

TOWN OF KENDALL  
ZONING BOARD  
MEETING MINUTES

Wednesday, May 21, 2008 — 7:00 p.m.

ROLL CALL: Members:

Kevin Banker, Chairman	- present
Pam Rowles	- present
Chuck Patt	- absent
Mike Hanlon	- present
Gay Smith	- present

ALSO PRESENT: Paul Hennekey, Deputy Code Enforcement Officer  
David Schuth, Representative to Town Board  
Marianne Wilson, Recording Secretary

Sheila & Alan Fry, 16937 Bald Eagle Drive  
Dick Bauman, 16921 Bald Eagle Drive  
Penny A Hoag, 16933 Bald Eagle Drive

CALL TO ORDER: Meeting was called to order at 7:00 p.m.

OLD BUSINESS: Mike communicated with the town's attorney and discussed interpretation of the reasons for the Diodato variance request specifically and variance requests in general. It was stated that there is a need to be very specific with each case. If this request is to protect an individual in a wheelchair, then a decision based on that need can be defended in court. The fence in question is not required by New York State law. Mike also relayed the attorney's input regarding conduct of voting in the case of public hearings. As per the attorney's direction, a motion will be made and voted upon to discuss a variance request. Also discussed persuasive vs. binding precedent in granting variance requests.

A resident raised a question regarding setbacks on contiguous properties bisected by a private road, as in waterfront properties. Much discussion ensued regarding laws governing Right Of Way, fire codes and emergency access. Mr. Bauman stated that Town of Hamlin ordinance factors the rear setback from the ROW, unlike Town of Kendall. The mean high water mark is the point of reference for front setbacks on waterfront property in Kendall. The CEO must base his decisions on several sources: state, county, fire code, and town ordinance.

Residents in attendance stated the CEO put a temporary stop work order on the Diodato garage construction on Monday, but work has resumed. Larry issued the building permit on that structure with the understanding that Diodatos' lots were in one parcel; they were not. When this was brought to his attention, he issued the stop work order while he investigated for 3 days. Paul states the ROW may be defined in the homeowners' deeds. Dave suggested perhaps the Homeowners Association designates the ROW regulations. The HOA has no legal standing. It was suggested they present some of their questions to the Assessor, and to confirm if the Diodatos have applied to consolidate their 2 lots into one parcel. Kevin advised the homeowners to turn to the Town Board to address their concerns. David said he will discuss this situation with the Assessor and Town Board members and respond.

PUBLIC HEARING: The hearing was formally opened at 7:47 p.m. for consideration of application 08VAR03, by Mr. Alan Fry, to request a 2 foot side setback variance to accommodate an addition to their existing house at 16937 Bald Eagle Drive, parcel #11.13-1-26. Pam made a motion to discuss this variance application. Seconded by Gay. All in favor.

Kevin asked Mr. Fry for clarification as to reasons for this request. Mr. Fry explained their septic system wraps around the house, thereby narrowing their expansion possibilities to the west side. The ordinance states a 5 feet setback is required. Fire code requires 10 feet between buildings, as

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previously stated by the CEO: this distance is divided between the adjoining properties, hence a 5 foot side setback. Kevin stated the approval is granted for the property, not the current owners and consideration must be given to the future, as succeeding owners will inherit this situation. Granting this variance would limit what the property owners at #16933 to the west can do in the future, unless laws change. The current owner, Penny Hoag, has a fence that is nearly on the lot line; however, fences are not defined as structures.

Specific consideration given to reasons for granting this request. The board is responsible to preserve and protect health, safety, and welfare of the community. The property at #16933 has several options for future expansion. Ms. Hoag has no objections, and is pleased they are not asking to expand to the north, as that would obstruct lake views. The Fry home can only expand to the west or upward; this being a retirement home, the upward option is not feasible. The proposed addition would not adversely impact the neighborhood and maintains a small footprint.

There was no further discussion. Mike moved to accept the application for a 2 feet variance, hence allowing the Frys to build up to 3 feet from the west property line. Seconded by Pam. Passed by unanimous roll call vote. Kevin will notify the CEO of this decision.

APPROVAL OF MINUTES: Minutes of April 23 meeting were reviewed. Gay moved they be accepted as written. Seconded by Pam. Passed and carried unanimously.

APPLICATION 08VAR02, Mr. and Mrs. Michael Diodato: Mike moved to reopen discussion and decision from April 23 meeting. Seconded by Gay. All in favor.

The town's attorney was to email information to the Town Clerk. It is not known if it was received. The board has 62 consecutive days to respond from the time of the public hearing, or 90 days for requests referred to OCPB, as so stated in 834D of the Town Ordinance. Mike states he has no concerns about proceeding with this decision, as long as reasons are clearly stated for the record.

This request pertains to the lot on south side of ROW. The neighbors' have existing garages on either side. The Diodatos are currently constructing a garage, which this board understood to be aligned with existing structures. Further discussion followed.

All those present were reminded that the only consideration here is the fence, not the garage under construction. In considering the 5 criteria: This request for a 100% increase over the ordinance is substantial. The proposed fence will not hide the pool, as the pool itself is 52" high, plus a deck with 36" fence for the safety of the wheelchair-bound individual. It is the determination of this board that there are other options available, not requiring a variance. There are two issues to be considered: handicapped needs and safety concerns. Building codes discussed with Paul. The deck and railing address the safety concerns for the wheelchair; the proposed fence does not provide safety for a wheelchair. When this request was presented last month, it was the understanding of this board's members that the new garage being constructed was to be the same distance setback as the other buildings on the street, thereby obscuring the pool and fence.

After much discussion, this application request was NOT granted, by a unanimous roll call vote, as it is 1) a substantial request at 100% increase over the current ordinance, and of significant size in length and width 2) there are other achievable, feasible options available to the homeowners not requiring a variance. The pool deck and railing meets or exceeds New York State law. The proposed fence would not be an improvement to the pool. These reasons combined represent a detriment to the neighborhood. Notification will be mailed to the Diodatos.

NEXT MEETING: Rescheduled to Wednesday, June 18. It would conflict with the training workshop in Niagara County. Will wait for training in Orleans County on September 24th. OCPB will

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set the topics. Kevin will contact Jim Bensley with this board's needs: state law vs. town law, fire codes, updating/writing zoning ordinances.

TOWN BOARD: Dave reported that the Planning Board is very close to presenting the wind energy draft document to the Town Board. Then it will go to Zoning, town's attorney, and town's engineering firm for input. The Town Board will have it for the first meeting in June. Would like a combined meeting of the Planning, Zoning, and Town Boards, attorney, and an engineer. It needs to be to OCPB by July 17 for their meeting on July 24. There will be at least 1 public hearing. Dave is to work with the Town Board to revise regulations for unregistered vehicles. Note that 18 wheel trailers parked on various properties are creating an eye sore. The Town Board requests a Master Plan with 5, 10, and 20 year outlooks. This is the job of the Planning Board, but they want input from the Zoning Board. Marianne is to provide copies of the current Master Plan to Pam, Mike and Chuck.

Dave notes the Memorial Day Parade will be Friday night, May 30th at Beechwood Cemetery, processing from the corner of Carr and West Kendall. Also noted, the Kendall Garden Club is planting barrels of flowers tonight along Main Street to beautify the hamlet. June 1 there will be a community plant swap at the Lutheran Church at noon.

Dave talked with the Assessor, Supervisor, and CEO regarding setbacks on waterfront properties. It has been suggested that consideration be given to impervious surfaces that cause runoff issues for neighboring properties. An environmental study is supposed to accompany every building permit.

Thursday, May 29 there will be a meeting at the Town Hall with representation from the DEC regarding updates to the National Flood Plain Hazard Zones.

ADJOURNMENT: Kevin moved to adjourn. Seconded by Gay. Motion carried. Meeting adjourned at 9:23 p.m.

Next meeting is Wednesday, June 18, 2008.

Respectfully submitted,

Marianne Wilson  
Recording Secretary