

From: Stephen Honan <Shonan@fnmlawfirm.com>

Sent: Tuesday, September 15, 2020 8:59 PM

To: Alyse Terhune <aterhune@ldzhlaw.com>; Jack Jannarone <jjannarone@highlands-ny.gov>; Diane Doyle <diane@fnmlawfirm.com>

Subject: ZBA Application of D. Kopald of 2020 (Kopald -2)

Dear Alyse:

Attached please find my letter in opposition to Ms. Kopald's instant ZBA application challenging the issuance of the C of O to the Tonneson Family. Please submit the same to the board members in advance of tomorrow's hearing.

Thank you for your attention in this matter.

Very truly yours,
Steve Honan.

--

Stephen M. Honan, Esq.
Ferick Nugent MacCartney PLLC
96 South Broadway
South Nyack, NY 10960
845.353.2000
845.353.2789 (fax)
shonan@fnmlawfirm.com

FEERICK NUGENT MacCARTNEY ^{PLC}
ATTORNEYS AT LAW

ROCKLAND COUNTY OFFICE
96 SOUTH BROADWAY
SOUTH NYACK, NEW YORK 10960
TEL. 845-353-2000 FAX. 845-353-2789

ORANGE COUNTY OFFICE
6 DEPOT STREET, SUITE 202
WASHINGTONVILLE, NEW YORK 10992
(Not for service of papers)

www.fnmlawfirm.com

All correspondence must be sent to Rockland County Office

DONALD J. FEERICK, JR.
BRIAN D. NUGENT*
J. DAVID MacCARTNEY, JR.
MARY E. MARZOLLA*

OF COUNSEL
DAVID J. RESNICK
KEVIN F. HOBBS
MICHAEL K. STANTON, JR.

JENNIFER M. FEERICK
STEPHEN M. HONAN**
ALAK SHAH*
PATRICK A. KNOWLES*
JOHN J. KOLESAR III
PATRICK J. MCGORMAN

*LICENSED ALSO IN NEW JERSEY
+LICENSED ALSO IN CONNECTICUT

September 15, 2020

Via Email Only: aterhune@ldzhlaw.com & jjannarone@highlands-ny.gov

Town of Highlands
Consolidated Zoning Board of Appeals
254 Main Street
Highland, New York 10925
Attn: Chairman Jack Jannarone

Re: ZBA Application of D. Kopald (Kopald - 2)

Dear Chairman Jannarone:

This office represents the Tonneson Family in this matter commenced by the applicant and neighboring landowner. Ms. Deborah Kopald is challenging the issuance of the Certificate of Occupancy by the Building Inspector for the Town of Highlands to the Tonneson Family on or about June 15, 2020. To the extent this Board may entertain this appeal, please accept this letter in opposition to Ms. Kopald's most recent application.

Ms. Kopald previous made an application to this ZBA in 2019, which she amended in June 2020 (Kopald-1). In that initial appeal she included a challenge to the Certificate of Occupancy, when issued. She seems to be renewing her application challenging the C of O at this time.

I have reviewed the documentation posted on-line at the Town's Website which consists of the following: An application to the ZBA, dated August 10, 2020; A letter to the Board purportedly written by Ms. Kopald's attorney, Richard B. Golden, Esq., dated August 10, 2020, consisting of 30 pages; Affidavit of Mr. Michael W. Finkbeiner, LLS, dated August 17, 2020, consisting of 1 page; Affidavit of Matthew Waletzke, dated June 17, 2020, with exhibits (totaling

Feerick Nugent MacCartney PLLC

Re: ZBA Application of D. Kopald (Kopald - 2)

September 15, 2020

Page 2

48 pages); “Kopald Affidavit”, dated September 4, 2020, consisting of 2 pages; “Kopald Affidavit”, dated July 10, 2020 with exhibits (totaling 248 pages); “Kopald Affidavit”, dated June 8, 2020, with exhibits (totaling 134 pages), and; “Kopald Affidavit”, dated June 17, 2020 with exhibits (totaling 3 pages).

It is respectfully requested that the Board take notice of this Board’s previous determination and Addendums entitled, “Interpretation of Relevant Town of Highland Code to Property Identified on the Town of Highland Tax Map as Section 11, Block 1, Lot 1.52” and dated August 19, 2020 and entered in the Town Clerk’s Office on August 25, 2020.

Ms. Kopald’s instant application to this Board challenging the Building Inspector’s issuance of the Certificate of Occupancy should be denied based upon the previous submissions to and findings of fact made by this Board in the application designated as Kopald-1. By my review of the letter of Mr. Golden of August 10, 2020, I am unable to identify any new allegation of fact or law that is different from the previous application and which has not already been reviewed and determined by this Board. As there is no new issue of fact or law presented by the applicant and the very same numerous arguments are reiterated in this present application, I submit that the Board is constrained to determine this instant application in the same manner as the previous application. Additionally, the previous application also asks for this Board to strike the Certificate of Occupancy when and if it is issued. The applicant is now making this application presumably claiming that since the C of O was only issued in mid-June that date was after her initial papers had been submitted to this Board for determination.

It certainly appears that Ms. Kopald is pursuing the second application before the Board as a simple exercise in harassment against the Tonneson Family and against the Town of Highlands. At page 19 of Mr. Golden’s letter, the first full paragraph on that page states and concedes, “It is likely that eventually the permits, approvals and variance needed by the Tonneson can be secured by them, allowing them to have a home on their property.” As Ms. Kopald now asserts that the property in question is legally and properly suited to be developed with a single family home, there appears to be no basis for the Kopald-2 application. This is progress, as Ms. Kopald previously sought relief to remove the Tonneson home and for an order to replant trees and restore the Tonneson property to its pre-construction state.

The current Affidavit of Mr. Finkbeiner, dated August 17, 2020, is of no significance. The final paragraph of his Affidavit indicates that he was able to see the Tonneson house from the east side of Ms. Kopald’s deck on or about June 14, 2020. This conclusion has no consequence and has no bearing upon Ms. Kopald’s application to strike the certificate of occupancy. Homes in a residential subdivision are normally and customarily visible to adjoining and nearby properties. There is no requirement for any type of visual buffer between like uses of real property, such as between residential lots in a residential zone. Landscape buffers are

Feerick Nugent MacCartney PLLC

Re: ZBA Application of D. Kopald (Kopald - 2)

September 15, 2020

Page 3

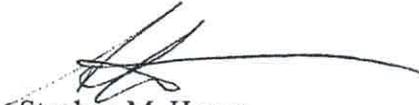
generally used in situations between residential and commercial uses whereby the commercial lot is burdened with buffer requirements to shield the residential use.

The Affidavit of Ms. Kopald is likewise of no significance with respect to her instant application before this Board. Her Affidavit of September 4, 2020 seems to claim that she needs more trees around her home to shield her home from noise and electromagnetic radiation in addition to Wi-Fi. Even if the Board accepts that as true, her representations that the McCarthy property and the Tonneson property generated noise during construction, is not grounds to revoke the Tonneson C of O issued for the occupancy of their property and home. Ms. Kopald is free to plant additional trees and foliage on her own property to increase or create a landscape buffer between her home and her neighbors' homes.

Additionally, Exhibit "E" to Kopald's Affidavit of June 8, 2020 contains a one page Affidavit of Mr. Michael W. Finkbeiner, LLS, dated January 24, 2020. In paragraph 2 of the Affidavit he claims that there is storm water flowing from Tonneson's Lot 7.2 (a small triangle shaped lot fronting on Forrest Hill Rd) onto downhill lands of Canterbury Forest Corp. (a Kopald Family owned and controlled corporation). What he intentionally fails to point out is that the storm water emanates from a municipal drainage pipe located under Forrest Hill Road and discharges and flows onto Lot 7.2. The pipe has been there for many years apparently. Mr. Finkbeiner's Affidavit has no relevance in the least to the instant application.

It is respectfully submitted that this Board, if it entertains this appeal, deny Ms. Kopald's application to revoke the lawfully issued Certificate of Occupancy that was issued to the Tonneson Family. The former Building Inspector, Mr. Bruce Terwilliger, submitted an Affidavit to this Board that the Tonneson Family complied with all provisions in all aspects of municipal law in the development of the property. Consequently, the Tonneson Family was entitled to the issuance of the Certificate of Occupancy on June 15, 2020 having complied with all provisions of the Town Code and State Law.

Respectfully submitted,



Stephen M. Honan

SMH/drd

cc: David and Deborah Tonneson (*Via email only*)