

TOWN OF KENDALL
ZONING BOARD OF APPEALS
MEETING MINUTES

Tuesday, July 21, 2009 – 7:00 p.m.

CALL TO ORDER: Chairwoman Rowles called the meeting to order at 7:02 p.m.

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

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

Paul Gray, Planning Board Chairman
Daniel Gaesser, Councilman
Steve Nauerth, 16757 Smith Drive
Mr & Mrs James Andre, 16769 Smith Drive
Don & Lynne Short, 16821 Bald Eagle Drive
Betty Makowski, 16761 Bald Eagle Drive
Eloise & Jeff Stevens, 16951 Bald Eagle Drive
Kirk Golden, 47 Tearose Meadow Lane, Brockport
Pam Dutton, 16839 Bald Eagle Drive
Steve Maley, 16955 Bald Eagle Drive
Sandra McAllister, 16963 Bald Eagle Drive
Joyce Henry, 16015 Bald Eagle Drive
Cramer, 16909 Bald Eagle Drive
Andrew , 16860 Bald Eagle Drive
Kathryn D’Aguila Mitchell & Michael P Mitchell, 16887 Bald Eagle Drive
Francine Fantuzzo, 16847 Bald Eagle Drive

APPROVAL OF MINUTES: Minutes of 6/16/09 were reviewed. Kevin moved to accept them with minor changes. Seconded by Mike. All in favor. Approved.

OLD BUSINESS: Pam asked Paul Gray for an update on the DMD Machining rezoning request for light industry: Where does it stand now that owner Don Hofer has passed away. Paul reports it will go forward, as per Don’s son David. It will go before OCPB for review this Thursday.

CODE ENFORCEMENT: Pam asked Larry if any applications are forthcoming. None at this time.

WIND ENERGY: Kevin asked Paul Gray if he has copies of the final approved Wind Energy document, as this board only has the last draft version. Paul states the only changes to that version were in the commercial portion of the document. Dan Gaesser made copies of the 7 pages of the

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final approved document which pertain to residential applications.

CORRESPONDENCE: Kevin received a letter from OCPB regarding what is permissible at the town level, without review by that board. Copies were made and distributed to ZBA board members. Paul Gray indicated the Town Board did receive and signed off on the letter.

PUBLIC HEARING: 7:15 p.m. #09VAR05, Steve Nauerth, 16757 Smith Drive, application to obtain a 2 ft side setback various for construction of a 2 car garage on east side of existing house. Legal notice was read by Pam. It was noted the house is not situated parallel to the lot lines and the proposed garage will vary in distance from the property line, but not to exceed 2 ft. Neighbors to the east, the Andres, indicated theirs is the same. They inquired as to any possible impairment of drainage, as there is no existing drainage ditch. The owner explained that it will be drained to the front with underground pvc pipe. The garage height will be 14ft, compatible with existing structure. Reason for the variance request is to accommodate the width needed to store 1 large and 1 small vehicle in the garage and allow for door openings. The Andres ask how it may affect property value – answer is that adding the garage will increase the value of the Nauerth home, and thus raise values in the neighborhood. No further questions or concerns. The hearing was closed at 7:22 p.m. The 5 criteria were reviewed and explained. Gay moved to accept the application as written, stipulating that it is the east side setback. Seconded by Kevin. All in favor. Motion carried. Mr. Nauerth was referred back to Larry Gursslin to complete the building permit process.

PUBLIC HEARING: 7:30 p.m. 09VAR06, Don and Lynne Short, 16821 Bald Eagle Drive, application for a Use Variance to install a 48 ft stand-alone wind energy system in the WR district. The legal notice was read by Pam. She asked Mr. Short to first explain what they propose to do. Manufacturer’s literature was provided (Skystream). It was prefaced this is a residential system only. Current town zoning restricts wind energy in the WR district. The Shorts feel their property is a unique configuration to the district and that it will accommodate this system without adversely impacting the neighborhood. Photos were provided with scale drawing of the proposed tower shown. Paul Gray states the wind energy ordinance was developed by the Planning Board, reviewed by Orleans County Planning Board, adopted by the Town Board. Three zones restrict installation of these systems: hamlet, waterfront residential, and waterfront development. The board did not consider individual properties in making this decision. In general, it was felt the population density prohibited such. A special use permit is required for any wind energy system. Don previously approached the Planning Board with his proposal and was advised to follow this route. Due to the proximity to the Lake Ontario State Parkway, this proposal would have to be referred to OCPB. It will have to comply with LWRP. Paul states that Don does have the required minimum 2 acres. The tower itself is 42 feet high, will generate 2.5 kilowatts. It is relatively small. The fall zone is 150% or about 80 feet within which no structures or overhead wires can exist. It can be no closer than 500 feet to any off-site structures. Noise rating is 45 decibels at 40mph. The Planning Board would require a site plan. Paul has obtained aerial views of the property.

A resident asked why there is a 65 feet height limit in the ordinance. Paul states it is to preserve views for neighboring residents.

Nominal wind speeds are 10mph at 100 feet.

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Kevin suggested board members reference #8 on page 22 of the Ordinance. He also clarifies that the front of the property in waterfront district is the lake side, not the south side.

Resident Steve Maley states he thought the proposed location was wetlands. Mr. Short states it is high ground, sloping down to marsh and then to the creek. There is marsh land between the site and the parkway.

Resident Eloise Stevens asks if the property is considered waterfront, as it faces Bald Eagle Creek. Kevin states the waterfront designation refers to Lake Ontario.

Resident Pamela Dutton asks specifically where they propose to situate the tower. It was demonstrated on the map provided. She states she lives immediately east and would be most impacted by the visual appearance.

Neighbor "Andy" states he resides on a parallel with the proposed site and has no objections.

A neighbor asked if it will be lighted at night. It will not, as it will be as tall as the utility poles on the road, nor as tall as some of the trees on the property.

Kevin states the uniqueness of this property makes it possible to even consider the proposal in WR district. As the road progresses west, density of houses and trees increases, a point the board has to consider. Don states CEO Gurslin has been there, Mike Hanlon was there last evening. Pam states she drove there today but did not walk the property.

The installer states the wind speeds average around 10mph, making this location feasible. Trees are about the same height, with some being taller than the tower. Prevailing winds are off the lake. Mike asked will the trees impede operation as they continue to grow over time. Installer states they will not, due to wind direction.

A neighbor requested to know what other properties would qualify in the WR district. Kevin states they are not aware of another parcel of this size in WR district. It is one of a kind. There may be a few meeting the minimum 2 acre size but not in this type of location.

Larry states there is no relevance, no precedent. The only other property that might be considered is the former Salvation Army camp; however, that property holds a specific designation in the LWRP. The Lake Ontario Waterfront Revitalization Plan (LWRP) was designed as an aid to develop properties along the shoreline. It contains nothing specific regarding wind energy.

Pamela Dutton asks to clarify if the Shorts own one parcel or 2: it is 2. Kevin states it is all in the WR district though. Exact location would be determined by the Planning Board and OCPB. This hearing tonight is simply to consider the possibility of allowing the installation. Pamela states she pays prime taxes for a quiet view. Fences of greater than 3 ft are restricted, so how can a 48ft tower be permissible. It was clarified that the 3 ft fence restriction is intended to preserve lake views. This proposal is on the south side of the property, not on the lake side. Residents can argue tax rates with

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the Assessor – that’s his job. The Zoning Board cannot address property values.

Resident Mrs. Fantuzzo states she and her husband own 3 parcels within view of the Short property. She is in favor of wind energy. She has lived in the southerntier, where they are now common-place. She feels it is a wise investment in the future. There is virtually no noise. She applauds the Shorts for taking this step.

Discussion regarding 45 decibel level. Kevin states conversation is 40-45 dec. A lawnmower is 68-74dec., which is significantly louder. A pool filter would be louder than 45 dec. The installer states that most of the noise is from vibration of the tower itself. There will be a little hum and the sound of wind. Extra energy generated will go to the grid. He states that a smaller unit would not be smaller in size. The grid is overburdened – we need to seek alternatives – that is why there are government incentives to install these units. It is expected that there would be heavier use in winter when it tends to be windier on the lakefront.

Mr. Maley asks if approval of this application would make it easier for Pamela Dutton next door to seek a unit in the future, should she desire. This board considers each application individually.

Hearing closed at 8:25 p.m. to public input.

DELIBERATIONS: Kevin clarified with Paul Gray that density was the deciding factor in restricting wind energy systems from WR district. Paul states it was also visual impact. The Planning board would have to consider the design and provisions for removal for any application. Main concerns are noise and visual impact. Don clarified that their lot to the east is vacant. Pam asks for other comments/questions from board members. Mike stated that he and his wife went to the Town of Eagle about 1 year ago. They happened to meet the town supervisor who allowed them onto his land where he has 3 towers of 200ft height. It was very quiet, just a low hum. Mike feels we need to be looking at alternative energy forms.

Kevin refers to page 67 of the Ordinance where granting use variances is spelled out, as this board has not considered a use variance for some time. Kevin asks Don and the installer what the return on investment is. Payback is expected in about 6 to 8 years, factoring in federal and state tax credits. Life expectancy of the unit: after about 20 years the main bearing would need replacement, then another 20 years or more is reasonable. Why wind vs solar: The unique location of the property does make wind more feasible than solar, which is usually not the case in residential installations. Solar costs more to install but government incentives are also available.

Four criteria were considered. Mike states the Short’s property is unique to the district. The greatest visibility will be to the marina. Don states that Art Kirch from Lakeland Beach called to inquire as to the proposed location and states he is supportive. Gay states that the Shorts have not created the high cost of electricity, which is the driving factor behind this request.

DECISION: Mike moved to accept application #09VAR06, by Don and Lynne Short, as written, for a 48 ft stand-alone wind energy system in the WR district at 16821 Bald Eagle Drive. Seconded

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by Gay. There was considerable discussion, referencing Section 833, B1 of the Town Ordinance. The alternative is solar which is more costly at \$30,000 vs. \$12,000 for a wind energy system, or geothermal which is considerably more costly. All details of the site plan will fall within the jurisdiction of the Planning Board.

ROLL CALL VOTE: Pam, nay; all others aye. Motion carried. Further, this board stipulates that this property is unique to the Waterfront Residential district in both size and location at the end of the road, and that the tower is to be located at the far south end of the property. Even though the wind energy system restriction applies to the entire district, this is virtually the only WR property where all other provisions for wind energy could apply and be met. Also, comparison was made to solar and geothermal, which are both significantly more costly to install. It is the opinion of this board that this request does not alter the essential character of the neighborhood due to the visual screening of the existing vegetation. There was no reasonable rate of return that could be realized with installation of other alternative energy systems.

Mike wonders if the town's attorney should be consulted.

Pam states she spoke with the town's attorney at the July 27 Town Board meeting regarding usage variances and he stated the decisions lie with the Zoning and Planning boards.

ADJOURNMENT: Gay moved to adjourn. Seconded by Pat. All in favor. Adjourned at 9:30 p.m.

NEXT MEETING: Tuesday, August 18 at 7:00 p.m.

Respectfully submitted,

Marianne Wilson
Recording Secretary