that she had heard.
- iii) Ms. Ross agreed with the Supervisor and noted that regular rental properties do not have similar restrictions.
- iv) Ms. Petit asked about grandfathering in those properties that were already on the County's registry list.

- v) Bill Brevold (public) spoke and asked if there were any hotels in Esopus. It was discussed by the ZTF and determined that there were limited lodging options.
- vi) Decision: Mr. Rogers asked about striking subsection G – limiting non-owner occupied short term rentals to one registered unit in the draft law. A vote was taken and the majority were in favor of removing the limit.
- g) Distance requirement for host.**
 - i) Mr. Rogers asked about changing the ten mile designated host radius, he suggested 15 miles.
 - ii) Decision: The Committee agreed 15 miles would be a better limit.
- h) Posting of contact information.**
 - i) Ms. Ross cited Woodstock's information provided on their town website and suggested Esopus could post their regulations on the Town Web Site in a similar way so that those with concerns could find information there and also those who were interested in doing a short term rental could find information there.
 - ii) Ms. Frary (public) felt that the owners contact information should be provided on the building.
 - iii) Mr. Rogers stated that registration was required and it would be best for residents to address concerns with the building department.
 - iv) Decision: The Committee agreed information related to short term rentals should be located on the Town web page for reporting problems and to outline the approval and permitting process.
- i) Additional miscellaneous discussions.**
 - i) Ms. Petit asked about fee structure. Mr. Rogers stated it would be set by the Town Board.
 - ii) Ms. Ross questioned the provision relating to the onsite advertising (draft line 96). Mr. Rogers explained that this was outdoor advertising. He stated that Laberge will clarify this.
 - iii) George Post asked about smoke detectors, etc. Mr. Rogers said it would be part of building code requirements and inspected at the time.
- j) Mr. Rogers closed the short term rental discussion.**

Proposed Draft Chapter 91 Noise Control Discussion (Drafted 11/11/19)

- a) Introduction of the draft law.**
 - i) Mr. Rogers stated that the noise law was provided as a starting point for discussion and outlined the structure of the law. The Law would be adopted as a separate Chapter in the Town Code and not as part of the zoning regulations. Mr. Rogers showed a decibel chart, giving examples of sound levels of different items and described them.
 - ii) Laura Petit asked about the municipal exemption and for clarification why other events such as the Headless Horseman are not exempted. She also raised concerns about the firework exemption with fireworks legal in New York State.
 - iii) Chairman Jared Geuss asked if it was possible to differentiate between residential and commercial uses giving commercial something similar to municipal exemption since they have received site plan approval. Mr. Rogers stated that the Planning Board could impose restrictions on approvals.
 - iv) Darin DeKoskie stated that the Planning Board gives consideration to noise levels prior to any approvals.
 - v) Fred Zimmer suggested a review of the Rhinebeck noise laws in relation to the Dutchess County Fair.

- vi) Cynthia McVay (public) asked about restrictions on shooting and target practice and how the law addressed this. Mr. Rogers discussed state limitations on weapons discharges in proximity of residences and roads. There was general consensus that the noise law would not specifically address sound created by the discharge of weapons.
- vii) Jim Banks felt that the weekend time limits were too restrictive.
- viii) Mr. Zimmer felt construction noise should not be restricted on private property during the day.
- ix) Donald Carragher asked if livestock noises were included in the law. Mr. Rogers stated that there were agricultural exemptions.
- x) Cynthia McVay (public) related an adjacent property owner who had audio of bird sounds playing and tractors running at all hours. Mr. Rogers said the agricultural exemptions would be reviewed further by Laberge Group.
- xi) Darin DeKoskie suggested that sounds above an ambient level be restricted and cited the examples of properties along highways.
- xii) John Cutrone discussed grandfathering in current establishments that do not have complaints against them. Chairman Geuss agreed this was also important but felt that different noise levels be allowed for new businesses trying to become establish in town.
- xiii) Mr. DeKoskie suggested adding in language indicating that the Planning Board may wish to require noise studies.
- xiv) Diane Hull asked about the wording in the noise law regarding enjoying property and cited her experiences in Connelly at her home with music and a DJ at the Rondout Yacht Club. Mr. Rogers said that noises considered unreasonable may be reined in by this law.
- xv) George Post discussed the time and noted that during the winter it get dark earlier in relation to the decibel limits and timeframes in the draft law.

b) Based on the Committee discussion, the following edits will be made:

- i) Language related to exemptions of existing uses will be added for discussion.
- ii) Different decibel levels will be recommended for commercial and residential uses.
- iii) Alternative timeframes will be provided for consideration including daytime decibel limits.
- iv) Language clarifying the planning board's authority (during site plan and special use permit reviews) to allow new uses to emit sound in excess of the law's limits will be provided for discussion.
- v) Measuring decibel levels and accounting for ambient/background noise will be provided for discussion.
- vi) Agricultural exemptions will be clarified.

Proposed Draft Small Scale Solar Energy System Regulations (Drafted 11/12/19)

a) Introduction of draft regulations and general discussions.

- i) Mr. Rogers described the draft law and the Town's current Unified Solar Permit process and requirements thereof.
- ii) Fred Zimmer suggested changing the kilowatt threshold in the law to square footage and it would be easier to administer for the Building Department and inspector. Mr. Rogers explained that this was the industry standard.
- iii) There was confusion regarding the term "Solar Engineer." [Editor's Note: The term "Solar Engineer" is not in the current draft. The term "Qualified Solar Installer" is used in the draft.]

- iv) Mr. Rogers asked the Committee to review the draft regulations for discussion at the next meeting.

Utility-Scale Solar Energy Systems

- a) Mr. Rogers discussed utility-scale solar and asked the Committee if this type of use should be allowed and if so where? If it should be allowed, Laberge will prepare draft regulations.
 - i) Light Industrial (LI) and Heavy Industrial (HI) Districts, including the Callanan Quarry and Dyno Nobel sites were identified as ideal.
 - ii) Mr. Rogers suggested the use not be allowed east of the railroad line. There was further discussion of in the light industrial zoning and the Dyno Nobel site.
 - iii) Mr. Rogers further asked about locating the use in the R-40 District.
 - (1) Supervisor Shannon Harris stated that she was concerned about the use affecting the viewshed.
 - (2) Mr. Rogers described protections that could prevent any deteriorations to the viewshed.
 - iv) Cynthia McVay (public) encouraged utility-scale solar not to be permitted in open green spaces, rather located on lands already cleared or on rooftops. Susan Barbarisi agreed with Ms. McVay and said there should be consideration of not siting the use in heavily forested areas as it would be counterproductive to the aim of using solar energy.
 - v) Decision: It was determined by consensus that utility-scale solar energy systems should be permitted only in the Heavy and Light Industrial Districts. Supervisor Harris wanted to point out that the Town Board was in the process of rezoning some of these lands to Commercial. The Supervisor further pointed out that the aim of solar should not be to destroy habitat.
 - vi) Ms. McVay (public) asked if the Committee could determine a set of ideal sites where this would be allowable. Mr. Rogers stated that such an effort would be impractical. Mr. DeKoskie clarified that the utility-scale solar would only be permitted in those districts (LI and HI) and that any applicant would still be required to go through the planning Board Review process. Chairman Geuss and Mr. DeKoskie suggested an overlay district. Mr. Rogers discussed other possible solar overlays.
 - vii) Mr. Rogers confirmed the Committee would like to allow utility-scale solar as an allowable use only in the industrial zones and that Laberge Group would draft regulations.

Further Discussions

- a) Due to time constraints, additional draft documents and issues on the agenda could not be discussed in detail by the Committee.
 - i) Wind Energy Systems. Matthew Rogers discussed small scale and utility scale wind energy systems.
 - (1) The Committee felt that utility size wind farms should not be permitted.
 - (2) Mr. Rogers confirmed Laberge Group would define utility scale and draft small scale wind energy systems regulations for the Committee's review.
 - ii) Gas Stations
 - (1) Mr. Rogers discussed regulating gas stations which was raised in the Comprehensive Plan.
 - (2) Mr. DeKoskie felt that there would be proposals in the future.
 - (3) Supervisor Harris discussed that it was the intent of earlier discussions that they not be allowed in the northern gateway to Port Ewen.

- (4) Decision: This was generally agreed upon by the Committee. The Schedule of Permitted Uses would be revised to reflect the Committee's desire to prohibit gas stations in northern gateway to Port Ewen.

Other Business

- a) The Committee was provided with the following two handouts and asked to review the material prior to the next meeting:
 - i) Draft Connelly Zoning District Amendments.
 - ii) Summary of current density calculation methods.

Meeting Adjourned at 7:04pm

Agenda Items Not Discussed

- a) Port Ewen – Hidden Yacht Club and nearby properties – WR to W.
- b) Port Ewen - Proposed expansion of BC District north of Horton Rd.
- c) Port Ewen – Proposed overlay district for Smith property (between the Bridges) to encourage mixed-use, residential and resort development.
- d) Connelly – Rondout Yacht Basin – WR to W.
- e) Connelly – Proposed expansion of NC.
- f) Connelly – Proposed overlay district for Certified Marina and adjacent parcels to encourage mixed-use, residential, resort development.
- g) Calculating Density.

Meeting Notes Submitted by Laberge Group January 8, 2020

Revised FINAL Meeting Notes Submitted by Laberge Group January 15, 2020