

**TOWN OF KENDALL  
ZONING BOARD OF APPEALS  
MEETING MINUTES**

Tuesday, January 11, 2011 – 7:00 p.m.

**CALL TO ORDER:** Board Chair Kevin Banker called the meeting to order at 7:01 p.m.

**ROLL CALL:**

Kevin Banker, chair	- present
Patrick Bolton	- present
Tony Cammarata	- present
Gay Smith	- present

**ALSO PRESENT:**

Larry Gursslin, Code Enforcement and Zoning Officer
Paul Hennekey, Deputy Code Enforcement and Zoning Officer
Daniel Gaesser, Supervisor
David Schuth, Town Board Representative
Joyel Miesner, Recording Secretary

**PUBLIC:**

Bonnie Ann Briggs, 16739 Lakeland Beach
Beverly Daubney, 16743 Lakeland Beach
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
Fletcher Rowley, 2040 Norway Road

**APPROVAL OF MINUTES:** Minutes from December 21, 2010 were reviewed. Tony moved to accept the minutes with corrections. Seconded by Gay. All in favor.

**PUBLIC HEARING**

Board Chair Kevin Banker reopened the public hearing to order at 7:03 p.m. Kevin read a letter from Larry addressed to the Martins and himself. The letter discussed that on December 27, 2010 at 2:00 p.m., Larry and Paul measured the distance of the Murray's garage to the road. It was determined that the distance measured did not meet the 20-foot setback requirement. Kevin asked the Murrays and their attorney if they would like to change the current variance application. Mr. Martin said that it was his understanding that the new setback violation would be addressed separately and that the current public hearing would proceed to a conclusion. He said the determination of the board on the current variance request would determine how he would address the new setback violation. Kevin asked if Mr. Martin wished to proceed with the current hearing rather than withdraw the application. Mr. Martin said yes. Kevin gave Mr. Lester an opportunity to speak. Mr. Lester said it was his understanding that the hearing would come to a conclusion that night. Kevin gave the public an opportunity to speak. Beverly Daubney said she was the neighbor to the west of the

Murrays and said that she had absolutely no problem with the structure. Bonnie Ann Briggs a neighbor of the Murrays also spoke. She said that she was very troubled to hear about the problems with the garage and that she was very sympathetic with the Murray's situation. Mr. Martin discussed whether the variance was self created and whether the variance was substantial relative to the zoning requirement. He commented on different degrees of self-creation, gave examples and described how the Murrays applied for a legal building permit. Mr. Martin said the application was obtained in good faith and discussed a letter from Larry. He said the violation was not blatant. He said the violation may or may not be substantial depending on how it is looked at by the board. Mr. Martin referenced case law that favored applicants with variances. Mr. Lester said he stood by comments he placed on the record during the first portion of the public hearing. He said he would like to note that the additional comments made that evening came from neighbors not affected by a garage being built on their property line. He said the garage position on the original building permit would have been closer to commenting neighbors. He discussed how the Murrays are asking for a substantial amount of relief. Mr. Lester discussed the encroachment. He discussed the error that had been made by the builder and property owner and how the tape map warned that it was not to be used for building purposes. He discussed possible procedures that could have been performed to avoid the building error. He said that if ZBA grants this variance it will be sending a bad message to the Town of Kendall and to contractors. He urged the ZBA to abide to the town laws and not grant the variance. Mr. Martin said he felt that the statements made by Murrays neighbors were relevant and were relevant to the neighborhood character. He acknowledged the encroachment and said the Murrays intended to address the encroachment to a maximum of three inches if variance is granted. Mr. Lester discussed the Murrays request for 100 percent relief and the comments made by Mr. Miller in regards to neighborhood character. He said that granting the variance request would involve a significant departure from the trends in the neighborhood. He discussed alternatives to the variance, such as, submitting a purchase offer and moving the garage. Gay asked how the encroachment would affect the titles of the Murray and Lustumbo properties. Mr. Martin said the encroachment is a title objection that affects the marketability of both properties. Mr. Martin said it would be the Murray's intention to correct the encroachment issue. He said that if a variance is granted for a setback violation it would not create an issue if the property is sold. Mr. Lester said that if his client attempted to obtain a mortgage or sell the property the encroachment would need to be resolved and that the property value would be negatively affected. Kevin read the five criteria from section 832 of granting area dimensional variances from the Kendall Zoning Ordinances.

- Would an undesirable change be produced in the character of the neighborhood or be created by granting the variance?
- Is there another feasible method other than an area variance?
- Is the requested variance substantial?
- Is there an adverse affect or impact on the physical environmental conditions?
- Was the alleged difficulty self-created?

Kevin asked if there were any questions from the public about the criteria. There were no questions from the public. Kevin closed the public hearing at 8:32 p.m. The board talked about the criteria and how it pertained to the case at hand. Kevin discussed how both parties agreed that the alleged difficulty was self-created. He discussed how the building was accidentally placed because of the use of an incorrect property marker. The board agreed that the alleged difficulty was self-created. Kevin discussed whether or not the request was

substantial. The board agreed that the request was substantial. Kevin discussed whether there would be an adverse affect or impact on the physical environmental conditions. Kevin discussed the runoff from the building and said it could be addressed with gutters. Mr. Martin commented on the drainage and said the runoff could be channeled away from the Lustumbo's property. Gay asked if the view was obstructed. Kevin referenced LWRP book and said there were no rules stating the south side of the road has lake viewing rights. Mr. Lester and Mr. Martin discussed the impact the garage had on the view. Kevin discussed the character of the lakefront properties in Kendall and commented on how the board will set a precedent with the decision made about the case. He said the board also needs to keep in mind that the property needs to be addressed solely, as well. The board discussed if another feasible method other than an area variance was available. Kevin discussed the purchase of the property and the option of moving the building. Mr. Kupferschmid said the building would need to be dismantled and described how the east wall would be moved off of the Lustumbo's property. Mr. Kupferschmid said if the wall was moved five feet three inches that a car would no longer fit in to the garage space. Discussion took place about the demotions of the garage and fitting a vehicle in to the garage. Gay asked if the building could be extended on the east side of the garage. Mr. Kupferschmid said it was not a possibility because the septic system was on the east side of the garage and would be in the way. Kevin commented that that building was to big for the lot. Discussion took place about the building size in relation to the lot. Mr. Martin said that a building permit was issued by the town and at that time the structure size was not to large. Kevin asked Larry if it was his responsibility to know where the septic system was located. Larry said the property owner and contractor were responsible for knowing where the septic system was located. Pat asked if the location of the entrance to the garage could be changed to the south side of the garage. A comment was made that the garage door could not be relocated because a guardrail blocked the south side. Discussion took place about the location of and possible removal of the guardrail. The board discussed whether an undesirable change would be produced in the character of the neighborhood or be created by granting the variance. Kevin commented on the encroachment. He discussed issues that could arise from the needed to trespass on someone else's property to accomplish maintenance of the garage. Gay expressed that she felt it would be detrimental to the zoning board to grant a zero variance. Mr. Martin made comments on how the Lustumbo property was not a buildable lot. Discussion took place about purchasing the Lustumbo property and purchase offers. Kevin asked if the Murrays were willing to put in a purchase offer on the Lustumbo's property. Mr. Martin said an offer was made to buy a four foot six inch portion of the land and was denied. Mr. Lester said the Lustumbos did not wish to make the lot more nonconforming by selling a portion of the property. Discussion took place about the Murrays past attempt of purchasing the property. Discussion took place about sending the case to the County Planning Board. Kevin commented that the town attorney said that if the rear setback was nonconforming then the side setback variance will be null and void. Gay asked Mr. Martin if any of the case examples he used involved 100 percent variance requests. He responded no, the examples he used were comparable in feet. It was decided by the board to delay a vote on the case until they received a recommendation from the County Planning Board. Discussion took place about the Murrays applying for a variance for the rear side setback. Mr. Martin said his clients may elect to make an offer to the Lustumbos for the entire parcel of land. Mr. Martin asked if the County Planning Board's decision was binding. Kevin said it was not binding and that the County Planning Board's referral would be a recommendation. Mr. Miller addressed the board and asked if mail

notices would be sent to the adjacent properties when the Murrays applied for a rear setback variance. Kevin said the standard operating procedure is to make public notices and send writing notice to the adjacent property owners. Discussion took place about possible notification of additional neighbors in the future.

**APPROVAL OF MINUTES:** Minutes from October 12, 2010 were reviewed. Gay moved to accept the minutes with corrections. Seconded by Pat. All in favor.

#### CEO

Kevin discussed a permit for a deck that was denied by Larry. The owner wishes to place a deck over top an existing patio at his home in the lakefront district. The owner has requested a variance application. Kevin asked Larry to be sure he obtained detailed plans about the porch from the owner. Larry said he asked the owner for an instrument survey. Discussion took place about the layout of the property. Kevin suggested that the board observe the property. Discussion took place about how boat dock construction gets approval. Larry mentioned that he would be on vacation for the months of February and March.

#### TB

Dave discussed the moratorium extension and the work the planning board has done on the moratorium document. He said the extension will be until June. Discussion took place about the windmill project in Kendall. Larry said a map had been submitted. Larry said he would expect a permit to be issued soon for the windmill project.

#### ZONING BOARD VACANCY

Kevin said Mr. Rowley would like to join the zoning board. Discussion took place with Mr. Rowley about his qualifications and the requirements of the zoning board. Dave requested that the zoning board send a letter of recommendation to the town board.

#### NEXT MEETING

Tuesday February 8, 2011 at 7:00 pm

**ADJOURNMENT:** Tony motioned to adjure. Seconded by Gay. All in favor. Adjourned at 8:40 pm.

Respectfully submitted,

Joyel Miesner  
Recording Secretary