

**Town of Kinderhook  
Zoning Board of Appeals  
June 6, 2013**

**Minutes**

Approved June 27, 2013

The Meeting of the Town of Kinderhook Zoning Board of Appeals was held on Thursday, June 6, 2013 beginning at 7:06pm at the Kinderhook Town Hall, 4 Church Street, Niverville, NY with Chairman John McManus presiding. 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  
Nataly Dee, Secretary

Excused:

Greg Allen

Absent:

None

**B. Correspondence**

1. Review of Minutes:  
May 2, 2013

Approval of the Minutes was tabled. No changes to the draft Minutes were noted.

**Public Hearing(s):**

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.

The notice as it appeared in the paper of record was read by the Secretary. (On file)

Mr. Defiglio addressed the Board and reviewed the details of his proposal. He is seeking an area variance on two sides of his property for the purpose of constructing a garage to house his personal property: golf cart, 4 wheeler, boat, etc. These items are currently being stored on the property under tarps. The applicant is seeking a 28' variance on the rear of the property (Code stipulates 35') placing the structure 7' from the property line, and a 19' variance on the side of the property (Code stipulates 25') placing the structure 6' from the property line. The proposed garage would be 20' x 24' in size. The siding would be consistent with that of the house. Mr. Defiglio stated that due to the location of the septic, dry well, well, house, and driveway, the proposed location is the only place for the garage. He also indicated that he scaled down the dimensions of the garage from what he would have preferred.

A motion of positive recommendation was submitted from the Planning Board based on the plans

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submitted and presentation provided by the applicant before the Planning Board on May 16, 2013. The Planning Board requested that the location of the well be indicated on the plans of the property provided.

The zoning classification of the property in question is Hamlet. The proposed structure would be considered an accessory structure.

Mr. Defiglio provided the Board with a description of other houses and properties with accessory structures in the neighborhood. He stated that many properties also have sheds and garages. He also stated that his neighbors do not have any concerns about the proposed project. Further, he presented that these sheds and garages are of a similar distance from property lines as he is requesting in his proposal.

The Board questioned the applicant. Mr. St John posed several questions to the applicant. 1) Can you describe the kinds of housing structures in the neighborhood? The applicant replied that there are many converted camps in the neighborhood. Mostly they are now year round residences. Some have dug out basements and garages, sheds or both. 2) Are the sheds or garages similar in size to the one you are proposing? The applicant noted that some are larger, some smaller, some are attached. 3) Did the applicant consider alternate locations for the structure? The applicant answered that he had, but this is the only feasible location. 4) Did the applicant consider alternate dimensions for the structure? The applicant answered that he has scaled down the structure from what he would prefer, while still making it sufficient to meet his needs. 5) What are the items of personal property intended to be stored in the structure? The applicant responded that he intends to store a jet ski, 4 wheeler, golf cart, deck furniture, boat and trailer, garbage cans, etc. in the proposed structure. These items are currently being stored on his property under tarps.

A Motion to close the Public Hearing was made by Mr. Bujanow. Motion seconded by Mr. St John. All in favor. Motion carried; hearing closed.

The five factors used to evaluate area variances were reviewed:

**1. The requested variance will not produce an undesirable change in the character of the neighborhood nor will a detriment to nearby properties be created.**

The manner in which the proposed structure will be built is consistent with the existing neighborhood.

**2. The benefit sought by the applicant cannot be achieved by a feasible alternative other than the requested variance.**

Due to the existing physical characteristics the applicant would not be able to achieve his goals in any other way, however, it was posited that the structure could be somewhat smaller.

**3. The requested variance is not substantial.**

It was felt by some members of the Board that the variances were substantial (mathematical calculations were performed to determine percentages of proposed setbacks in

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relation to Code requirements). The percentage of deviation from the code was between 75-80%. Based on these numbers there was agreement from others that this constituted a substantial deviation. Mention was made to the relative nature of these figures when considering lot size and other similar properties in the neighborhood.

**4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

Mr. McManus felt that the proposed project would be a benefit to the neighborhood as the applicant is proposing to house his personal property in one enclosed area instead of in the open on his property. It was noted that the applicant had voluntarily reduced the size of the proposed structure prior to his application. Additionally, what he proposed to build will be similar to and consistent with the style of his house.

**5. The alleged difficulty was not self-created.**

While the answer to this question is invariably yes, it is not necessarily a fatal flaw.

No one factor will determine the outcome of the application.

Further discussion of the factors ensued. Mr. Bujanow offered that codes were developed for a purpose. He expressed his regarding doing planning a justice by allowing more buildings to be in tighter locations in certain areas. The concern is would we be creating something that the code tried to address by establishing minimums and deliberated on the schedules for some time. He stated that he did not think it does any justice to the Town to adding density to an already dense area. Mr. St John was concerned about the number of nonconforming dimensions that already exist on the property. There appears to be insufficient yard space; does the proposed structure have to be the size proposed? Is there any way to reasonable modify the proposal to better conform with the code and still satisfy the applicant? The area is already dense with small structures, and there is concern about increasing the density of the area. Mr. McManus noted that there are a number of small parcels in the town and many non-conforming, preexisting uses. The Board, beyond the current tenure has granted many area variances to owners of those properties. He proposed tabling the deliberations in order to take the time to look back at past determinations on area variances of similar applications. Further, he felt that in balancing the five factors considered, the applicant has satisfied the standard for area variances for the proposed structure and would not propose any conditions on what he seeks to do other than what he has stated. The Board agreed to review the history of similar area variances granted.

Motion to table the application until next meeting on Thursday June 27, 2013 at 7:00pm scheduled so due to the July 4<sup>th</sup> Holiday was made by Mr. St. John. Motion seconded by Mr. Bujanow. All in favor. Motion carried. Application tabled; meeting rescheduled.

**New Business:**

None

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**Old Business:**

None

**Other:**

Liaisons:

Not in attendance.

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 8:20pm.

Respectfully submitted,

Nataly Dee, Secretary