

TOWN OF KENDALL
ZONING BOARD OF APPEALS
MEETING MINUTES

Tuesday, February 8, 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
 Fletcher Rowley - present
 Gay Smith - present

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

PUBLIC: Mary Anne Fleming, 16081 Lomond Shores W.
 Thomas Fleming, 16081 Lomond Shores W.
 Louie Lustumbo, 15116 Marsh Creek Road, Kent
 Tonya Lustumbo, 15116 Marsh Creek Road, Kent
 Rich Miller, 16729 Lakeland Beach
 Bruce Newell, 17141 Norway Hts.
 Mark Schieb, 16083 Lomond Shores W.
 Sandra Schieb, 16083 Lomond Shores W.

APPROVAL OF MINUTES: Minutes from January 11, 2011 were reviewed. Gay moved to accept the minutes. Seconded by Pat. All in favor.

MORATORIUM

Discussion took place about the moratorium for fences and accessory structure within Hamlets, Waterfront Development and Waterfront Residential Zones. Kevin asked the board if they had received the updated moratorium draft he had emailed to them. The board said they had. Paul Gray distributed a draft of the moratorium document to the board. He then discussed the joint moratorium meeting the planning board had with the town board. Paul Gray said the planning board would possibly be presenting the moratorium document to the town board after the next planning board meeting.

CODIFICATION

Kevin discussed the codification process that is taking place. He said he received one recommendation that related to the zoning board. He said the recommended change was to bring consistency between town law and state law regarding use variances and use variance requests. Kevin asked Dave about the timeline for the codification process. Dave said the codification process was a three to four year process. He discussed the length of time allowed for payment of the process to better fit the town's budget. He discussed how he and Paul Gray had reviewed the document. He said the deadline was supposed to be February 11 but

would not be met. He said the completion of the process would take about two more years. Dave discussed the benefits of the codification process and pointed out specific issues that had been corrected by the codification process.

PUBLIC HEARING

Kevin passed out maps of a property located at 16081 Lomond Shores W. Kevin relayed what Larry had told him about the property. Kevin read the public notice that 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, February 8, 2011 at 7:15 p.m. at the Kendall Town Hall, 1873 Kendall Road, to consider the application of Thomas and Maryanne Fleming, owners, 16081 Lomond Shores W., Tax ID 9.12-1-28.1, for a 20-foot front setback. Applicant proposes to construct a wooden deck, which requires a 60-foot front setback. Relief is being sought from Article V, Section 560. Property is zoned Waterfront Residential (WR). All persons wishing to speak will be heard at this time. Kevin said that Larry wanted him to make note that the lot lines are not true parallel lines, one being 16 feet and the other being 18 feet. This is why a 20-foot request was made. Kevin asked the Flemings if any changes had been made since the application was completed. The Flemings responded no. Discussion took place about a patio that is located in the position the deck is to be added. Kevin asked what the height of the deck was going to be. Mr. Fleming responded that the deck was to be about two feet off the ground. Kevin asked if the Flemings intended on placing a railing on the deck. Mr. Fleming responded yes. Kevin asked about the type of railing that would be placed on the deck. Mr. Fleming said the railing would be wood. Discussion took place about New York States railing requirements. Paul Hennekey said that a railing was required for any deck over 30 inches in height. Discussion took place about the high water mean mark used to set front setbacks. It was determined that the high water mark was not found on the property map. Kevin asked Paul Hennekey what the code enforcement office uses to measure front setbacks on lakefront property. Paul Hennekey said that the code enforcement office measures the front setback of lakefront property by obtaining the overall lot depth and measurements from the road. Kevin described the neighboring properties and discussed the size of the deck. Kevin asked the Fleming's neighbors, Mr. and Mrs. Schieb, their opinion on the building of the deck. Mr. Schieb said they had no issues. Discussion took place about the nonconformity of the lot. Discussion took place about the east side of the property and how the five-foot set back would not be met. Kevin asked the adjacent neighbors, the Schiebs, if they had any issue with the five-foot setback not being meet. The Schiebs said no. Discussion took place about the moratorium and the setback requirement in the moratorium document. Discussion took place about incorporating the five-foot setback issue into the exiting variance request. Discussion took place about the possibility of shorting the deck to meet the five-foot set back requirement. It was determined that shorting the deck was not a possibility. Kevin closed the hearing at 7:41 pm. Kevin and the board discussed 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?

Pat motioned that a variance be granted for a 20-foot front setback to construct a wooden deck. He also granted a variance extension for a one and a half foot east side setback to meet the egress needs from the home's existing entry way and to conform to the existing patio. Pat requested that railings up to 36 inches in height be added to the deck to address the safety issues of the deck's height of two feet. Gay seconded the motion. Kevin called for a roll call vote, with the following results:

Kevin Banker	- Yea
Patrick Bolton	- Yea
Tony Cammarata	- Yea
Fletcher Rowley	- Yea
Gay Smith	- Yea

MURRAY VARIANCE REQUEST

Kevin discussed the county planning board's recommendation for the Murray's variance request. He said that the county planning board suggested that the variance be denied. Kevin recapped the public hearing for the Murray's variance request. Paul Gray acted as the town representative at the county planning board meeting and described the meeting to the board. Gay made a motion to deny the Murray's variance request. Tony seconded the motion. Kevin called for a roll call vote, with the following results:

Kevin Banker	- Yea
Patrick Bolton	- Yea
Tony Cammarata	- Yea
Fletcher Rowley	- Abstain
Gay Smith	- Yea

PLANNING BOARD

Paul Gray asked the board to review the moratorium document and provide feed back before February 22, 2011. Discussion took place about meaning of lakeshore, lake view and combined property. Paul gave an overview of the document.

TOWN BOARD

Dave discussed the moratorium document. He asked the board to read the moratorium document and provide their input. He said the town board hoped to get the moratorium document passed in April. Dave thanked Fletcher Rowley for agreeing to be on the zoning board.

NEXT MEETING

Tuesday March 8, 2011 at 7:00 pm

ADJOURNMENT: Tony motioned to adjure. Seconded by Gay. All in favor. Adjourned at 8:24 pm.

Respectfully submitted,

Joyel Miesner
Recording Secretary