

TOWN OF KENDALL
ZONING BOARD OF APPEALS
MEETING MINUTES

Tuesday, December 21, 2010 – 6:00 p.m.

CALL TO ORDER: Board Chair Kevin Banker called the public hearing to order at 6:03 p.m.

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

ALSO PRESENT: John Sansone, Attorney
 Larry Gurslin, Code Enforcement and Zoning Officer
 Paul Hennekey, Deputy Code Enforcement and Zoning Officer
 Paul Gray, Planning Board Chair
 Daniel Gaesser, Supervisor
 David Schuth, Town Board Representative
 Joyel Miesner, Recording Secretary

PUBLIC: Kevin Halligan, 16755 Lakeland Beach
 Andrew Kupferschmid, 16530 Woodchuck Alley
 Nat O. Lester, 64 Main Street, Brockport
 Louie Lustumbo, 15116 Marsh Creek Road, Kent
 Tonya Lustumbo, 15116 Marsh Creek Road, Kent
 Jeffery Martin, 66 Village Square, Holley
 Rich Miller, 16729 Lakeland Beach
 Martin Murray, 16745 Lakeland Beach
 Suzanne Murray, 16745 Lakeland Beach

PUBLIC HEARING

Kevin read the public notice aloud. The notice stated: Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals of the Town of Kendall on Tuesday, December 21, 2010 at 6:00 p.m. at the Kendall Town Hall, 1873 Kendall Road, to consider the application of Martin Murray, owner, 16745 Lakeland Beach Dr., Tax ID 10.16-1-9, for a east side setback. Applicant proposes a zero line setback on an existing structure (garage), requiring a 5-foot side setback variance. Relief is being sought from Article VIII, Section 832. Property is zoned Waterfront Residential (WR). All persons wishing to speak will be heard at this time. Kevin Banker Chair, Zoning Board of Appeals.

Kevin asks Mr. Murray if the building is a 24-foot by 24-foot pole barn to be used as a garage. Mr. Murray says yes. Kevin said the building permit stated the location of the pole barn was to be built on the southwest corner of the property. Mr. Murray said that was correct. Kevin said there was an interference issue with the original placement of the barn. Mr. Murray said that was correct. The contractor working for the Murrays, Mr. Kupferschmid, said there was an issue with the setback of the road. The setback pushed the barn into the area where the septic would be. Kevin said the plans for the pole barn were then moved to the southeast end of the lot. Mr. Murray said correct. Kevin asked Larry if another

building permit would have needed to be issued to change the location of the barn. Larry said the location was modified on the existing building permit. Kevin asked if the barn was complete. Mr. Kupferschmid said it was structurally complete but lacked some cosmetics. Kevin said there is framing and sheathing but no doors or concrete flooring. Mr. Kupferschmid agreed with Kevin comments. Kevin discussed a survey map of the property done by Gregory T. Pauly, dated September 13, 2010. Kevin asked if it was the most recent survey map of the property. Mr. Martin told him he was correct. Kevin said the survey map showed the barn is exactly on the property line. Mr. Lester said the survey showed that structure encroaches on the Lustumbos property by eight hundredths of a foot. Mr. Lester pointed out that the encroachment issue of the barn needed to be addressed as well as the setback issue. Kevin asked if the Lustumbos had another survey showing different numbers from the Martins survey. Kevin asked for the Lustumbos survey. Mr. Lester presented the Lustumbos survey to the board. Mr. Kupferschmid explained how he decided on the placement of the barn. He said he mistakenly took a measurement from two state easement property markers thinking they were the Martins property line markers. Kevin said so there was measurement mistakenly taken from the wrong location. Mr. Kupferschmid said yes. Mr. Martin mentioned a letter Larry had written stating that if the markers the builder relied on were the correct lot line markers there would be no setback violation. Mr. Martin described the state easement property markers and the mistake made by Mr. Kupferschmid. Mr. Martin discussed discrepancies between the Lustumbo survey and Martin survey. Mr. Lester wanted to make the point that the building was erected in good faith on what was thought to be the proper property marker. Kevin asked Mr. Kupferschmid when he was first aware a mistake was made. He said the building contained siding and a roof when a letter to remedy was received. Kevin asked the date the letter was received. Mr. Martin replied the notice of violation was dated on August 31, 2010. Mr. Martin discussed a letter from Larry. In the letter Larry said the Murrays had to get the situation resolved by September 30th. At this point the Murrays took legal council with Mr. Martin. Mr. Martin said he looked into the option of securing an easement from Mr. Lustumbo and asked for an agreement signed by Mr. Lustumbo that would allow the encroachment. He said that he looked into the Murrays purchasing the strip of land between their property and the state parcel, but Mr. Lester told him that the entire lot must be purchased. Mr. Martin deemed that impractical. Kevin asked if there was a stop work order. Larry said as long progress towards a resolution continued there was no need for a stop work order. Kevin asked what the cost of the contract for building the barn was. Mr. Kupferschmid answered \$15,400 not including the concrete. Kevin asked Mr. Murray how much had been paid so far. Mr. Murray replied pretty close to the entire amount. Kevin asked about the location of the septic system using the survey map as a guide. Mr. Kupferschmid explained the location of the septic system. Mr. Martin gave the board a packet. He then discussed the packets contents. The packet contained the building permit application, the building permit, zoning board minutes from June 8th, zoning board minutes from July 17th, a copy of the Murray's property deed, a copy of the subdivision map filed in the county clerks office, a tax map containing the martin property, copies of the relevant zoning ordinance pages, a notice of violation issued by Larry, Larry's letter that accompanied the notice of violation, a letter to Larry from Mr. Martin, a letter from Mr. Lester to Mr. Martin, a letter from Mr. Martin to Mr. Lester, a copy of the variance application, a short form EAF, a tape location map of the Murray's property from 1986, and a sketch of the Lustumbo's property. Mr. Martin presented 12 photos to the board, as well. These photos were of the Murray's pole barn the Murray's property, neighboring properties, and structures similar to the Murray's barn found on lake front properties. He described the photos and

there importance. Mr. Martin said that the existence of the garage whether it was in its current location, or if it was five feet further to the west was consistent to the neighborhood. He reviewed the five factors the board had to consider and responded to each one. Mr. Martin discussed the properties neighboring the Murrays property. He referenced the photos and pointed out similar structures to the Murray's barn found in the neighborhood. He said the Lustumbo property contained a drainage ditch and in his opinion will not be able to be developed. He discussed the encroachment of the structure and possible scenarios in which the barn would need to be moved. Mr. Martin said there would not be any undesirable change produced in the character of the neighborhood and no detriment to near by properties will be created if the variance is granted. Mr. Martin discussed whether or not there was another method feasible other than an area variance that would solve the issue. He discussed obtaining an easement from Mr. Lustumbo, He asked for an agreement that would allow the encroachment and he inquired about purchasing the land. He said the only options were to purchase the entire lot or move the barn. He and the Murrays felt neither of these options was feasible. Mr. Martin then discussed whether the requested variance was substantial. Mr. Martin conceded that the request was substantial because they asked for a zero variance up to the property line. He discussed whether or not the proposed variance would have an adverse affect or impact on the neighborhood. He said there were no changes to the topography, no increase in traffic and no impact on drainage or flooding. Mr. Martin discussed whether the difficulty was self-created. He conceded that the contractor made a mistake and the difficulty was self-created. Mr. Martin then referenced case law that dealt with an area variance. Tony asked a question regarding where the run-off will go. Mr. Kupferschmid said the run-off will go into the lake and will not run into the neighboring property. Discussion took place about the purchase price of the Lustumbo property. It was said that property was assessed at \$900 a liner foot of lakefront, but there was no set purchase price. Mr. Lester asked the total cost of the project? Mr. Kupferschmid said the building cost was \$15,400, the concrete would be \$2,400 and the electric would cost \$1,200 to \$1,500. Discussion took place about trees being cut. Mr. Kupferschmid said two trees over the parking area were trimmed. Mr. Miller asked the board if a new site plan was completed for the new placement of the barn. Kevin explained the definition of a site plan and that site plans are not used in this procedure. Mr. Miller asked if there was knowledge of the new barn placement by code enforcement? Larry said yes, it is not unusual for a building application to be changed or modified. Mr. Miller asked if there was a written agreement of where the barn was to be placed. Kevin said it was not possible to have a written agreement for the placement of the barn because the barn was placed in violation of the code. Kevin explained setbacks requirements the barn would have needed. Mr. Miler asked about the height of the barn. Mr. Kupferschmid responded that the barn was 13 feet 6 inches tall. Mr. Miller discussed how the barn obstructs the view of the lake and the view from the Lustumbo's property to the lake. Mr. Miller discussed how he felt the barn was in violation of the road set back. Discussion took place about road set backs. Kevin read the zoning regulations. Setback, back is defined as the required open unoccupied space measured from the rear lot line to the nearest part or the main or accessory structure. Mr. Miller asked when the board would make a decision about the case at hand. Kevin described the procedures that must be followed by the board when granting or denying a variance request. Kevin said the variance case must first be referred to the county planning board because of the proximity of the property to county and state property. The county planning board has 30 days from the date they receive the variance case to give input to the town zoning board. The zoning board of appeals has up to 62 days to make a decision from the closing of the public hearing. Mr. Miller gave his opinion on the publication process of

the public notice. He felt it was not sufficient. Mr. Miller gave his opinion on how the barn obstructs the view. Mr. Miller gave his opinion on how the Murrays would have benefited by purchasing the Lustumbos property. Mr. Miller discussed trees that were rimed on the Lustumbos property. Mr. Miller asked if the zoning board allowed the variance to be granted, if it then allows him to trample on his neighbors property. He pointed out that his garage was smaller than his house. Mr. Lester said he opposed the Murray's variance application on behalf of the Lustumbos. Mr. Lester addressed the five factors the zoning board considers when granting or denying a variance. Mr. Lester said that Mr. Lustumbo requested that the Murrays submit a purchase order. He said the Murrays had not done so. He said a purchase order was not difficult to draft and submit it for consideration. Mr. Lester discussed closing costs and expenses that he thought the Murrays should pay. He discussed how the Murrays were of aware of the size of their lot and what they could have done to assure the proper set back. He discussed the standard tape location map the applicant relied on. He pointed out the map said it was not to be used for building purposes as an exact location of property lines. He suggested that the applicant should have had the property staked out before they began construction. He discussed how the applicants have not abided by the town zoning ordinances. He discussed how the Murrays did not talk with the neighbor on the other side of the Lustumbos property to possibly split the cost of the purchase. He commented on how the Murrays were asking for 100 % relief of the zoning ordinance. Mr. Lester said that if relief is granted the town ordinance will then be ignored. He then discussed the need for set backs, so emergency vehicles can have access to properties. Mr. Lester referenced case law. He said the larger the variance requested the more likely it will have negative affect on the neighborhood. Mr. Lester requested that the variance be turned down. Discussion took place on whether the septic was the determining factor for the new placement of the barn. Mr. Miller said there was no reliable evidence showing the location of the septic system. He said he felt it is wrong to grant a variance when both parties acknowledged there was an encroachment on the Lustumbo's property. Mr. Miller wanted to clarify if rear set back had been violated. He encouraged the board to turn down the variance application. Mr. Lustumbo asked if the Murrays knew he owned the adjacent property before the barn was erected. Mr. Murray responded yes. Mr. Martin said they knew the Lustumbos owned the adjacent parcel, but may not have known exactly where the property line was located. Mr. Lustumbo said Murrays did know where the property line was. Kevin said whether the barn was built on the Lustumbos property intentionally or if it was a mistake does not have an impact on the board's decision. Mr. Lester referenced a previous lot line variance case. Kevin suspended the public hearing until Tuesday January 11th at 7 pm. Kevin requested that Larry address that a true measurement is obtained from the property line to the building and from the road to the building. Mr. Haligan asked about the subdivision and how it came into play regarding the location of the barn. Kevin said the matter would be addressed at the next public hearing. Mr. Lester requested that the public hearing not be suspended and that a decision be made. Discussion took place about whether a new legal notice would be needed. Kevin said a new notice was not needed. Mr. Martin asked if the board planned on referring the case to the county planning board. Kevin said yes. Discussion took place about sending the referral to the county planning board. Mr. Martin said he felt a decision made that night would be premature with out the county planning boards suggestions.

NEXT MEETING

Tuesday January 11, 2010 at 7:00 pm

ADJOURNMENT: Tony motioned to suspend the public hearing. Seconded by Pam. All in favor. Adjourned at 7:27 pm.

Respectfully submitted,

Joyel Miesner
Recording Secretary