

Approved August 23, 2021

Village of Kinderhook
Zoning Board of Appeals
Public Hearing
Minutes of January 25, 2021

Attending via Zoom: Chairman Jerry Callahan, David Sullivan, Greg Seaman, Kim Gray, Bill Barford; Liaison David Flaherty, CEO Peter Bujanow, Village Attorney Robert Fitzsimmons, Secretary Carol van Denburgh, Village Clerk Nicole Heeder, Attorney William Better, and approximately 185 others in attendance. 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 welcomes all to meeting at 7:06pm. Introduces all Zoning Board Members, Village Attorney Rob Fitzsimmons, Village Clerk Nicole Heeder and ZBA Secretary Carol van Denburgh.

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. The building is in a residential zone where works of art would be displayed in the building and no sales of art would take place at this building. There would be limited hours for the public to view the artwork and a certain number of yearly events (6) would take place. This use was approved and the gallery opened. In 2014, J.Shainman came to the ZBA requesting 2 banners be placed on the front of the building representing events and items on display. An area variance was needed as these banners were deemed signs and they were larger than the code permitted. This went through the ZBA process of a Public Hearing and the two banners were approved at 186 square feet each. In 2015, J.Shainman came to the ZBA for a sculpture in the front yard of the building. Then CEO, G.Smith 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 on the front façade of the building, a wrap with lettering. The CEO, P.Bujanow, reviewed this and he issued a determination that it was in the nature of signage and it would have to be reviewed by the Planning Board and potentially the Zoning Board if it exceeded the allowable size. J.Shainman disputed this and filed an appeal to the Zoning Board which said the display on the front of the building is an artistic expression and not signage and therefore, should be exempt from zoning regulations by the village. The purpose of tonight's meeting is to take public comment on this issue. It is an interpretation as to whether the display should be regulated as signage or should be considered an artistic expression and exempt.

J.Callahan states that due to 39 people having signed up to speak at tonight's meeting, tonight's meeting will be dedicated to the Public Hearing. A special meeting will be held on February 2, 2021 at 7:00pm to discuss the application. Tonight, four minutes will be allotted to each speaker to address the Board. Also, the Board has received 56 emails expressing opinions on tonight's application. Although too lengthy to read, they will be incorporated into the record of this hearing (see Appendix A). An additional 12 emails (68 total) were received after the January 25 meeting. Each Board member has received a copy of these emails.

Code Enforcement Officer (CEO) P.Bujanow states he is certified by State of NY and he enforces NYS Building code and Village Zoning. When considering whether the vinyl letters affixed to the building is a sign or art, the discussion cannot be limited to a narrow review, but must include all of the conditions affecting that property such as Village Planning and Zoning protocol, rules, regulations, any special use, variance conditions imposed or allowed, designated zoning district restrictions that determine the applicable uses, and any overlay districts. This has much to do about complying with previously forged conditions of special use permits made

through hours of deliberation by volunteer boards based on Village policy and code. No one should be above the law.

In October 2012, a special use application was received from J.Shainman requesting a change from a residential designation to a business use for interior storage and display of artwork. In December 2012, the Planning Board issued a letter about the special use and specific conditions and 8 stipulations for allowable uses. The one that pertains to the façade of the building states that any external changes to the building or new signage is to be reviewed by the Code Enforcement Officer for further review or HPC review as applicable. In November 2014, the property was granted an area variance for banners with specific conditions and stipulations. In October 2018, a Planning Board application was submitted for consideration of a temporary art installation at 25 Broad Street. P.Bujanow reads parts of the letter which was submitted by J.Shainman requesting approval of a LED light sculpture on the façade of the building per the Zoning code. On August 13, 2020, P.Bujanow receives an email from C.Hanrahan, from The School describing a building vinyl wrap project. This was unusual as in the past, formal applications were received. This property is located in the landmarks and historic district which requires any alteration visible from a public way must be presented to the HPC for review and consideration. On September 24, 2020 C.Griffen sent an email to the Deputy Village Clerk explaining that they were trying to get a new banner approved for The School and there was little time left for the project to be relevant and he was requesting to be added to the ZBA meeting agenda to address the earlier Zoning & Planning approvals. On October 5, P.Bujanow wrote a response that the proposed project was not in compliance with Village of Kinderhook Code and NYS Building Code. On October 20, there was a special meeting with J.Shainman and staff and the representatives from each board (PB, ZBA, HPC and VB) to discuss possible solutions to this proposal. There was discussion but not a resolution to the issue. October 21, a letter was received from J.Shainman that the project would move forward without required approvals. On October 25, a stop work order was issued by P.Bujanow but work continued to go on. The project evolved into letters with total linear feet of 157' (length of the façade) and 21' tall. The Village code does not have specific definition for a building wrap, but the project met the definition for a sign, banner or billboard. Another building in a residential historic district with large letters on the facade, 24 Hudson Street, is also in the records determined to be a sign. Agreements made in the past should be respected and honored or there is no need for Zoning Boards, Planning Boards or Historic Commissions.

W.Better, Attorney for The School, asks the Board if all documents that he has sent have been received, (confirmed). Copies of all of the correspondence (approximately 56) will be sent to W.Better from C.van Denburgh. The CEO made a decision that it was a sign, banner or billboard. The School stated it is art and an appeal was made. Building code issues are not part of the Zoning Board's purview. W.Better reads Nick Cave's, the artist, statement about the artwork. The Village of Kinderhook ordinance defines what a sign is and what a sign is not. Truth be Told is about a movement, as an installation it is temporary in nature, it is not in the nature of an announcement, direction, or advertisement. Banners are discussed as The School has applied for these before. Billboards are not allowed in the Village of Kinderhook and the first characteristic of a billboard is that it has to be a sign. A billboard draws attention to an idea, product or business activity which is conducted, sold or offered elsewhere. In the case of the HPC issue, this is not an issue as municipalities are limited in regulating content and in order to be applicable to the HPC, you need a building permit and this did not need a building permit.

The first witness, Joseph Thompson, founding director of MASS MoCA and serves on Board of Trustees of Art Omi. J.Thompson discusses how MASS MoCA has helped North Adams turn around. With approximately 300,000 annual visitors, increased hotel rooms, and increased downtown occupancy rates. There is no doubt in his mind that this is art, text-based art. No doubt that it can be confusing, art does that. He has had lots of issues in the past and they all have been solved with conversations. He states that we are very lucky to have J.Shainman as part of the Kinderhook community.

The second witness is David Berliner, President and Chief Operating Officer of the Brooklyn Museum and

a resident of Columbia County for over 20 years. Nick Cave's work is part of their permanent collection. He also has over 25 years' experience as a real estate attorney with a focus on land use and zoning. The artwork at

issue here is not a sign. The Brooklyn museum often uses its façade as a canvas for public art installation. The building is from 1897 and is a designated NYC landmark, they are not required to get permits from any government body to display artworks on their exterior.

C.Hanrahan from The School discusses the Zoning Board meeting of October 26, 2015. There was an appeal to the ZBA in regards to the sculpture on the front lawn of The School which was previously approved as an accessory use. The appeal was denied by the ZBA. In 2018, there was a formal application submitted for a neon light sculpture project which was never realized. The School has always contacted the Village with anything that is going to be placed in the front yard that may impact the neighbors. 5 different artworks have been placed in the front yard since 2015 without complaint or censure. C.Hanrahan states it is clearly art and we clearly have a right to do it.

J. Callahan opens up the public speaker portion of the meeting. Each speaker has been allowed 4 minutes to speak.

1. Stuart Peckner – He lives at 24 Broad Street with his wife Audrey. He purchased his home across from a then school. He invested in restoring his property in a residential and historical village with a strong zoning code. There was trepidation when the school was sold and became a cultural facility. A sculpture appeared in a side yard, 2 large banners appeared on the front of the building, a temporary stage on the front lawn, and the streets were lined with vehicles dangerously obstructing intersections for the opening event attended by hundreds of people. They began to see that the Zoning code, the stipulations of the special use permit and the verbal assurances of J.Shainman were not going to be enforced. The current CEO's decision should be upheld. J.Shainman should return to the Planning Board for clarification of the proper use of his property to avoid future controversy and to safeguard all properties in the Village.
2. Lee Linderman- He is a resident of Valatie. What is at stake is are we a community which embraces freedom of expression or do we stifle anything that contradicts how we may view the world? Art stimulates discussion and the definition in Merriam Webster is broad. He hopes the Board can see beyond the narrowness of the issue art vs. sign. J.Shainman is an important part of this community.
3. Donna McElligott - She is a Village of Kinderhook resident. Truth Be Told as an art installation is as much a building modification as painting her house different color schemes. The church has also had functions with cars creating a traffic hazard. The material used is used around the world in the same type of application and is less flammable than the red oak wood floors in our homes. We have been told that this artwork does not fit our historic area yet there are fiberglass dogs and cats in Hudson and Catskill, Art Omi in Ghent near historic homes, and Mass MOCA uses historic buildings. Nick Cave used The School as his canvas. 3,363 people signed an online petition because clearly this is not a sign. We can handle art in Kinderhook.
4. Robert McElligott – He is a Village of Kinderhook resident and he has a degree in Civil and Environmental Engineering. He discusses the material that is adhered to The School. On the 3M website, it is in the most fire-resistant category and used throughout the world. This is art, not a modification to the exterior of a building, it is temporary, it is art.

5. Tsia Carson – She is a resident of the Town of Kinderhook, and she is a designer and a small business owner. She has taught as a visiting critic at RISD, Parsons and Yale with a Master’s Degree in Art and an undergraduate minor in Art History. She feels The School approached the village in good faith in August and this piece does not constitute a sign according to the village by-laws and it seems to fall outside existing by-laws.
6. Jasmine Vanterpool – She is a resident of Albany and she works in Kinderhook. On the surface this meeting is about an artist’s right to determine what constitutes his & her art and your desire to exert control by undermining a previously upheld protection. It is not going to cause anything to catch on fire, not a sign, not a billboard, not a banner. Your actions have consequences and still there are people out there that want to suppress a black man’s words because they are simply not understood.
7. DeWayne Powell – He is a resident of Ghent and real estate agent in the Hudson Valley and Kinderhook as well as a former attorney. The School is a selling point and a marketing strategy that works when he is selling real estate. Perhaps there was a better way for J.Shainman to get the permit for the work of art, but art is ephemeral, it has to be relevant and timely. He would urge the Board to accommodate Nick Cave and the work that The School is doing.
8. Alexandra Anderson – She is a resident of Kinderhook for over 35 years and an art critic, author and editor. People should look at our zoning and building code. This is not an issue of free speech, not an issue of art vs. sign. A sign can be simultaneously a work of art and a sign. Truth Be Told falls within the definition of a non-traditional sign and in the Village of Kinderhook, this still has to go through the code enforcement process with the Planning Board and the Zoning Board. We have to obey our codes or we lose our historic district.
9. Rima Bostick – She is a resident of the Village of Kinderhook. The function of government is to help people get along and not get in the way of progress. There would be no history if things didn’t change.
10. Andrew Pellettieri – He is a resident of the Village of Kinderhook. Art encompasses diverse media such as painting, sculpture, printmaking, drawing, decorative arts, photography and installation. Truth Be Told is a message that has been in use as a message for a few hundred years. He would emphasize the need for the ZBA and Village Board to revisit this code as far as the special use of The School and streamline and smooth out these wrinkles.
11. George Spencer – He is a resident of the Village of Kinderhook. What the Village of Kinderhook has rejected, the Brooklyn Museum has welcomed by having Nick Cave’s artwork being on the façade of that museum. When one googles Nick Cave/Brooklyn Museum/Truth be Told, over 800,000 links come up and these are not positive links about the Village of Kinderhook. He completely supports J.Shainman and states that the leadership of the Village should get back to the job that they were elected to do.
12. Julie Harrison – She is a resident of Ancram for 20 years and a former full-time professor at Stevens Institute of Technology. The School is the best thing that has happened to Columbia County. During the summer, she and her friends visit the gallery and go to the farmers market and do business in Kinderhook. The School is a major selling point for the entire county. We went through something

similar 30-40 years ago with Robert Mapplethorpe. Leave the art to the art professionals. It would be a sad day in Kinderhook to reject this piece.

13. Ellen Simpson – She owns a small art gallery in Hudson. To have the whole town talk about what is art and what is a sign is exactly the goal of public art. She states it is art. When Kinderhook decided to let J.Shainman open up a gallery, the job of a gallerist is to not worry about what people like but getting people to talk. Do we really want the Zoning Board and municipalities to decide what art is and what art isn't?
14. Brian Murphy – He is a 40-year resident of the Village of Kinderhook. Truth Be Told is not a sign, not a banner and not a billboard. He saw the words Truth Be Told on The School and thought of himself as an Eagle Scout and to “tell the truth” and that is what it is saying.
15. Kate Orne – She is the founder of Upstate Diary, a regional arts publication. She wants to express the importance of having Nick Cave's work, Truth Be Told, featured on the façade of The School. Featuring work in this manner speaks volumes of J.Shainman's commitment to the region and more importantly, to the freedom of creative expression of our entire community which draws attention from national and international audiences. Work like this enriches us both creatively and economically.
16. & 17. Donna Moylan & Benjamin Chu – When they first saw Nick Cave's piece on the façade of The School, they were proud and full of admiration as the message spoke to the moment in history that we are living. They want to voice their support for The School, J.Shainman, and the Village and reemphasize that this is artwork. The Village should not be determining what goes up on The School and we have to figure out a way to streamline this whole process to look at what is being presented at The School.
18. Randall Bourscheidt – He lives in Stuyvesant for almost 20 years. He is a career long public official in cultural matters. He has watched with pleasure The School become a vital and respected cultural institution in the Valley. He respectfully asks the ZBA to determine this work is not a violation of an understandable rule against public signage, but a daring and imaginative expression of this high ideal.
19. Lee Jamison – She has lived in Stuyvesant for 40 years. She has had a career as a psychiatric social worker with a Bachelor's Degree in Visual Arts. Do we really want to regulate, zone and criminalize art? She asked her Stuyvesant Zoning Board members how much training they have had in art as training is necessary to be on the ZBA and nobody has had any training in art. She is happy that J.Shainman has repurposed The School as an art gallery. Truth Be Told is a temporary art installation which is not a lawn sign, banner or billboard and it should not be criminalized.
20. Jennifer Birckmayer – She is a resident of Kinderhook. She wants to share two brief excerpts that Matthew Garrison, a former Kinderhook resident from 30 Broad Street and associate professor of art & digital media, sent in a letter to the ZBA. Cave's motivation was a heartfelt response to current events but the work is not overtly political or commercial and therefore not signage. It makes no pitch to sell or to promote. Instead, Cave's mural functions as art by raising questions and encouraging discourse.

21. Rachel Gevlin – She grew up in Stuyvesant and attended the school from 1996-1998 where she began her appreciation for visual art and the written word. Currently she is an English Professor at a small liberal arts college. Nick Cave's piece falls into both categories of visual art and written word. Art makes us think and art makes us feel things and sometimes elicits disagreement. A sign conveys information or instruction, communicating information that we have agreed to be true. She urges the Board to let Truth Be Told stand.
22. Denise Markonish – She is the Senior Curator at MASS MoCA and she has been a curator for over 20 years. The School has enlivened the Village of Kinderhook with art. Nick Cave is a remarkable artist who has changed both Kinderhook and MASS MoCA by bringing his vision to our communities. He sees himself as a messenger more so than an artist and his message is always truth. For years, MASS MoCA has put up art on the façade of its historic building. They only seek permits when they are making permanent structural changes to their buildings. Truth Be Told is a temporary, removable, reversible piece with no lasting changes to the historical façade. It is art, it is not a sign.
23. Elizabeth Martin – She is a resident of the Village of Kinderhook. The two most important issues at hand are the first amendment rights and the definition of what is art and what is a sign. She discusses an article regarding how the legal community defines art. Nick Cave's Truth Be Told is not necessarily abstract, it's made up of words placed on a building, to provoke from us a response. It is not asking us to buy something or support a cause, it is asking us to look inside ourselves for truth. Her hope is that we can resolve these issues and do better going forward by modifying the code and enriching the village.
24. Trevor Smith – Curator of the Present Tense and Associate Director of Multisensory Experience at the Peabody Essex Museum in Salem, Massachusetts. Salem was founded in the 17th century and shares many of our citizen's interests in preserving our history. He whole heartily agrees that the status of Truth Be Told is a work of art, it does not advertise or announce anything, it is not a sign.
25. John Bosquet-Morra – He is a resident of Stuyvesant and has lived in Columbia County for 18 years. He is calling for tolerance in the various ways that people define art. He feels this is a special kind of art, conceptual art. Take a deep breath and try to see the virtue of stepping outside of one's definitions.
26. David Smith – David and Vicki Smith have been residents of the Village of Kinderhook since 2004. The School has proven to be magnetic for many and destination defining. The enforcement in this case appears to be unjustified, disproportionate, unrelated to public safety and to date, convincingly countered. They hope for a mutually respectful meeting of the minds. The very presence of The School suggests that our village remains a special place, one evolving now as in the past.
27. Jeff Bailey – He is a resident of Old Chatham since 2003, a trustee of the Shaker Museum, and a former art gallery owner in Hudson and New York City. He is expressing his full support of Nick Cave's artwork, Truth be Told, at The School. Clearly it is a work of art cleverly making use of The School's exterior. Kinderhook's history and architecture are important as are the exhibitions and

programming at The School. Visitors attend from all over the world and bring their tourist dollars with them. He urges the Board to see the positive message and effects of Nick Cave's artwork.

28. Lisa Corinne Davis – She is a painter and 15-year professor of art at Hunter College and before that, Yale University. She works and has studios in Livingston and Brooklyn, New York. This is not a sign, it is conceptual art. J.Shainman was one of the first art dealers in New York City to give voice to African and African American artists. The art he brings is thought provoking but not controversial. There is no controversy here, it is not a sign.
29. Randal Schmit – J.Shainman's gift to Columbia County and to the Town and Village of Kinderhook is immeasurable in its intrinsic and cultural value for the current and future history of Kinderhook. This artwork is important in this time and moment of national and international history.
30. Michael Robbins – He and his wife Wendy are five-year residents of the Village of Kinderhook. He is a writer and editor and he did graduate work in American Art and architecture and he worked as editor of Museum News and did years of work with a museum exhibit design firm. He knows this is not a sign. One of the reasons they choose to live in Kinderhook was the art gallery was within walking distance of their new home. It is self-evident that it is a very important work of art and not a sign. The School is an art gallery with works of art both inside and outside that offers art to the public. Nick Cave is a well-known artist, not a sign painter. The content is not commercial and not identifying goods or services that are available.
31. Emma Kokolis – She is 13 years old and lives in Kinderhook. She states how things have been tough this year with the pandemic, we have lost loved ones and many have lost jobs or have had to go remote. There is another problem and that is racial injustice. In November, Truth Be Told (stating the truth) appeared on The School. This artwork should stay up so anyone can interpret it however they want and start a conversation because art can and should be the freedom of expression.
32. Brian Ruhl – He is a new homeowner in Stuyvesant. The School and its cultural benefits are what brought him here. Truth Be Told is an extraordinary work of art and The School is a valuable asset to all of Columbia County.
33. Greg Pettyjohn – He is a resident of Stuyvesant and has experience in fine art spanning the last 20 years. Nick Cave's piece, Truth Be Told, is a work of art. J.Shainman is an authority on the matter of art and he thanks the staff of the School for their hard work as they continue to bring vitality, thought and honesty to our community.
34. Camille Massey - She has spent 17 years in Kinderhook. She is a human rights lawyer and the founding executive director of the Sorenson Center for International Peace and Justice. To be able to walk down the street and watch the installation of the art piece and read those words is beyond meaningful. Truth Be Told represents freedom of speech and is important for our democracy. She and her family thank J.Shainman and The School for their inspiration and bringing art into people's lives.

35. Paul Calcagno – As a member of the Village of Kinderhook, we are a melting pot, a welcoming village and an all-inclusive village. The village is more than just art and businesses, it is historic residences and one should respect the old guard.

P.Bujanow responds to the comments he heard. He suggests that people take a look at the Village of Kinderhook code book which he enforces every day. There was no censorship of Nick Cave, no racial injustice issues. P.Bujanow did not ask at the beginning of the project what was on the sign, he was given a picture. His concern is about what the code says and he must interpret what is written. He approaches every situation with a neutral bias. He is not a policy maker; he is a code enforcement officer and a zoning enforcement officer. He is responsible for enforcing that code which is in the code book. If someone deems it to be changed, that is up to the Village Board and other boards. There were open communications with The School to attempt a resolution. The issue is what was agreed to in the past for that specific sight. There were stipulations that were agreed upon and adhered to for several different proposals. He looked at the building, at the material, at the code. It is up to the policy makers to change or improve the code.

W.Better responds that if P.Bujanow had followed the prior decisions and rulings of the ZBA, we would not be here tonight as these decisions clearly state the HPC has no jurisdiction over temporary matters. Also, if the definitions had been followed of what is a sign, banner or billboard, we would not be here. If it is not a sign, it is not a billboard and The School knows what a banner is as they have applied and been approved for them in the past. The 2015 decision about the accessory use of art was set as a precedent. That art, temporarily installed, is an accessory use which in the Village of Kinderhook are permitted as a right. Listen to all of the people who spoke tonight, people who run museums, gallery operators, artists, academics, and residents. It is good for the community to have this conversation as in the long run, something good will come of this.

J.Callahan thanks all of the participants and observers of tonight's public hearing as well as the ZBA Board, Ms. Van Denburgh and Ms. Heeder, Mr. Bujanow and Mr. Shainman and his representative, Mr. Better. J. Callahan makes a motion to adjourn the Public Hearing and designate February 2, 2021 at 7:00pm as a special meeting of the Board via Zoom to discuss and make a determination of their interpretation of the code; K.Gray seconds, all in favor "aye".

Next Meeting: February 2, 2021 (Special meeting)

Adjourn: 10:20pm

Respectfully submitted,

Carol van Denburgh
Secretary to Zoning Board of Appeals