

Approved October 25, 2021
Village of Kinderhook
Zoning Board of Appeals
Minutes of September 27, 2021

- Attending via ZOOM: Chair Jerry Callahan, David Sullivan, Greg Seaman, Kim Gray, Bill Barford, Trustee Mark Browne (for Liaison David Flaherty), Secretary Carol van Denburgh, Attorney Rob Fitzsimmons, CEO Peter Bujanow, Applicant Barry Herbold, Jake Samascott, Mary Ose, Andrew Scharoun, and Brian Murphy. 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.
- Workshop: All ZBA members attended, no action taken.
- Call to Order: Chairman J.Callahan opens the meeting at 7:04pm and he introduces the Board Members.
- Public Hearing: J.Callahan convenes the Public Hearing, awaiting B.Herbold to join. J.Callahan asks if anyone in the audience wishes to speak on the area variance application, no response received. K.Gray states there was an instance where the applicant did not appear for their Public Hearing (The Flammerie). Chairman Callahan reconvenes the Public Hearing at 7:11pm. B.Herbold speaks that the dimensions of the lot are wider that it is narrower (most lots are deeper than wider). This constricts the shape of the house that can be placed there. The setbacks push the potential house toward the front of the lot and the parcel is in the historic district. He only wants to construct a one-story house (most houses in historic district are 1.5 or 2 stories). The rear yard backs up to property owned by the Shermans, which is "useless land." This is adjacent to B.Herbold's rear yard at 30 Broad Street. He bought this parcel 18 years ago to protect his rear yard privacy. Moving the rear yard setback from 50' to 25' will not impact any of the contiguous property owners. J.Callahan asks about the request for a front yard setback from maximum of 50' to 70'. This is in conjunction with pushing the building back to the rear yard boundary, this would allow for a larger front yard and the house would not be as close to the street as other houses, setback from the road noises. B.Barford asks about the proposed land going to Neil Van Allen and if that will affect the side yard setback of 25'. B.Herbold states it will not affect this. No public comments were given at the Public Hearing. B.Barford makes a motion to conclude the Public Hearing at 7:18pm, seconded by K. Gray, all in favor.

- Regular Meeting: Meeting is convened by J.Callahan at 7:19pm.
- Minutes: Approve minutes from the last meeting of August 23, 2021.
D.Sullivan has an alteration under correspondence page 1, “told” should read as “tolled”. C.van Denburgh has made the change to the minutes. B.Barford motions to approve minutes of August 23, 2021.
D. Sullivan seconds, all in favor.
- Funds Remaining: \$1860.92
- Correspondence: The Advisory Opinion letter from the Planning Board regarding the Area Variance at 30 Rothermel Lane, Lot #43.20-1-83.200, was read by Secretary C. van Denburgh.
- Old Business: Barry Herbold, Area Variance, 30 Rothermel Lane, Lot#43.20-1-83.200. J.Callahan states that the section in the code that this area variance applies to is section 130:Attachment 1 (VOK Density Control Schedule), not section 130-32 (existing undersized lots). G.Seaman asks if there are two variances (front and back). J.Callahan states this is one variance request. G.Seaman notes that the setback is significantly more than the other houses on the same side of the street but there is a good reason for it.
- R.Fitzsimmons states this is a Type 2 action (area variance related to residential construction) so it is exempt from SEQRA. Area Variance Findings & Decision Form review. If item 1, 2, 3, or 4 answered yes, the application is automatically denied. If item 5 answered yes, the variance can still be granted.
1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties. Concurrence of no.
 2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance? Concurrence of no.
 3. Whether the requested variance is substantial? Concurrence of no.
 4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood? Concurrence of no.

5. Whether the alleged difficulty was self-created? Concurrence of yes.

J.Callahan states that the benefit to the applicant DOES outweigh the detriment to the Neighborhood or Community. Approval of this application that 4 of the 5 criteria are met. Record of the vote is approval on the Area Variance Findings and Decision form.

New Business:

PCJ Development, Appeal for an Interpretation, 10 Broad Street Lot #43.20-1-30. Neither the applicant or a representative were present at this meeting to speak in regards to the application. This application requests an interpretation of the village code with regard to whether or not a building permit is required for the erection or repair/maintenance of a fence between 10 Broad Street and 12 Broad Street. Also, does the fencing project require the review of the HPC.

J.Callahan swears in P.Bujanow. On August 23, 2021, P.Bujanow witnessed a fence being installed at 10 Broad Street, a property which had not been issued a building permit. The property owner and contractor were instructed they needed a building permit and a stop work order was issued. On September 7, A Notice of Violation and Order to Remedy was issued. Several documents and photographs were submitted to the ZBA showing the building in the early 70's. The CEO took photos on August 23 and there was no indication that a fence had previously been installed there from the front sidewalk back. New holes were being dug, new posts were being installed and 4x4's were being placed there. The Village requires a building permit for a fence, certificates of insurance, a survey to indicate accurate property lines and other conditions that affect the property, various inspections and then final inspection. The Columbia County Real Property record indicates there were 3 improvements to this property, all 3 being porches dating back to 1900 and 1950. The Village records do not indicate any record of a building permit being issued for a fence. The property owner at 12 Broad Street indicated that there was no fence that she was aware of for the last 3 years that she has owned the property.

K.Gray asks for clarification that no fence existed which is contrary to the application for interpretation. P.Bujanow states that is correct. Photos submitted show a clear pathway and no existing fence. The applicant is asserting that he is making repairs to an existing fence, which, if true, would be exempt from building permit. Would it also be exempt from HPC review? A repair would be replacing a board or

two or a panel, and this would have to be reviewed. Sometimes there is evidence of a prior fence, (footings) as was the case on another property owned by P.Calcagno. A total replacement would require a building permit. If the fence is visible from a public way, HPC would need to review. There was a front piece of fence that was on 12 Broad Street's property and that owner asked for that piece to be taken down. Now the fence in question is visible from a public way.

G.Seaman asks if we are talking about the fence that is running perpendicular to the street only or the part that is parallel to the street. The part that is parallel did exist and was installed on the neighboring property (12 Broad Street) which the owner wanted removed. The part we are discussing is the perpendicular part between 10 and 12 Broad Street from the sidewalk back.

B.Barford asks if there is any evidence of an old fence there such as old rotten wood. P.Bujanow states there is nothing there nor is there any record either in the Village files or County files of a building permit ever being issued for a fence at this location.

D.Sullivan states the issue raised by the applicant of repairing an existing fence is immaterial as there never was an approved fence. P.Bujanow states there is no evidence or any record of a fence permit ever being issued.

J.Callahan asks if P.Calcagno is aware that P.Bujanow is saying there was no pre-existing fence. The application indicates that pieces of the old fence will be incorporated into the repair or maintenance. P.Bujanow refers back to the building permit records and there is no permit for a fence ever being issued for 10 Broad Street that he can find and the Columbia County Real Property Records do not indicate any fence installation.

R.Fitzsimmons states that he has been in discussions with the applicant's attorney and they represent that they are repairing an existing fence. Even if that was the case, the substantiality of the repair would still require a building permit and this has been applied several times this past year in the Village.

K.Gray states that the application says the applicant intended to use the original fence panels to the existing structure. 12 Broad Street had a front panel that ran horizontal/parallel to Broad Street. The owner of 12 Broad wanted that panel removed by P.Calcagno. There was no

fence that ran perpendicular to Broad Street even on the wrong side of the property line where the new section is being installed which goes back 30' - 40'. K.Gray asks if it was possible that there was an existing fence that had to be removed due to a boundary line issue and is it possible that the fence had been permitted? P.Bujanow states there is a no evidence of a building permit being issued that he can find. Even if there was a fence there, the substantial nature of this improvement warrants a new building permit and this policy has been applied to at least four properties in the Village this year.

J.Callahan proposes the motion that the Zoning Board accepts for review at a Public Hearing the Appeal for Interpretation submitted by PCJ Development, 10 Broad Street, Lot #43.20-1-30 for hearing on October 25, 2021. D.Sullivan suggests that we confirm that the applicant will be present at the Public Hearing to explain his application. J.Callahan amends the motion to include the suggestion that the applicant be notified that he is expected to make an appearance at the Public Hearing for the purpose of explaining his position and that he will do so under oath. B.Barford makes the motion, G.Seaman seconds, all in favor.

Discussion:

M.Browne states the alternate position conversation came about from a request of the Planning Board followed by the Recreation Commission and HPC. The Village Board then said to do it for all of the Boards. The Zoning Board is the one board in question. The Code was borrowed from the Town. Once all text changes made, legal review is required, then a Public Hearing would take place at the Village Board meeting and then it would be determined if this would be incorporated into the Village Code. This is being fast-tracked as we are converting to Code 360 online. K.Gray has a concern with the insertion of the term "random". This was not mirrored in the Planning Board's verbiage so she suggests removing the term "random" so this is applied uniformly across all of the Boards. One of the conditions for substituting an alternate is for conflict of interest and another is for absence of a regular member. She does not want to see the misuse of a statute to enable an alternate to vote on something that a regular member would vote on had they not been absent. Maybe this should be a joint determination, not a unilateral decision to avoid misapplication of the statute. We don't want to substitute on any of the village boards when a vote is coming up in order to manipulate a vote. Have the language of the statute be applied consistently, have scheduling remain consistent, and the conflict-of-interest standard is applied in an acceptable way, she would support having an alternative

for the Zoning Board. The ZBA rarely has to be worry about having a quorum (3 out of 5 members) for a meeting. M.Browne states that each Board's language is unique so it is hard to make one consolidated text. G.Seaman asks if it can be worded that an alternate will be appointed as or if necessary. M.Browne states at the Town, if there is not a quorum, has to raise someone up in order to have the meeting but if they are down one person, they may not raise the alternate at all, it is at the discretion of the Chairman. R.Fitzsimmons states that having alternates for Planning and Zoning Boards is relatively new (within the last ten years). The Chairman appoints an alternate if there is a recusal of a member due to a conflict, or if there is an absence. There has to be some flexibility but the alternate should attend all meetings. D.Sullivan states that alternates could eventually become members when Board members retire. J.Callahan states there is a lot of burden on the alternate to complete the 4 hours of training and harassment training and to sit through the meetings with not a lot of opportunity to participate. R.Fitzsimmons suggests we set up a provision to allow for an alternate, but the Village Board does not have to appoint anyone to fill the position at this time. D.Sullivan proposes the motion that the ZBA to endorse the application of an alternate member of the Zoning Board of Appeals as and when needed, B.Barford seconds, all in favor.

Next Meeting: October 25, 2021

Adjournment: B.Barford makes a motion to adjourn the meeting to go into executive session to discuss pending litigation with our attorney. The ZBA will reconvene only for the purpose of concluding the meeting at the end of the executive session. K.Gray seconds, all in favor.

Return to regular session
and adjourn regular meeting: B.Barford makes a motion to adjourn the meeting at 8:42pm,
K.Gray seconds, all in favor.

Respectfully submitted,

Carol van Denburgh
Secretary to Zoning Board of Appeals