

TOWN OF KENDALL
ZONING BOARD OF APPEALS
MEETING MINUTES

Tuesday, June 16, 2009 – 7:00 p.m.

CALL TO ORDER: Chairwoman Rowles called the meeting to order at 7:04 p.m.

ROLL CALL: Pamela Rowles, chair - present
 Kevin Banker - present
 Michael Hanlon - present
 Gay Smith - present
 Patrick Bolton - present

ALSO PRESENT: Larry Gursslin, Code Enforcement Officer
 Paul Hennekey, Code Enforcement Officer II
 Marianne Wilson, Recording Secretary

Carol & Art Kirch, 16787 Lakeland Beach
Mr. & Mrs. John Lennon, 16781 Lakeland Beach
Richard Miller, 16775 Lakeland Beach
Steve Nauerth, 16757 Smith Drive

APPROVAL OF MINUTES: Minutes of 5/19/09 were reviewed. Kevin moved to accept them as presented. Gay seconded. All in favor. Approved.

CODE ENFORCEMENT: Pam asked Larry if any applications are forthcoming: Possibly a side setback variance for a garage. The owner and friend are present and produced a map, with subsequent discussion. They propose to construct a 24ft garage, which will require a 1 ft side setback variance, to accommodate 2 large vehicles and dogs. No commercial activity.

Property Maintenance: Dennis Steffen is in the process of tearing down & removing the burned house north of the garage in the hamlet, though one month late. Three court appearances last night were postponed to next Monday – one judge in hospital, one away on training. The burned house on northwest corner of hamlet intersection: Larry is working with 4 investigators with differing opinions. Larry is pushing for demolition before the firemens’ carnival in July. Former Lemcke property: has spoken with Supervisor; no further update. Property listed on E-bay by Baha Holdings: a woman who called Larry to make inquiries did buy some of the property on-line, in excess of 11 acres. She stated the “price was right”.

Eagle Creek Marina: Kevin states he has heard rumors. What is happening? Jim Freemesser made a verbal request yesterday for a temporary C of O for the first floor only. Larry issued a Stop Work Order last night for code violations. Jim is making slight improvements in 5 areas. Larry is pleased that Jim is working with Larry Pratt at Orleans County Dept of Health regarding the septic system. A certificate from DOH and also from the elevator company will be required for any C of O. He will inspect with Fire Chief Mike Kludt. A temporary C of O means he doesn’t need all aspects completed: 2 working showers, not all 5, for example. The handicap ramp is not acceptable as is.

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PUBLIC HEARING: 7:15 p.m. 09VAR04, Carol & Art Kirch, 16787 Lakeland Beach Rd, seeking to construct a 6 feet high fence, requiring a 3 feet variance. The hearing opened with Chairwoman Rowles reading the legal notice. The homeowners state they think the addition of a fence and plantings will help with noise abatement from Eagle Creek Marina boaters. They would initially install 48 feet of fencing, possibly more.

The Kirches express their appreciation to CEO Larry Gurslin and Supervisor Gillman for their ongoing efforts to assist in resolving their concerns. Given the current level of improvements, they may not need the fence, but would like to pursue it just the same. It was clarified that a variance is permanently assigned to a property.

Mr. Kirch demonstrated location of the fence on the map provided, on the property line between Waterfront Residential and Waterfront Development districts. The fence will not go further north than the house, so it will not obstruct any lake views, including their own. It should not bother any neighbors – the only neighbor to the east is the marina. Neighbors on the west side were in attendance and are fully supportive.

The Kirches stated that most boaters are considerate, and in fact, they are friends with many. There is one particular boater who has created a great deal of noise with his radio playing loudly, at all hours. Boaters are upset, but have not taken steps as have the Kirches, to address the problems. The offending boater has been relocated by Mr. Freemesser, who has been working directly with the Kirches, Mr. Gurslin and Supervisor Gillman. The Kirches feel this should have been addressed in the site plans for the marina project and don't understand how this oversight occurred. They request to fill the gaps between an existing shed and trees on the east side of their property. They do not have actual measurements of the shed, but it is approximately 12 ft x 20 ft. It is estimated the shed is about 20 ft from the center of the road. Again, they are very pleased with the help and support they have received from Mr. Gurslin and Supervisor Gillman.

Gay asks if there is an obligation by Mr. Freemesser to the adjoining property owners. Larry says yes, and it should have been part of the original site plans in the initial planning stages.

Rich Miller, owner of the house at far west end of the road, #16729, asks if he were to want to install a fence to block people from accessing his property from the west at the end of Kendall Rd, would he get similar considerations. Kevin explained that every variance application is considered on an individual basis, and each zoning district differs from the others. He explained the 5 criteria and states that most lakefront property is not compliant with code because lots are typically narrower than the code allows. LWRP was also explained.

Carol Kirch states that part of the marina problem is that it is more a campground than a marina. The boats rarely, if at all, leave the dock. Boaters have flowerpots and vegetables gardens and often erect tents for extra guests. Mr. Kirch states they don't know the rules of use for marina patrons. Another problem is that Mr. Freemesser does not live on-site. There are barking and unleashed dogs. Other boaters are dissatisfied but do nothing. The Kirches have been boaters for many years and are unused to this situation. Mike states that Kendall does have a dog law that is enforceable.

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Public Hearing Closed. The 5 criteria were read, explained and discussed. It was agreed the existing vegetation is not sufficient for noise abatement. The Kirches are recent property owners and were not made aware of on-going and pre-existing conditions. Larry states there is nothing in the site plan that addresses this property. The Zoning Board was shown preliminary plans during the planning stages, but was not part of the decision-making, nor did they see any final plans. There have been a number of changes made in the ensuing years. This appears to be an oversight.

MOTION: Kevin moved to approve the 3 foot variance request, to commence no closer than 32 feet, as measured from the center of the road, and no further than the northern front corner of the house, and the fence is to be decorative on both sides. Overall length is undetermined, so that, should they feel a need to continue the fence across the property between these two points, they may do so without seeking another variance. In further discussion, it is felt the fencing and plantings will be an esthetic addition to this property. The set back from the road will retain a safe view for vehicles coming up from the north shore. Seconded by Gay. Accepted by unanimous roll call vote.

SIDE NOTE OF COMMENT: This property is adjacent to a Water Development project known as Eagle Creek Marina. This matter was an apparent oversight in the site planning phase of this project.

The Kirches were advised to meet with Larry to obtain the building permit. They state the noise level in the past week has been worse, in apparent retaliation. They have called the sheriff more than once. They also state they are good friends with most of the boaters. They have told Jim Freemesser he needs to establish rules and enforce them and he needs an on-sight manager. Larry states it is difficult to enforce noise ordinances. Carol also asked regarding movement of heavy equipment in and out, and wonders what hours of operation are set. Larry states there are set hours for construction, and none is allowed on Sundays. Larry called Mr. Freemesser on a Sunday when a complaint was received; and work ceased. Larry tells the board the Kirches have been very methodical and neighborly throughout this process. Their first approach was as neighbors trying to come to understandings, before they turned to Code Enforcement. Neighbor Mrs. Lennon asked if they can always expect a cottage environment at the marina. There was discussion regarding typical campground rules. One suggestion was made that perhaps Mr. Freemesser should charge an entry fee to limit and control visitors.

Larry raised the ongoing concern with the Sober property adjacent to the marina. There is a site plan and all parties agree then can improve on that site plan. The request has to come from Jim Freemesser, who must put it in writing to the Planning Board. Jim doesn't want to install the agreed to fence on his property, he wants it on the Sober property. A dialog is ongoing. It may come before this board. Each property line has different agreements: some are bermed with trees, some trees only, some have retaining walls. Larry has told Jim he must address these situations sooner, not later. The handicap parking and the Sober property must be satisfied as part of the CofO, temporary or not. Mike notes that all these residential properties are adjacent to commercial property. The north shore area site plan has never been finalized. This is a mixed used area, no longer the quiet little cottage spot it was. Kevin notes the site plans include public access. Larry also states that Jim's application for fireworks permit is on hold, pending compliance.

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ADJOURNMENT: Pat moved to adjourn. Seconded by Gay. All in favor. Adjourned at 8:20 p.m.

NEXT MEETING: Tuesday, July 21 at 7:00 p.m.

Respectfully submitted,

Marianne Wilson
Recording Secretary