

Town of Otsego Zoning Board of Appeals

Minutes (Unapproved) – November 15, 2016

REGULAR MEETING

The monthly Town of Otsego Zoning Board of Appeals (ZBA) meeting was held on this date at the Town Office Building in Fly Creek, NY. Chairman Greg Crowell called the meeting to order at 7:04 PM and led the Pledge of Allegiance.

Roll call was taken by Secretary Bill Deane. Board members present were Crowell, Tony Scalici (Vice-Chairman), John Tedesco, and Dean Robinson. With Christopher Voulo and first alternate member Michael Pelcer absent, second alternate member Bruce Miller joined the meeting table. Town Attorney Michelle Kennedy and Zoning Enforcement Officer Ed Hobbie were also present.

Chairman Crowell asked if anyone had a potential conflict with tonight's applicants. No one reported any conflict.

The Board reviewed the minutes of October 18, e-mailed to the members. Chairman Crowell read aloud an email from Attorney Kennedy, where she asked that the minutes on the Hummel application, paragraphs #4-9, be amended as follows (amendments in **bold**):

<< Attorney Kennedy distributed copies of a three-page handout, summarizing New York State statutes and **case law and including a July 25, 2016 decision letter issued by Judge Cocco**. She **holds the position** that the application is timely based on these, and that to determine otherwise would be to deny the applicant due process – quoting Martin Tillapaugh, “elevating procedure over substance.” **Kennedy advised the ZBA to consider the application.**

Zamelis disagreed, saying that Bissell had an opportunity for due process. Zamelis said that the 1984 **case** that Kennedy cited had limited value due to a subsequent recodification. He said that State laws supersede Town laws. Panasci disagreed with Zamelis.

After discussion, Dean Robinson moved to proceed with the application based on Attorney Kennedy's advice, **the relevant statutes and case law and the July 25, 2016 decision letter of Judge Cocco**. Christopher Voulo seconded the motion and it was approved, 5-0. Zamelis objected for the record.

Attorney Kennedy said that the ZBA would have to perform State Environmental Quality Review (SEQR). She said she would initiate coordinated review, and distributed copies of a proposed resolution to declare lead agency. The Board noted two places where “Planning Board” was printed instead of “Zoning Board of Appeals.” Kennedy said she would prepare a corrected resolution.

After discussion, Chairman Crowell moved to approve the resolution as amended. Tony Scalici seconded the motion and it was approved, 5-0. The consensus was to proceed

with SEQR in December, giving other agencies time to respond to the resolution (they have 30 days to do so, which would be beyond the November 15 meeting date). Panasci agreed to waive the “62-day clock,” which requires the Board to make a decision within that timeframe **unless a public hearing is scheduled.**

The Board itemized what would be needed to deem the application complete and schedule a public hearing, citing Land Use Law Section 9.03 (3). Included would be a survey/site plan showing the location of the entire property, including the new building, and documentary evidence as to why **the** hardship is unique. >>

Tony Scalici said that the term “art studio” is misleading, as the building in question is not an art studio. He asked that the minutes be clarified to reflect that it is “the proposed second principal building” or “the building referred to as ‘the art studio.’”

Chairman Crowell moved to approve the minutes as amended. Robinson seconded the motion and it was approved, 5-0.

Chairman Crowell said that the only correspondence received since the last meeting related to the Bissell application, including an email from Attorney Doug Zamelis and correspondence from Bissell. These had previously been forwarded to the Board members. The Board moved on to applications.

APPLICATIONS

16.07 – Matthew & Linda Lionetti – Area variance, minor subdivision in RA2 District – 768 County Highway 26 (#114.00-1-46.01)

No one appeared on behalf of the Lionetti application.

16.09 – Addison Bissell (Robert Panasci) – Use variance, principle buildings per lot – 6515 State Highway 80 (#84.12-1-6.00)

Chairman Crowell said that the representatives had asked that the Bissell application be tabled until December. Attorney Kennedy said that didn’t mean the Board couldn’t discuss the application, just that they couldn’t take any action on it.

Attorney Kennedy discussed state environmental quality review (SEQR). She sent out notices to other agencies on November 7; they have 30 days, or until December 7, to challenge the ZBA’s lead agency declaration. Kennedy said she had received a revised site plan via e-mail, but it was missing IRS Schedule C. Secretary Bill Deane said the applicants would also need to provide an updated list of neighbors (and addresses) within 200 feet of the property. Kennedy said she would advise the applicant’s representative about the missing documents.

Attorney Kennedy recommended that the proper sequence of actions to come would be to schedule and hold a public hearing, complete SEQR, and then decide on the application. This could not be completed before January.

John Tedesco noted that there is no area variance, nor application for an area variance, for the building. Kennedy said that they needed a use variance before the Board could even entertain an area variance.

Scalici asked how Bissell could come to the ZBA while he is in violation of Town laws. Kennedy said that Bissell is attempting to come into compliance, and has to be given the opportunity to exhaust his administrative remedies. She noted that the bed & breakfast is grandfathered, but non-conforming.

Tony Scalici thought the Board needed proof that the building referred to as the “art studio” was moved rather than newly-built. Attorney Kennedy said that that was immaterial, since there was no permit for the building in either case. Doug Zamelis said that, either way, the situation is self-created.

OTHER BUSINESS

Chairman Crowell announced that Barb Monroe had resigned, and Ed Hobbie is the interim Zoning Enforcement Officer. Crowell and Tony Scalici advised Hobbie to work with applicants in submitting complete applications, as it is not the ZBA’s job to do that. Hobbie discussed the Blackbird Hollow situation, saying in the future the Planning Board should demand detailed plans from applicants so he could monitor that they are following their approvals.

The Board discussed making recommendations to the Town Board for the 2017-21 member (Dean Robinson’s term ends 12/31/16), Chairman (currently Greg Crowell), alternates (Bruce Miller and Mike Pelcer), and Secretary (Bill Deane).

Chairman Crowell moved to recommend that the Town Board reappoint Robinson for the 2017-21 member term. John Tedesco seconded the motion and it was approved, 4-0, with Robinson abstaining.

Chairman Crowell moved to recommend that the Town Board reappoint Deane as Secretary. Robinson seconded the motion and it was approved, 5-0.

Tedesco moved to recommend that the Town Board reappoint Crowell as Chairman. Robinson seconded the motion and it was approved, 4-0, with Crowell abstaining.

Chairman Crowell said that the Town Board is seeking a replacement for Pelcer, who is unable to attend most meetings. Crowell moved to recommend that the Town Board appoint Miller as first alternate member. Robinson seconded the motion and it was approved, 4-0, with Miller abstaining.

With no further business, at 7:59 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Secretary