

TOWN OF KENDALL
ZONING BOARD OF APPEALS
MEETING MINUTES

Thursday, February 11, 2010 – 7:00 p.m.

Draft #2

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

David Robinson, 2398 Norway Rd

PUBLIC HEARING: 7:03 p.m. #01VAR10, David & Ellen Robinson, 2398 Norway Rd application for a zero (0) foot area variance for the reconstruction of a barn and shed.

Kevin presented the completed and signed application for the variance, a copy of the current tax map, and accurate scale drawings of the property.

Kevin read the public notice. The public notice contained incorrect information about the date of the hearing. The public notice said that the hearing was to be held on Tuesday, February 11th. The actual date of the hearing was Thursday, February 11th. Kevin stated that in a public notice the date supercedes the day and the public notice error would not have an impending issue with the hearing.

Kevin explained the case and said that the Robinson's barn was destroyed by fire three weeks ago. The previously existing barn was a nonconforming structure but was a grandfathered structure. A previous variance was issued for a lean-to to be built on the side of the barn.

Kevin asked Mr. Robinson what the relationship of the old barn's footprint and the placement of the new barn would be. Mr. Robinson used maps to answer Kevin's question. Mr. Robinson said that on the map the blue area represented the preexisting barn and the red area represented the new barn. Mr. Robinson described the old barn and attached shed. Mr. Robinson explained that he had an existing variance from 1994 and that variance would have allowed him connect the original barn to another barn on the property. Mr. Robinson then described the structures that were lost during the fire. He requested to rebuild the barn and shed with changes. He wanted to extend the shed to the south connecting the shed and the barn. He also wants to add a 12-foot lean-to to the

north side of the barn. He stated that the new structure would not go to the property line and that it would be short of the property line.

Kevin clarifies that the zero foot request is to recover the same area and the same footprint where the shed was. Mr. Robinson notes that the variance was granted before to add the shed. Kevin asked if Mr. Robinson intended to go to the property line with the zero variance. Mr. Robinson said that would be impossible to go to the edge of the property line, because it was rock.

Kevin and Mr. Robinson discussed reasons for placing the new structure in the footprint of the original structure. An existing cement slab, existing driveways and pathways, existing electric wiring, and existing water pipes would be utilized by the new structure and would be expensive to move. Mr. Robinson also stated that the footprint was located on high ground on the property. Kevin asked if the leach field was on the north side of the structure. Mr. Robinson said, yes it was in the lawn.

Mr. Robinson presented photos and described them. Kevin asks when the most recent survey map was done. Mr. Robinson said 1978 was when he purchased the property. Kevin asked if there were road pins to measure from? Mr. Robinson said yes. Discussion took place about the size of the new structure. The new structure is to be 130 feet long.

Mr. Robinson asked about the life of the 1994 variance. Kevin stated that a variance is issued for the life of the structure.

Kevin expressed concern that perhaps problems could arise in a future survey of the Robinson's property or the neighbor's property.

Kevin asked how many acres Mr. Robinson had on his farm. Mr. Robinson responded with 50 acres.

Larry clarified how the zero variance was decided on. He stated that the original intent was for a 14-foot side setback, but he explained to the Robinsons that 14 feet may not work for their structure and that they may want to apply for a zero variance.

Kevin asked to know distance from new lean-to the property line. The barn was said to be 16-foot from the property line and lean-to was said to be 4ft from property line.

Tony asked if the Robinsons would be sheltering animals, such as, horses or chickens. Mr. Robinson said yes they would house horses, but would not be housing chickens.

Kevin presented the first of town law that needed to be addressed by the zoning board. He read the first law that pertains to whether an undesirable change would be produced in the character of the neighborhood or if detriment of near by property would be created by granting the variance.

Discussion took place. Kevin was concerned about the Robinson's need to go on their neighbor's property to maintain the barn. Mr. Robinson described a good relationship

with his neighbor. He stated that he has been maintaining and cutting the neighbor's adjacent pasture for several years. Pam stated that the neighbor was absent from the hearing and that it must not be an issue. Gay had concern with the barn being expanded and said that it may cause future issues with neighbors. Mr. Robinson said that the new barn would not be encroaching on the neighbor's property because there was a barn in the same place before. The shed would not be encroaching on the neighbor's property because the shed would be longer and no closer to the property line. Pam stated that if the fire had not occurred there would be no problems with the original barns placement. Pam stated that the zoning board should look at each property on its own premise. Mr. Robinson said he did not think the barn being close to the neighbor's property devalued it. He said a new buyer would buy the property knowing the Robinson's barn was close to the line. Mr. Robinson said the property right next to the barn was not valuable because it could not be sold as a building lot. He said that power lines divided the property and a natural ditch was on the property. A new house would have build close to the road.

Kevin asked if Mr. Robinson had a special use permit for housing horses or livestock now or if he ever had to have one. Pam asked him why would he need special use permit in an agricultural district. Kevin said there is a special use permit for animal housing, but was unsure if the permit was required personal use horses or if the permit was required for boarding, only. Paul said housing is defined as boarding for a fee.

Kevin presented the second law, is there another feasible method Kevin stated that clearly a variance was needed to build close to the previous existing footprint and that it would be expensive to move to the barn to another location.

Kevin presented the third law, is it substantial. Kevin said he thought that it was a yes and that it was a 100% variance and that is substantial.

Kevin presented the fourth law, is there an adverse affect on impact on the physical environmental conditions. Kevin asked for comments. There were no comments.

Kevin presented the fifth law, was the alleged difficulty self-created. Kevin said the he did not think the initial difficulty was self-created, but the expansion of the structure is self created.

Kevin stated that the previous variance for the shed was for a 3-foot variance and asked if problems would be created with a new 3-foot variance. Mr. Robinson said that the concrete slab would need to be cut for the construction of a pole barn. The concrete sits 5½ inches from the line. Mr. Robinson brought to the attention of the board that according to the 1978 surveyor's map, the shed already existed on the property line and the 1994 variance approval was incorrect at 3 feet. The correct variance in 1994 should have been a zero foot variance.

Both Gay and Kevin made comments about the uniqueness of this situation created by Mr. Robinson's want for a zero variance. The preexistence of a structure and that the structure had been in the same location for an undetermined amount of years was noted.

Kevin stated that the request was not for the construction of a new building or for the rebuild of a dilapidated building, but for the replacement of a barn that was being used and was destroyed by fire. Kevin mentioned the uniqueness of not having a recent property survey. Kevin noted that the survey map was done 30 years ago without the use of today's technology.

Kevin stated concern with the old survey. Kevin asked Larry how is it that the town is assured a new building is where it should be. Larry said the code enforcement officer does not take measurements of the property. Larry said the code enforcement officer makes sure the owner is following rules, but it is the property owner's responsibility to be sure and follow the rules. Kevin asks Larry if the code enforcement office will require a current survey. Larry said it was not a requirement to have a current survey, but it is a good practice. Discussion about the price of a survey takes place.

Pam moved to approve the application for a zero (0) foot area variance for the reconstruction of a barn and shed for the north side property line at 2398 Norway Road. Seconded by Pat.

Further discussion takes place about having the property surveyed. Gay asked if a new survey would be taken. Discussion about the price of a survey begins again. Larry stated that the code enforcer cannot mandate a new survey. A question is asked if the old survey is correct. The survey map has a stamp and it is decided that it is a legal binding document.

Larry suggested working with Mr. Robinson to make sure there is good faith between the code enforcer and the property owner.

It was reiterated to the applicant that the responsibility for correct placement and measurements of the structure relies on the homeowner so as to not have any of the building on the adjoining property.

Kevin called for a vote.

DECISION: Passed by unanimous roll call vote, 5-0.

Pam motions to adjure. Seconded by Pat. All in favor. Adjourned at 8:30 pm.

Respectfully submitted,

Joyel Miesner
Recording Secretary