

**Town of Kinderhook
Zoning Board of Appeals
June 7, 2012**

Approved

MINUTES

The Meeting of the Town of Kinderhook Zoning Board of Appeals was held on June 7, 2012 at the Kinderhook Town Hall, 4 Church Street, Niverville, New York. The meeting was called to order by the Chairman at 7:04pm. The roll was taken by the Secretary.

1. ROLL CALL

PRESENT

Tom Puchner, Chairman
John McManus
Stephen Hotaling

Nataly Dee, Secretary

EXCUSED

Keith St. John
Jeff Ouellette
Andy Howard, Attorney

ABSENT

2. MINUTES & CORRESPONDENCE:

The Minutes from the March meeting were tabled until next month. A spelling correction was made to the Minutes from the April meeting.

A Motion to approve the Minutes from the April meeting was made by Mr. McManus. Motion seconded by Mr. Puchner. All in favor by a show of hands. Motion carried; Minutes approved.

3. NEW BUSINESS

None

4. OLD BUSINESS

Ed Simonsen - Appeal of Certificate of Compliance issued to the Van Allen's for the shed at the Car Quest property:

Mr. Puchner read the Resolution prepared by Mr. Howard:

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TOWN OF KINDERHOOK

ZONING BOARD OF APPEALS

APPLICANT: Edwin Simonsen

RESOLUTION

June 7, 2012

WHEREAS, application was made to the Town of Kinderhook Zoning Board of Appeals (hereinafter referred to as the “ZBA”) by Edwin Simonsen (“Simonsen”) on December 12, 2011, requesting a determination on the appropriateness of a building permit issued by the Town of Kinderhook Building Department on August 9, 2011 for a parcel of real property bearing tax map number 33.-1-41.110 and owned by Kenneth Van Allen and Patricia Van Allen; and

WHEREAS, the Town of Kinderhook Building Department responded in correspondence dated December 21, 2011, where it contended, in part, that the Simonsen application to the ZBA was deficient for the reason that it was made more than sixty (60) days after the issuance of a building permit in contravention of Town Code Section 81-51 (A); and

WHEREAS, after appearing at the January 5, 2012 meeting of the ZBA, at which time there was not a quorum of the Town of Kinderhook Zoning Board of Appeals, Simonsen was nonetheless advised of the deficiency in his application; and

WHEREAS, on January 6, 2012, Simonsen submitted a revised application with the requisite application fee to the Town of Kinderhook Zoning Board of Appeals challenging the November 11, 2011 issuance of a Certificate of Compliance by the Town of Kinderhook Building Department for said parcel of real property bearing tax map number 33.-1-41.110 and owned by Kenneth Van Allen and Patricia Van Allen; and

WHEREAS, the ZBA met at its regular monthly meeting on February 2, 2012 to consider the application, at which time concerns were expressed about the timeliness of the instant challenge to the Building Department’s issuance of a certificate of compliance and the matter was adjourned to the March 2012 regular monthly meeting of the ZBA in order to provide the ZBA’s attorney with an opportunity time to review the applicable case law, and

WHEREAS, the ZBA received additional correspondence from Simonsen dated February 18, 2012, and

WHEREAS, the ZBA received correspondence from Tal Rappleyea, Esq., attorney for Kenneth Van Allen and Patricia Van Allen, dated February 28, 2012, which alleged that the instant Simonsen application should be dismissed due to a lack of standing and the doctrine of laches; and

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WHEREAS, the ZBA met at its regular monthly meeting on March 1, 2012, at which time the ZBA heard from Simonsen and discussed the legal challenges being raised to the instant application by Kenneth Van Allen and Patricia Van Allen, and

WHEREAS, the ZBA was unable to take further action at its March 1, 2012 regular monthly meeting due to the recusal of one of its members and the resulting lack of quorum; and

WHEREAS, Simonsen submitted additional information to the ZBA in correspondence dated April 3, 2012, and

WHEREAS, Tal Rappleyea, Esq., submitted to the ZBA a response to Simonsen's April 3, 2012 correspondence in a letter dated April 5, 2012, and

WHEREAS, the Town of Kinderhook Zoning Board of Appeals took up the Simonsen application at its April 5, 2012 regular monthly meeting, at which time it duly discussed, deliberated, and unanimously determined via a vote of the voting members of the ZBA there present, to dismiss the application, subject to the preparation, review and final approval of a formal resolution conforming to said determination of the ZBA; and

WHEREAS, this meeting has been duly noticed and convened;

NOW, THEREFORE, BE IT:

RESOLVED, that the Town of Kinderhook Zoning Board of Appeals hereby questions the methods and actions of the Building Department in issuing a Building Permit for the subject premises and proceeding with the issuance of a Certificate of Compliance absent site plan review by the Town of Kinderhook Planning Board; and be it further

RESOLVED, that the Town of Kinderhook Zoning Board of Appeals hereby finds that there is no evidence in the record demonstrating that Kenneth Van Allen and/or Patricia Van Allen would not have proceeded with a site plan application had they been so directed by the Town of Kinderhook Building Department; and be it further

RESOLVED, that the Town of Kinderhook Zoning Board of Appeals hereby finds that the Appellate Division Third Department has held in Clarke v. Town of Sand Lake Zoning Board of Appeals, 52 A.D.3d 997 (3d Dep't 2008), that a citizen's appeal to a ZBA on the issuance of a certificate of compliance is barred by the doctrine of laches where that appeal is made after the structure is completed, a certificate of occupancy is issued and the structure is occupied; and be it further

RESOLVED, that the Town of Kinderhook Zoning Board of Appeals hereby finds that in the present case, despite having knowledge on September 7, 2011 that the subject

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storage building was being built on the real property bearing tax map number 33.-1-41.110, Simonsen did not institute the present challenge until after completion of the storage building and 57 days after the November 9, 2011 issuance of the certificate of compliance by the Town of Kinderhook Building Department, and at no time did Simonsen seek to enjoin construction, use or occupancy of the storage building; and be it further

RESOLVED, that pursuant to the foregoing and after receipt and review of the initial submission of the applicant, Simonsen, as well as the subsequent correspondence and information provided by Simonsen to the ZBA, review of the correspondence of Tal Rapplyea, Esq., review of case law pertaining to the doctrine of laches with regard to the issuance of building permits and certificates of compliance, the prior proceedings held on this matter, and upon due deliberation thereon, the Town of Kinderhook Zoning Board of Appeals hereby dismisses the January 6, 2012 application of Edwin Simonsen seeking to challenge the issuance of a Certificate of Compliance by the Town of Kinderhook Building Department on November 9, 2011, bearing Certificate Number 2011-0322; and be it further

RESOLVED, that Certificate Number 2011-0322 relative to the parcel of real property bearing tax map number 33.-1-41.110 shall remain in full force and effect.

Resolution moved by: Mr. McManus

Seconded by: Mr. Puchner

VOTE

AYE

NAY

ABSTAIN

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A Motion to pass the Resolution was made by Mr. McManus. Motion seconded by Mr. Puchner. A Roll Call vote was taken: Mr. Puchner: Aye; Mr. McManus: Aye; Mr. Hotaling: Aye. Motion carried unanimously; Resolution approved.

A discussion of the matter ensued. While Mr. McManus had nothing additional to add., he did state that he felt constrained by the Third Department's decision in the Clark case, and that that really commands this result.

Mr. Simonsen was invited to address the Board.

Mr. Simonsen thanked the Board for their patience and for taking this matter seriously. He

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apologized for some of the action not being as timely as it should have been. Furthermore, Mr. Simonsen expressed disappointment in the Town Board's response, stating that if their response had been what it should have been, they would have addressed this matter. Additionally, Mr. Simonsen noted that at a recent Comprehensive Plan Review Committee Meeting an attendee suggested that what they referred to as the "Car Quest issue" was an example of the anti-business atmosphere in the Town of Kinderhook. Mr. Simonsen took umbrage with this comment, as he felt it referred to himself for taking issue with the Building Department not following the law as an anti-business atmosphere. Mr. Simonsen reminded the Board that he presided over the Planning Board when the Town of Kinderhook had the greatest expansion of commercial development in the town's history. In closing, Mr. Simonsen again thanked the Board.

Mr. McManus responded to Mr. Simonsen comments. Mr. McManus thanked Mr. Simonsen for bringing this issue with the Building Department to the attention of the Board. He assured Mr. Simonsen that the decision of the Board would be passed on to the Building Department. Further, he thanked Mr. Simonsen for his patience through the process.

A Motion to adjourn was made by Mr. Puchner. Motion seconded by Mr. McManus. All in favor. Motion carried; meeting adjourned at 7:20pm.

Respectfully submitted,

Nataly Dee, Secretary