

**Town of Kinderhook  
Zoning Board of Appeals Minutes  
August 2, 2012**

**MINUTES**

The Meeting of the Town of Kinderhook Zoning Board of Appeals was held on August 2, 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.

**1. ROLL CALL**

**PRESENT**

Tom Puchner, Chairman  
Andy Howard, Attorney  
Keith St. John  
Stephen Hotaling

**EXCUSED**

Jeff Ouellette  
John McManus  
Nataly Dee, Secretary

**ABSENT**

None

**2. MINUTES & CORRESPONDENCE:**

Prior minutes will be tabled until next month.

**3. NEW BUSINESS**

Mr. Puchner commented that for the first time in his memory, two item on the agenda for the ZBA, the Kinderhook Prospects Inc, and John Murray. Both are appeals of determination by the Building Inspector.

Mr. Howard commented that he had a discussion with the Building Inspector, Mr. Kirsch, and he wanted to relate to the Board the Building Department's feeling on both cases before allowing the Board to carry out their deliberations.

Mr. Kirsch addressed the Board. He first addressed the Kindehook Prospects application. He noted that the ice cream window in question was open. While Mr. Kirsch has no objection with the business, it is his opinion that that they should get a Use Variance permit and have a site plan approval.

Mr. St John asked why a Use Variance is suggested. How is the modified use of this property not already permitted.

Mr. Kirsch replied that according to the code you can only have one business there.

Mr. Howard questioned the permitted uses in the Town of Kinderhook. E1MFO district. 250-40 a-g non conforming . They had site plan approval back in 1999. Section 250-7 was also noted by Mr. Howard. It was Mr. Howard's opinion that it not a variance requirement but a site plan review. He did not see a prohibition on one or more retail uses, so long as there is

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Zoning Board of Appeals Minutes  
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site plan review.

Mr. Kirsch addressed the Murray application. Because of the kitchenette and heating it indicates habitable space. As such, Mr. Kirsch felt it should go before the Board to decide whether it required site plan review.

A. Kinderhook Prospects Inc – Appeal of Determination of the Code Enforcement Officer

B. John Murray – Appeal of Determination of the Code Enforcement Officer

There is one bathroom on the second floor of the house. There is a small bath with a shower in the mudroom on the first floor. In 2010, the applicant approached a company based in New Jersey, the New Jersey Barn Company, with the concept of purchasing a barn frame. A previous owner of the property built a garage in the 1950 or 1960's which is approximately 1500 square feet. The current owner would like to tear down the existing structure and erect a structure, a bank barn, which is more historically fitting of the property, similar to the barn that was originally on the property.

Mr. St John inquired about the number of structures on the property. The applicant offered that there are essentially two structures: the main house, which is 2000 square feet, and the barn that was erected with remnants of the previous barn. He also noted a "teeny" brick shed. Additionally, he stated that the site of the barn is just behind where the original structure stood. The applicant provided some schematics of the property and buildings for the Board's review.

The applicant described his intentions as a labor of love and would like to restore the feel of the property as it may have looked in the 1860's when the house was originally built. The property is 98 acres, and the applicant feels it would look nice if there was a barn on the property.

The applicant provided details about the proposed building. The barn would have a basement with space for one car or farm vehicle. There would also be a bathroom. Stairs would lead to the main level which has open space. An additional staircase would lead to a loft area.

The applicant showed the Board where the buildings are located on a map of the property. He stated informed the Board that the property is currently farmed by Stanley Starron.

The applicant told the Board that the barn he proposes to erect was originally built in the 1870's.

Mr. Howard introduced the issue before the Board which deals with accessory apartments. The Code stipulates that the Planning Board needs to issue a site plan approval and an accessory apartment permit. For those applicants, the space has to be greater than 400 square feet for use as a "classic in-law apartment". Unlike many jurisdictions, the way Kinderhook has codified this would be upon the end of the mother-in-law, it's the end of the accessory apartment. The underlying concern in the creation of a separate residential unit that continues

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Zoning Board of Appeals Minutes  
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on for ever. All of a sudden, a residential property becomes a multi-family property just by happenstance. The primary threshold question before the Board would be is this a potential residential unit.

Mr. St John raised the issue that this potential accessory apartment is not within the owner occupied residence.

Mr. Puchner offered that the way the Code is written, it would have to be attached to or within the main dwelling. However, while he is appreciative of Mr. Kirsch's protection of the Code, he does understand the applicant as intending to create an apartment as such in the proposed structure.

Mr. Howard elucidated the difference in the Code between accessory building and structure and an accessory dwelling. That is the issue before the Board.

Mr. Murray ran through the design proposal indicating to the design plans where necessary. He indicated that water for the barn would run from the property's well. A septic system will be installed to deal with the outflow from the barn.

Mr. Puchner introduced that to get an accessory apartment use permit is not an impossible thing to do. Mr. Murray assured the Board that there is no intention for anyone to live in the barn. Further, he expounded on his ideals about what the barn would look like, that it would be an historic recreation. The heat to the barn will be radiant under polished concrete.

There is no freshly denied application from the Building Department. There could be a resolution that would deem this complete subject to an application for a building permit with the new plans, and a denial, with a subsequent application for an appeal for that denial.

A Motion was made to hold a Public Hearing I guess by Mr. St John. Seconded by I don't know who.

#### **4. OLD BUSINESS**

Motion to adjourn made by Mr. Puchner. All in favor. Meeting adjourned.

Respectfully submitted,

Nataly Dee, Secretary