

**Town of Kinderhook
Zoning Board of Appeals
September 5, 2013**

Minutes

Approved

The Meeting of the Town of Kinderhook Zoning Board of Appeals was held on Thursday, September 5, 2013 beginning at 7:03pm at the Kinderhook Town Hall, 3211 Church Street, Valatie, 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
Andrew Howard, Town Attorney
Peter Bujanow
Keith St. John
Greg Allen
Regina Rose
Nataly Dee, Secretary

Excused:

None

Absent:

None

B. Correspondence

1. Review of Minutes:
August 1, 2013

A motion to approve the minutes from the August 1, 2013, meeting as amended was made by Mr. Allen. Motion seconded by Ms. Rose. All in favor. Motion passed; minutes approved.

2. Resolution dated September 4, 2013, concerning The Defiglio Area Variance that was granted at the previous meeting.

A motion to approve the resolution was made by Ms. Rose. Motion seconded by Mr. Allen.

In Favor

Mr. McManus
Mr. Allen
Ms. Rose
Mr. Bujanow

Opposed

Mr. St. John

The vote was 4-1 in favor of approving the resolution. Motion passed; resolution approved.

Public Hearing(s):

None

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New Business:

1. Robert Cramer – Appeal of decision by the Building Department regarding Expert Builders signage

Mr. McManus addressed a threshold question regarding receipt of written Notice of Appeal and payment of \$50 filing fee. An application was received to the Zoning Board, but it was not submitted to the Building Department. The fee was not submitted. This will be addressed further in the Public Comment portion of the meeting, but under the regulations there is nothing to act on at this time.

Old Business:

None

Other:

1. Liaisons:

Not in attendance.

2. Public Comments:

Mr. McManus invited Mr. Cramer to address the Board.

Mr. Cramer provided the Board with a narrative explanation of the issue he would like to bring before the Board. He provided a history of the events and his opinion about the company in question, Expert Restoration. Mr. Cramer noted that this company came into town following a hail storm. They got a Peddler Permit from the Town Clerk. Mr. Cramer addressed the Planning Board, the Town Board and the Building Department regarding his complaint about this business. Mr. Cramer is particularly grieved about the nature and location of their trailer parked on Mr. Kenny Van Allen's property located adjacent to O'Kenny's on Route 9. Mr. Cramer read from email correspondence between himself and the Building Department (on file). Additionally, he read from 250-23 of the Code regarding the regulation about signs. Mr. Cramer feels the trailer should be moved. Mr. Cramer inquired about the procedures and forms he needs follow to pursue this matter.

Mr. McManus informed him that he needs to file a Notice of Appeal with the Building Department and file the required fee associated with that application. Mr. Howard referred Mr. Cramer to Article VIII of the Zoning Section beginning with Chapter 250-54. Upon the filing of these documents, the Building Inspector will transmit to the Zoning Board of Appeals all papers constituting the record upon which the action appealed from was taken. Mr. Howard provided addition comments regarding the process. The "record" then gets sent to the Planning Board for review and comment. Further, he provided some background in the form of comparison of codes

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from other municipalities. He commented on some of the nuances in codes regarding signage.

Mr. St. John added some comments and observations. They are both procedural and substantive. He stressed to Mr. Cramer that he file the requisite applications and fees so that the matter may be addressed in full. Upon the Board's determination that an application is complete, then a Public Hearing could be scheduled. Mr. St. John sought clarification from Mr. Cramer that he is asking the Board for an interpretation of one or more provisions of the zoning code because Mr. Cramer feels the Code Enforcement's interpretation of those provisions is incorrect. Mr. Cramer confirmed Mr. St John's suppositions.

Further discussion of the process of the filing of an appeal ensued.

Mr. Bujanow commented that 250-54 Appeals actually relates to an applicant that may have been aggrieved, rather than a citizen's appeal. He noted that when we put a citizen who may have discovered something questionable or may like further clarification about something through the same process with the same fee structure, he thought it is disingenuous to the citizen who may be just asking for a clarification but has no other way to pursue the matter. Further, he noted that it may be somewhat awkward for that citizen to approach a building official who had created that decision. He offered that there should be a citizen's appeal process whereby there are no fees charged. The burden of the fees may prohibit citizens to come forward with grievances.

Mr. Howard noted that a decision provided by the ZBA is not an advisory opinion but rather an interpretation of the Code. Further discussion regarding the rights of the citizen based on the current procedures ensued. The discussion resolved with an offer by Mr. Bujanow that he draft a resolution for review and adoption by the ZBA resolving to request the Town Board consider an amendment to the Zoning Code pertaining to the process by which citizens can make an appeal to the ZBA. The matter would in turn be directed to the Codes Committee. Note was made of Article 11, Chapter 250-66 of the Code regarding the fee schedule.

A Motion to adjourn was made by Mr.Bujanow. Motion seconded by Mr.Allen. All in favor. Motion carried; meeting adjourned at 8:20pm.

Respectfully submitted,

Nataly Dee, Secretary