

Approved August 23, 2021

Village of Kinderhook
Zoning Board of Appeals
Minutes of February 2, 2021

- Attending via Zoom: Chair Jerry Callahan, David Sullivan, Greg Seaman, Kim Gray, Bill Barford, Liaison David Flaherty, CEO Peter Bujanow, Secretary Carol van Denburgh, Village Clerk Nicole Heeder, Village Attorney Robert Fitzsimmons, Attorney William Better and approximately 40 other participants. In addition to the ZBA meeting agenda, all applications and corresponding documents for this meeting were posted on the Village of Kinderhook website for review.
- Call to Order: J.Callahan calls this meeting to order at 7:01pm. This meeting is a continuation from the January 25, 2021 Public Hearing. Ordinarily, the ZBA meets in regular session after the Public Hearing but due to the length of the Public Hearing of more than 3 hours, the regular meeting was rescheduled for this evening. J. Callahan introduces all Zoning Board Members, Village Clerk N.Heeder and ZBA Secretary C.vanDenburgh.
- Minutes: B. Barford motion to approve December 28, 2020 minutes, G.Seaman seconds, all in favor.
- Funds Remaining: \$646.64
- Correspondence: Planning Board Advisory Opinion, January 7, 2021 (attached to these minutes as Appendix A). C.van Denburgh reads this to the attendees.
- Old Business: 25 Broad Street Kinderhook LLC, Jack Shainman, The School
Appeal to the ZBA for Interpretation 25 Broad Street Lot #43.20-2-63

R.Fitzsimmons begins an overview of The School at 25 Broad Street. The building was formally a school in the Ichabod Crane School District. In 2012, J.Shainman sought a change of use to use this property as a cultural use facility. Cultural facility is not defined in the Zoning code. J.Shainman was going to use this to store art, display art and have events on the site. One of the conditions was that no sales would occur at this site and it would be open to the public to view the displays. In 2014, J.Shainman went to the ZBA and asked for two banners to be installed. The size of the banners exceeded what was allowable by code, so they were considered for an area variance which was granted. One banner was used to promote displays at the facility and the other to promote events at the facility. In 2015, J.Shainman came to the ZBA for a sculpture in the front yard of the building. The then CEO deemed it temporary in nature and accessory to the use of the facility and the ZBA agreed. In 2020, J.Shainman and his employees came to the Village as they wanted to put a display, Truth Be Told, on the front façade of the building. The CEO interpreted this display as a sign and like the banners, due to size and compositional issues, the CEO deemed this not permissible without getting review and approval from the Planning Board and perhaps the Historic Preservation Commission. The applicant made an appeal and interpretation to the ZBA and stated that Truth be Told was art, not commercial, and not a promotion of a business use. Being that it was art, it was an accessory use to the cultural facility, it was temporary and removable without making any permanent alteration to the structure. Similar to the sculptures, it is accessory and should be permitted and unregulated. It was installed as a political message, not a sign, and it does not fit the definition of a sign or banner under the code. We have had public comment, written correspondence, emails,

and petitions which the Board has had the opportunity to review. It is an interpretation as to whether the display should be regulated as signage or should be considered an artistic expression and exempt from regulation. J.Callahan opens the discussion to the Zoning Board of Appeals.

G.Seaman states that he has concluded that the display by an artist was entirely appropriate for an art gallery. He does not see any advertising in the Truth Be Told display or anything that the code defines as a sign or a billboard.

D.Sullivan states that he concurs with G.Seaman's assessment. He is totally understanding of the lack of specificity in the village code as to a cultural use center. If the Board is in agreement, he would ask the Village to put some more specifics in the code so we don't go through this on a regular basis.

B.Barford states that after listening to and reading all of the letters that came in, it is art and not different from the displays in the building themselves. He agrees that there should be some discussion with the Village for future use.

K.Gray agrees with B.Barford's assessment that the wording on the building is art and it bears a similarity to the interior gallery exhibits under normal conditions. The artwork on the façade is accompanied by a placard on the front lawn explaining the exhibit. She believes the question before us is not whether it is a sign or artwork, but is it a permitted use of the property based upon the agreement to apply for a conditional use permit in a residential zone. In 2012, the Village agreed to the conditional use permit subject to certain limitations. The reason for the conditions is because this cultural facility is not a residential use of land. The Kinderhook codes deal with land-use regulations not definitions of articles such as art or signs. Not only is this a residential zone but also, a historic preservation zone so the Village was careful about the permitted uses of the facility. One of the limitations on permitted uses were that any outdoor artwork would have to be approved in order for it to be displayed outdoors. After listening to all of the comments and reading all of the letters received and going through the code, she has concluded that this is not a permitted use of the facility. It is an attempt to have an outdoor art gallery when it was only permitted to have an indoor art gallery. For this reason, she feels the agreement was violated in the special use permit. A possible remedy could be The School apply for a new special use permit to have an outdoor art gallery in the Village, or a use variance could be requested as this is a new use for the property.

J.Callahan asked if the code would help him interpret what we have been asked to look at. The word "sign" appears in the code 99 times, the word "art" does not appear in the code at all as the word "art". There are many definitions of sign from advertising sign, lighted sign, political sign, lawn sign. There is nothing that indicates how the code would be applied in this specific case of a building operating as an art gallery under the terms and conditions of a special use permit. The code lacks the definitions that are required in order to meet this case. The piece was specific to Kinderhook, and not to J.Shainman's business in NY City, and the sign on the lawn advertised it as political speech, under those circumstances it is protected and cannot be regulated. In this instance, he could not find anything in the regulations that prohibited it based on its definition as a sign. There is nothing in the code that says it is art. In this case, Truth Be Told escapes regulation, however it would be in the best interest of J.Shainman, the residents of the Village of Kinderhook and the Village Board of Trustees, to figure out how the code and regulations can be enhanced, improved, and modified so that the gallery can be used without burden and conflict.

G.Seaman states it does not make a difference if it is art, or a cryptogram, or an anagram, it isn't a sign.

K.Gray agrees with G.Seaman but feels we are not limited in our observations about whether or not the special use permit was violated or other parts of the code. The ZBA can inform the ZEO of what we believe to be compliance with the code and land-use regulations. The change of use to a cultural facility was predicated upon

certain conditions in operations. We have a duty to protect the residential character of the neighborhood. The beginning of the code discusses what the purpose is for the code, section 130-1, to protect and promote public health, safety, morals, comfort, convenience, economy, esthetics and general welfare. Residential purposes ensure that the predominant character of the village remains residential, to assure that residential areas shall be protected by encroachment by incompatible non-residential uses and detrimental activity. We have to look to see if this was an appropriate non-residential use. The School is attempting to expand on a conditional special use permit that was permitted to store art and display art on the interior. Section 130-24 of the code states conditional use is allowed by special use permit, each specific use to be considered an individual use. Any use for which a special use permit is granted by the Planning Board shall be deemed a permitted use for that lot or portion thereof, except that for any addition to or enlargement of such use, a separate special use permit shall be required for each addition or enlargement. Was the display an addition or enlargement to a conditional special use permit for this cultural facility operating in a residential zone? While the display of an exterior exhibit is not a primary use of the land; it is an accessory use subordinate to the primary use as a cultural facility. This new accessory use is not customarily incident to operating as a museum. This is the definition of a permitted accessory use that does not require a special permit. Most museums do not operate with outdoor art exhibits. It is not a use permitted in the land use chart section 130-7 and requires submission of a new special use permit application to the Planning Board. The School could request a use variance which would be go to the Zoning Board as it is a new use of the property. The sculptures on the lawn were deemed accessory use but this art exhibit on the exterior of the building is distinctive, not the same as the sculptures. The 2018 letter from J.Shainman to the Village is referenced, "a request for approval per the Zoning code for a temporary installation of a LED light sculpture on the façade of the building." K.Gray states that J.Shainman understood this differs from the sculptures that were considered a customary accessory use incident to a cultural facility. K.Gray believes in the value of art and people should be able to seek it out in its place and time and at their own choosing. We should not permit an outdoor art exhibit and an outdoor gallery.

J.Callahan states that the ZBA has granted variances for the outside display of artwork by affirming the decision of the ZEO by allowing sculptures on the lawn as an accessory use of the building as well as approving the 2 exterior banners on display. Now, letters that say words and express an idea are being adhered to the façade of the building. Is The School encroaching with the use of the facility and the land or is it outside what the special use permit says is allowed or not allowed? J.Callahan states that he interpreted the application narrowly, is it a sign or is it art? We need more assistance through the code to reduce the conflict between The School and the ZEO.

K.Gray asks if we have been asked to conclude that artwork is unregulatable? J.Callahan states that art content is clearly unregulatable. Can the front of the building be used to display the art? The code falls short in order for the ZEO to permit it, refer it to the ZBA or refer it back to the Planning Board. K.Gray states that the content of the artwork has not been brought up at all during this meeting. You don't have to refer to the content in order to say whether or not it is permissible without further approvals. J.Callahan states that political speech is protected. G.Seaman says it is similar to Picasso's painting depicting the bombing of Guernica, a painting that made a powerful political statement that was art, similar to Truth Be Told. He states it has not violated the code.

J.Callahan asks each Board member to state their position relative to the interpretation of the code as it pertains to art vs sign.

G.Seaman states it is an appropriate display of art on an art gallery by an artist and does not violate the code regarding a sign, an advertising sign, a business sign or a billboard.

B.Barford agrees that it is art, not a billboard or a sign.

D.Sullivan agrees that it is art. The code is giving us little to go on so let's define this so we are not here again in a couple of months with the same issue.

K.Gray states that we cannot use the sign regulations to regulate this land use activity however there has been a violation of the special use permit which grants The School the approval to change the elementary school into a cultural facility. If we cannot reach a compromise the remedy to pull the special use permit would require to cease operating as a cultural facility and they would be free to operate as an elementary school.

J.Callahan states that this display is not regulatable as a sign because the code does not provide us with enough information to say that it can be regulated. The code does not tell us what art is. It would be in the best interest of The School and the Village to sit down and try to avoid a conflict like this in the future.

J. Callahan make a motion for the following resolution:

Resolved, that the words 'Truth Be Told' as exhibited on the façade of The School, a cultural facility operating as an art gallery, under a special use permit authorized by the Planning Board of the Village of Kinderhook and located at 25 Broad Street, Kinderhook, NY, were displayed as a political message and art for a temporary period of time, and therefore the Kinderhook Village Code does not apply to regulate the exhibit as a sign; and be it further

Resolved, that because the Kinderhook Village Code does not currently regulate the use of a cultural facility or its accessory uses occurring within a residential district, the Zoning Board of Appeals recommends that the Village Board work with the owner of The School to determine what can be done to allow The School to operate without undue conflict with the Village's residents and government.

B.Barford seconds. K.Gray votes "nay" to the unregulatable aspect of the resolution but votes "aye" to the aspect that it cannot be regulated through the sign regulations. J.Callahan states that the intent of the resolution in terms of answering the request for interpretation is that the code does not apply to regulate the exhibit as a sign and the reason for that is it is political speech and it is art. The ZBA would recommend that the Village Board meet with The School and come up with a solution to this issue, so The School can operate without conflict with the residents and government of the Village. D.Sullivan suggests that the process of amending the code should also include members of the public. R.Fitzsimmons states that would be a Local Law to amend the Zoning Code and that would be subject to a Public Hearing.

There are 2 elements of the resolution. 1. The display is not regulatable because it is political speech and art. 2. The ZBA is advising the Village Board to meet with The School for the purpose of resolving any issues to avoid this conflict in the future.

J.Callahan calls for the vote:

B.Barford- "aye"

K.Gray – "aye" because it is unregulated as a sign and "aye" that The School should confer with the Village Board.

G.Seaman- "aye"

D.Sullivan "aye"

The motion passes unanimously

New Business: NONE

Next Meeting: February 22, 2021 provided there is business to conduct

Adjournment: 7:53 pm K.Gray move to adjourn; D.Sullivan seconds; all in favor.

Respectfully submitted,

Carol van Denburgh
Secretary to Zoning Board of Appeals

APPENDIX A

**Village of Kinderhook
Planning Board**

PO Box 325
Kinderhook, NY 12106
(518)758-8778 ext. 305

January 15, 2021

Village of Kinderhook Zoning Board of Appeals
PO Box 325
6 Chatham Street
Kinderhook, NY 12106

Village of Kinderhook Zoning Board of Appeals,

At the January 7, 2021 Planning Board meeting, the Planning Board was asked to give an advisory opinion in regards to 25 Broad Street, The School, and discuss whether "Truth Be Told" was art or a sign.

A motion to issue an advisory opinion to the Zoning Board that a majority of the members of the Planning Board, three out of five members, K.Monahan, S.Patterson & T.Lang, believe that it should not be regulated as a sign and should be considered potentially as art. One member, B.Charbonneau, says it should be regulated but should be considered for a variance. One member, A.VanAlstyne accepts it as being called art, because art can be anything that you want, but disagrees with every other aspect of this. Not convinced it is not a sign and should not have been contained in this way. It is an artistic sign. Motion to approve made by B.Charbonneau, S. Patterson seconds, all in favor "aye" except A.VanAlstyne "nay".

Respectfully submitted,

Carol van Denburgh
Secretary, Planning Board & Zoning Board of Appeals

CC: J.Callahan, Zoning Board of Appeals Chairman
K.Monahan, Planning Board Chairman
P.Bujanow, Code Enforcement Officer
D.Leiser, Mayor
N.Heeder, Village Clerk

R.Fitzsimmons, Attorney
W.Better, Attorney