

**Town of Kinderhook
Zoning Board of Appeals
June 27, 2013**

Minutes

Approved

The Meeting of the Town of Kinderhook Zoning Board of Appeals was held on Thursday, June 27, 2013 beginning at 7:06pm at the Kinderhook Town Hall, 4 Church Street, Niverville, NY with Chairman John McManus presiding. Please note that this meeting was re-scheduled from July 4, 2013 to this day due to the Independence Day Holiday. The meeting was called to order by the Chairman and the Roll was taken by the Secretary.

1. Call Roll

Present:

John McManus, Chairman
Lela Gray, Acting Town Attorney
Peter Bujanow
Keith St. John
Greg Allen
Nataly Dee, Secretary

Excused:

None

Absent:

None

B. Correspondence

1. Review of Minutes:
 May 2, 2013
 June 6, 2013

A motion to approve the minutes from May's meeting was made by Mr. Bujanow. Motion seconded by Mr. Allen. Mr. McManus, Mr. Allen, and Mr. Bujanow voted in the affirmative. Mr. St. John abstained having been excused from that meeting. Motion carried; May minutes approved.

Corrections and amendments to the draft of the June minutes were reviewed.

A motion to approve as the minutes from the June meeting as amended was made by Mr. Bujanow. Motion seconded by Mr. St. John. Mr. McManus, Mr. Bujanow, and Mr. St. John voted in the affirmative. Mr. Allen abstained having been excused from the meeting. Motion carried; minutes approved as amended.

2. Correspondence was received via fax on 6/26/2013 from Christopher Muller representing Mr. Defiglio in his application. The correspondence was reviewed by the Board.

Public Hearing(s):

None

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New Business:

None

Old Business:

1. Peter Defiglio – 56 Hawley Road, Niverville, NY: Application for an Area Variance on two sides of the property for the purpose of constructing a garage.

Christopher Muller representing the applicant addressed the Board. Correspondence received by Mr. Muller was reviewed by the Board. He was not present at the prior proceedings and as such would like to request copies of the minutes from which Mr. Defiglio appeared before the Board. He requested that the Public Hearing be re-opened at the next meeting. Further, he request to review any materials provided to the Board in regard to the application and the history of previous area variances granted which were similar in nature and neighborhood as Mr. Defiglio's proposal. He also inquired about the bearing on precedent that previous determinations would have on this application. He noted that there are changes to note; additional pictures and evidence that the applicant would like to present to the Board. Mr. Muller requested the opportunity to present a full presentation which pairs both photos with precedent in order to provide the Board with the best information possible to make the most informed decision. Additionally, Mr. Muller stated that he has done research into the law regarding some of the issues similar to the Board's concerns in relation to this application, and is prepared to speak on those issues. In conclusion, he requested that the matter be adjourned and that he be given access to and time to review the minutes.

Mr. McManus stated that adjournment of the proceedings will not be an issue. Neither will it be an issue to provide the minutes. It was determined that a formal FOIL request for prior minutes would not be necessary. However, a letter of request from Mr. Muller was requested. Mr. Muller will send a letter of request defining the parameters of information he is requesting.

A public notice to re-open the Public Hearing will be required and will be issued. Notices to the neighbors be also need to be sent again.

Mr. Bujanow recomended that everyone visit the site, he found it very informative and helpful. He noted that the site plan and the pictures don't really show the property well. Nor is there an elevation drawing. Mr. McManus agreed. Mr. Muller suggested searching Google Maps for an elevated overview of the property and neighborhood.

Mr. Bujanow inquired whether it had been the precedent or policy of the Board to request a site plan of the property in similar previous applications. The sketches provided are difficult to accurately follow. He felt that it was difficult to make decisions without having accurate dimensions and schematics. Mr. McManus stated that the details provided by the applicant are consistent with what has been required by previous applicants. He has seen less and more.

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Mr. Muller commented that when you walk the applicant's property the dimensions do not seem to match the actual documented dimensions of the property. He noted that the fence line might be in the wrong place. This makes noting the exact distances on a plan difficult to represent and accurately calculate. Further, Mr. Muller suggested a proposed structural change to the roof of the proposed shed. Mr. St. John suggested that a sketch that showed elevation and facades would be helpful to appreciate the dimensions and the placement of the various structures. Mr. Muller commented that these requests do not seem to have been routinely done on prior variances. While he wants to provide the most complete presentation of the application, he also wants to be sure that there is some standardization of how the application is being evaluated. He expressed concern whether Mr. Defigilio is being asked to go above and beyond in order to demonstrate how in this situation as opposed to how decisions have traditionally been evaluated by the Board. Mr. Bujanow replied that he felt the same standards are being applied, but there are different people on the Board with maybe different perspectives, views, thoughts, knowledge, and skills. The methodology used previously may not be adhered to, however the same standards will be. The five points were reviewed at the last meeting. Mr. McManus agreed that the standards are set by the Code. Further, he suggested that the question for the applicant is that he needs to engage in a calculus to figure out what amount and type of proof he needs to put in to establish those standards. He suggested some of the legal issues addressed in Mr. Muller's letter to the Board were referenced at the previous meeting. The idea of following prior precedent and the question of whether the substantial factor comes down to a mathematical equation or one that's more broad.

A motion to adjourn the applicant's request for an area variance and notice the re-opening of the Public Hearing for that application until next meeting on August 1, 2013 at 7:00pm was made by Mr. Bujanow. Motion seconded by Mr. Allen. All in favor. Motion carried; application adjourned.

Other:

1. Liaisons:

Not in attendance.

2. Public Comments:

None

A Motion to adjourn was made by Mr. Bujanow. Motion seconded by Mr. St. John. All in favor. Motion carried; meeting adjourned at 7:45pm.

Respectfully submitted,

Nataly Dee, Secretary