

TOWN OF KENDALL
ZONING BOARD OF APPEALS
MEETING MINUTES

Tuesday, February 9, 2010 – 7:00 p.m.

CALL TO ORDER: Chairperson Kevin Banker called the meeting to order at 7:00 p.m.

ROLL CALL: Kevin Banker, chair - present
 Gay Smith - present
 Pamela Rowles - present
 Tony Cammarata - present
 Patrick Bolton - present

ALSO PRESENT: Paul Hennekey, Deputy Code Enforcement Officer and Zoning
 David Schuth, Town Board Representative
 Joyel Miesner, Recording Secretary

APPROVAL OF MINUTES: No minutes were presented from the previous meeting held on January 11, 2010

NEW BUSINESS: Kevin recommended reading zoning regulations case studies presented by James Coon. He suggested typing in the words zoning regulations and James Coon into a Google search to find the document.

Kevin introduced the application for the Robinsons of 2398 Norway road to build a new barn and shed where an existing barn and shed had been destroyed by fire. The Robinsons are asking for a zero variance to build the new barn on the burnt barns original footprint. This will allow them to utilize a cement slab from an addition added to the original structure. Paul stated that they had originally asked for a 3-foot side setback. He provided a copy of the application for the board members to observe. Paul also had a copy of the variance that was used for the original barn. Paul did not provide the current drawings of the property because Mr. Robinson had taken them back. The public notice stated that the new barn was to be 40 feet by 60 feet. It was determined that the public notice was incorrect and that the actual size of the new barn was to be 96 feet by 60 feet. Discussion took place about size and building design of the new barn. Kevin spoke about concerns he had about the Robinson's case. Kevin said that there was no survey map for the property. In the past the Robinson's lot line was gauged by a stone pile and a fence post, Kevin feels this could cause conflicts with modern mapping done by neighbors. He wants to be sure that whatever the Robinsons are applying for and what ever the board deems to grantable or not grantable that exact specifics are had. Paul informed the board that he spoke with Mr. Robinson on Thursday and that Mr. Robinson said that he had all the criteria including the map. A second concern of Kevin's was that there is no original footprint for the Robinson's barn. Paul stated that a variance is not need build on the original footprint of a residence but that the rule does not say anything about accessory structures. Kevin would like to see a variance issued to prevent problems from arising during future property sales. Paul asked a question about the Robinson's old variance and wondered if it would still stand. Kevin answered that the old variance is wiped out

because the old building was destroyed. Kevin stated that a variance is issued for the life of the structure. There was group concern about the placement of the barn and wonder why the barn could not be placed on another part of property. There was also wonder of what feasible reasons did the Robinsons have for not building the new barn in a different location on the property. Discussion followed. There was concern whether or not problems in future would arise if the Robinsons need to go on their neighbor's property to maintain the barn and that future surveys of the neighbor's property would be different. Paul stated there were cases where towns were sued because homeowners were over their right of way. Dave mentioned that there could be a problem with the runoff from the barn falling on the neighbor's property. Discussion occurred about whose responsibility it was to make sure the homeowner followed the guidelines set by the zoning board. Paul said that Larry's opinion was that it is the home owner's responsibility to build within the set backs and guide lines set by the zoning board. Tony asked what was the normal variance for a structure. He was answered with a variance of 30 feet. Discussion took place on whether the property was grandfathered in. Kevin stated that decision does not need to be made the night of the hearing. The board has 62 days from the hearing to make a decision.

Kevin made the point that people often ask the zoning board if a variance is needed. Kevin said he would like to see the Code Enforcement Office decide whether a variance is needed or not needed. Kevin stated that the Code Enforcement Officers have education and more information so they should make the initial decision. If someone disagrees with the decision made by the Code Enforcement Officers then the zoning board will get involved.

Pam wanted to know if Larry would be attending the hearing Thursday February 11, 2010. Dave assured that he would request that Larry attend the hearing. He also stated that he would present the information if Dave Robinson were unable to.

Kevin reviewed the five criteria of town law that must be addressed by the zoning board. The criteria can be found on page 67 of the zoning board's binder. The following criteria were stated.

1. Will an undesirable change be produced in the character of the neighborhood or detriment of near by property be created by granting the variance.
2. Is there another feasible method
3. Is it substantial
4. Is there an adverse affect on impact on the physical environmental conditions
5. Was the alleged difficulty self created

The board discussed public notices. The zoning board, planning board and town board has different requirements by law for when they have to put up public notices.

Town board – 10 days

Planning board – 3 days

Zoning board – 5 days (from the date of the publication)

The Zoning board publishes its notices in the Hamlin-Clarkson Herald that has a publication date of Sunday. Therefore, hearings for the zoning board are held on Thursdays.

Tony asked question about obtaining information about properties and visiting the property sites. Kevin gave the following procedure. A notice is put in the paper for the public. The adjacent neighbors in each compass direction are sent a letter by mail. Kevin told Tony to absolutely feel free to call the owner of the property and visit the property. Kevin stated that no more that two members of the zoning board might visit the property at the same time. If more than two members visit the property at the same time it is considered a meeting and the public must be notified. All meetings must be open to the public. Kevin stated that homeowners appreciate the visit because you are taking an interest in making an informed decision. Paul said a visit helps make the property drawings make sense.

It was discussed that zoning board is not to get involved with zoning issues unless an issue is brought to them.

Dave suggested that after the zoning meeting it would be beneficial for zoning board to attend the planning board's workshop about the junk regulations, storage regulation, and the moratorium.

There was concern about other properties in the Kendall area that experienced fires and there was interest in whether or not any work had began on those properties.

Kevin stated that things need to be referred to the county planning board, but that there is no strait forward set of guide lines. Kevin said that he see this becoming a bigger issue in the future. Kevin mentioned the municipal law article 12 B from 1991 that list individual circumstances for when something does not need to be referred to the county planning board. Dave said there was an agreement that was modified by the county planning board. The group discussed the different circumstances for notifying the county panning board.

Kevin spoke about the casual atmosphere of the zoning board and discussed how a motion was presented during a hearing. He said that it was not a good idea for the chairman to make motions and that he looks for other members to motion and second. He then calls for vote. Kevin said he always asks for a second and then the topic will be open for discussion. Pam mentions that a motion can be amended. Kevin said any member has the right to call for a vote and that after a vote another motion can be issued to open up discussion again.

Discussion took place about the next meeting. Topic that will be discussed will be the update to the regulations of the junk law and the outlawing of camp grounds on unapproved lots.

ADJOURNMENT: Pam moved to adjourn. Second by Pat. All in favor Adjourned at 8:09 pm

Respectfully submitted,

Joyel Miesner
Recording Secretary