

Borough of Kinnelon

Board of Adjustment

October 4, 2016

The regular monthly meeting of the Kinnelon Board of Adjustment was called to order by Chairman John Carpenter at 8:05p.m., Tuesday, October 4, 2016 in the Municipal Building.

It was posted that adequate notice of this meeting had been given in accordance with the Sunshine Law by posting a notice on the municipal bulletin board, by publication of a legal notice in the Suburban Trends on January 2016 and by sending the meeting date to the Daily Record and Herald News on January 2016.

Present and answering roll call were Mr. Carpenter, Mrs. Maletsky, Mr. Ruocco, Mrs. Canale, Mr. Diani, and Mrs. Minett. Mr. Ott arrived at 8:30 pm.

Mr. Carpenter asked if everyone would please rise for the Pledge of Allegiance.

A motion to approve the May 3, 2016 and July 12, 2016 was offered by Mr. Ruocco, second by Mr. Diani with the affirmative "yes" vote of all on roll call. Mrs. Maletsky and Mr. Ruocco abstained.

Mr. Carpenter stated that if anyone was here for application # 1147, 50A Maple Lake Road will not be heard tonight it will be heard at the November 1<sup>st</sup> meeting.

**Application #1452 160 Kiel Ave, Mr. Cabanillas.** The applicant is asking for a rear and side yard variance to construct an 8x10 shed. This application was carried from the September 6, 2016 meeting.

Mr. Cabanillas submitted a set of 14 pictures to the Board.

Mr. Bacchetta asked Mr. Cabanillas if he would make the submittal dated September 22, 2016 a part of his application. Mr. Bacchetta stated that the submittal discussed what was to be put in the shed, why the lower left corner of the property, it would be 8 feet from the back, 6 feet from the side and would be an 8x10 shed, and 8 feet high. The shed will sit on cement blocks with the center area filled with crushed stone, the walls would be plywood (color beige), and the roof light brown and it would not be a 2 story shed.

Mr. Cabanillas said that this is correct.

Mr. Carpenter asked if there were any questions from the board for the applicant.

Mrs. Canale asked if you are keeping your snow blower, lawn mower and that kind of stuff why is it located in such a far area on your property.

Mr. Cabanillas stated that the middle of the property is the septic and the other part is used for the garden. He also stated that he will not use these items every day.

Mrs. Canale asked what was in the current shed.

Mr. Cabanillas stated that it's for the in ground pool and there is no fuel in there because of the electrical power.

Mr. Carpenter then opened the meeting to the public.

Mr. and Mrs. Bender from 149 Kinnelon Road who are still under oath from the September 6, 2016 meeting came forward.

Mrs. Bender stated that it was her understanding that a variance is approved when there is no other place on the property to put a shed to be built and there are no objections by anybody. Mrs. Bender stated that the shed should be 50 feet away from the property line not 8 feet and last month it was 6 feet.

Mr. Bacchetta stated that the zoning ordinance says its 50 feet but the applicant has come in with a shed applicant saying he wants the shed 8 feet off the rear property line and 6 off the side property line and that's why he asking for a variance.

Mrs. Bender stated that she object to that being so close to the property line because he is going to store gasoline and propane right next to the property line. Mrs. Bender stated that there are other places he can put the shed he just chooses not to.

Mr. Carpenter asked Mrs. Bender if she had any questions for the applicant.

Mrs. Bender asked Mrs. Cabanillas why he can't put the shed right next to the other shed and have all his dangerous chemicals next to that.

Mr. Cabanillas said he can't because there is electric in that shed.

Mr. Bender asked Mr. Cabanillas what the conflict was with having electric in one shed and the other stuff in the other shed.

Mr. Cabanillas stated that he didn't want to disturb that part of the garden.

Mr. Carpenter said that Mr. and Mrs. Bender just testified they are afraid about having volatile chemicals and I don't think he wants to put them next to an electrical pump than can spark and create a dangerous situation. Mr. Carpenter asked Mr. Cabanillas if that was what he was testifying too.

Mr. Cabanillas said yes.

Mrs. Bender said if it's supposed to be 50 feet away from my property line apparently there is a reason for that.

Mr. Bacchetta stated that Kinnelon has one Residential zone and all set backs are the same. This property is less than the minim lot size. This applicant want to put the shed somewhere on his property that's not permitted by the zoning ordinance, so he has to come before this board. If this board feels

that the reason for this request are justified then they can grant a variance, he is asking for a 42 foot variance. Most of the homes in Kinnelon are probably undersized and this impacts the setbacks and this is why there are so many application before this board. The reason shouldn't be just because I can't put it anywhere else on the property because maybe this property shouldn't have a second shed and that's the other consideration. He is here because he wants to put a shed there and he needs a variance to do so. Mr. Bacchetta asked Mrs. Bender if he didn't have the volatile substances would it be a problem or do you just not like the shed 8 feet off your property line.

Mrs. Bender said she didn't want it 8 feet off her property line when it's supposed to be 50 feet and he has other places to put it.

Mr. Carpenter said that he wouldn't have to come in front of this board if it was 50 feet from the property line. Mr. Carpenter stated that he thought that the Mayor and Council are working on an Ordinance about multiple sheds on the property but as of now one doesn't currently exist, so we have to deal with his needs and why he wants it there.

Mrs. Maletsky stated that with undersized lots if you were to comply with the setbacks in our plan someone would have a shed right in the middle of their yard or over a septic disposal field. Mrs. Maletsky said that she sees the board as beginning here to try to accommodate where we can if it's a reasonable request but also with the understanding that we don't want to have an impact on the neighbors. This is the reason why we have the setbacks. A question for the applicant would be is there another location that the shed could be moved too that might make the neighbors feel more comfortable.

Mr. Cabanillas stated that it can't be next to the other shed because of the electrical power.

Mr. Carpenter said that he thinks the board is reluctant to grant permission for another shed to be installed on the property when there is already a very large shed there. Mr. Carpenter said that you have to show why you really need this for us to grant the variance.

Mr. Carpenter showed Mr. and Mrs. Bender the 14 pictures Mr. Cabanillas submitted.

Mr. Bender asked Mr. Cabanillas if he has been continuing to build the foundation without a variance.

Mr. Cabanillas said that he hasn't.

Mr. Bender stated that he wants us to take on a risk with the chemicals that he doesn't want to and that's not right.

Mrs. Bender stated that his letter mentions that he keeps his snow blower, lawn mower, fuel container under his deck taking on the risk of a fire. He wants to put the building with all those materials closer to us and why should we take on the risk.

Mr. Carpenter asked Mrs. Bender what she thought the distance was from the proposed shed to any building on her property.

Mrs. Bender said that there are a lot of trees though but probably 100 feet from the barn.

Mr. Bender stated that last month Mr. Cabanillas said that he was getting a shed from Home Depot and now this month he is building his own.

Mr. Bacchetta said that saying that you want to move volatile chemicals away from the house closer to your neighbor isn't a valid reason under the Land Use Laws to approve a 8 foot setback. Mr. Bacchetta said that his question was why you can't put all the stuff in the old shed that way you can eliminate the need for 2 sheds.

Mrs. Bender brought up to the board pictures of Mr. Cabanillas property that were submitted last month.

Mr. Bacchetta stated that if you wish for them to be part of your case they have to remain with the board and Mrs. Bender said that was fine.

Mr. Carpenter asked if there were any other questions from the board.

Mr. Diani stated that it seemed that the purpose for the sheds served two separate purposes one for servicing the pool and one would be used for a garden shed.

Mr. Dianne asked Mr. Cabanillas what the purpose of the fenced in area was for and Mr. Cabanillas said it was his garden.

Mr. Carpenter asked if there was anyone else that would like to be heard on this application.

Patricia Grennon from 164 Kiel Ave. Ms. Grennon is still under oath from the September 6, 2016 meeting.

Mrs. Grennon said that she had two questions now that she is understanding these combustibles and where the shed is going to be. Ms. Grennon said that it's going to be very close to her shed and the chain link fence is right on the property line. Ms. Grennon stated that she doesn't store the lawn mower or snow blower in the shed but in the garage where the other gas items are such as her car. This is easier for her to reach them. Ms. Grennon said that her son was visiting and brought to her attention that she should be worried about the esthetics of it.

Mr. Carpenter asked Ms. Grennon if she had any questions for Mr. Cabanillas.

Ms. Grennon said no just concerns because there was the other things the town was aware of prior and I had given photos with water drainage to my property that washed away a lot of my dirt. Mr. Dyer came out and I called everyone.

Mr. Bacchetta said that she was getting off topic.

Ms. Grennon said that she wanted to make sure she didn't have any more deficits to the property value with any dangers to combustibles.

Mr. Bacchetta said you can talk about the combustibles but you really can't speak about the property value unless you bring in a real-estate appraiser to testify.

Ms. Grennon said that her concern is that it's too close to the property.

Mr. Ott said that he has a lawn mower and propane tank that is stored in a shed. Mr. Ott asked Mr. Cabanillas if these things are stored improperly because you mentioned the potential for a fire.

Mr. Cabanillas said that it can or never happen.

Mrs. Canale said that she noticed that there are gutters and leaders on the shed that you have draining on to your neighbor's property.

Mr. Cabanillas said that the neighbor let him run the water that way.

Mrs. Canale stated that she is pretty sure there is an Ordinance that prohibits draining water from one property to another.

Ms. Grennon stated that she didn't think so because she had this happen when his pipe was coming out of his property and flooding my back yard, side yard and basement. Ms. Grennon said she reported it to the town and told everyone that she could.

Mr. Carpenter closed the meeting to the public and opened it back up to the board.

Mr. Carpenter said that he was reluctant to vote or pass a shed as any extra building especially on a property of this size.

Mrs. Maletsky said that after the testimony of the concerned neighbors to the side and the back regarding the water drainage, storing flammable materials and has an oversized shed on the property already she would make a motion to deny his application, this was second by Mrs. Minett.

Roll Call was done to deny Mr. Cabanillas application for an 8x10 shed:

Mrs. Maletsky – yes, Mr. Ruocco – yes, Mr. Ott – no, Mr. Diani – no, Mrs. Canale – yes and Mrs. Minett – yes.

Mr. Cabanillas application was denied the way it was submitted.

Mrs. Bender asked that if Mr. Cabanillas had to remove the foundation that he has started.

Mr. Carpenter said that this board is not an enforcement board and she would have to call the construction office.

**Application #1450 Ms. Donovan, 47 Fayson Lakes Road.** The applicant is asking for a front yard variance to enlarge the front steps. This application was carried from the July 12, 2016 meeting.

A motion to deem this application complete was offered by Mr. Ott, second by Mrs. Maletsky with the affirmative "yes" vote of all on roll call.

Ms. Donovan was represented by John Nolan, Esq.

Mr. Bacchetta sworn in Ms. Donovan.

Ms. Donovan stated that she was requested to do a survey which she did and was under the impression that was all that was needed.

Mr. Nolan said that Ms. Donovan is trying to make her front steps functional and workable. There is a very large chimney at the base of the stairs and when you walk down them you walk into the chimney. Mr. Nolan also said on top of that the front steps are in a state of disrepair and not up to any code. Ms. Donovan wishes to extend the stairs 1 foot to make it easier to come in and out of her house.

Mr. Carpenter said that along with the updated survey and the dimensions of the steps we also need the setback to the property line. We still don't see that on this survey.

Ms. Donovan amended her application asking for a 24 foot front yard variance.

Mr. Nolan stated that the steps will maintain the character of Fayson Lakes and will not have a negative impact on the neighborhood.

Mr. Carpenter agreed and also stated that he visited the property and the steps are in need of repair.

A motion to approve the application was offered by Mrs. Maletsky, second by Mr. Ott with the affirmative "yes" vote of all on roll call.

**Application #1453 Mr. Vasic, 158 Kiel Ave.** The applicant is asking for a rear and side yard variance to construct an 8x10 shed. This application is carried from the September 6, 2016 meeting.

Mr. Bacchetta asked Mr. Vasic if he was agreeing with everything in the letter with the two pictures he submitted on September 23, 2016. Mr. Vasic said yes.

Mr. Vasic is still under oath from the September 6, 2016 meeting.

Mr. Vasic stated that he brought the materials for the siding and the roof of the shed. The siding is going to be a dark gray made out of corrugated steel.

Mr. Carpenter asked if his letter was incorrect because it says the color will be royal blue.

Mr. Vasic asked to change the letter to battleship gray. The roof will be natural gray. Mr. Vasic said that once the shed is constructed the other shed will be removed.

Mr. Ott asked if a concrete slab was going to be poured.

Mr. Vasic said that it will be 3 feet cement and in the center will be pavers. The shed will be 19 feet from the rear and 9 feet from the left side.

Mr. Carpenter opened the meeting to the public.

Mr. and Mrs. Bender from 149 Kinnelon Road came forward.

Mrs. Bender said that she still has no objections to this project because he has an extremely small piece of property and it's the only logical place to put the shed. Mrs. Bender said she would prefer a dark green or dark brown color that faces her property but if it won't hold color that's fine.

Mr. Carpenter closed the meeting to the public and opened it back up to the board.

A motion to approve this application was offered by Mrs. Maletsky, second by Mr. Diani with the affirmative "yes" vote of all on roll call.

**Application #1445 Mr. & Mrs. Strecwilk, 10 Shirley Terrace.** The applicant is asking for a side yard variance for a detached garage.

A motion to deem the application complete was offered by Mr. Diani, second by Mr. Ruocco with the affirmative "yes" vote of all on roll call.

Mr. Carpenter read the Engineers report into the record.

Mr. Bacchetta swore in Iwona Strecwilk and Marek Strecwilk.

Mrs. Strecwilk stated that she was asking for a two car garage because right now they do not have one, they just have a little shed on the property and there isn't a lot of room for storage. Mrs. Strecwilk stated that they will demolish the shed and the garage will be perfect for their family.

Mr. Ott said that one of the questions that the engineer brought up was the location. Mr. Ott asked if an alternate location was thought of rather than it being 3 feet off the property line.

Mrs. Strecwilk stated that they thought about it but the property has two front yards and there is no other place to put it. There is the well and also the patio. Mrs. Strecwilk said that she spoke with her neighbor and he was fine with it.

Mr. Strecwilk stated that before we started the project we explained to the neighbor what we wanted to do and we just want to build something nice.

Mr. Ott asked what kind of lighting would be used on the shed.

Mr. Strecwilk said nothing.

Mrs. Strecwilk said whatever is permitted.

Mrs. Maletsky said that her concern is that it's so close to the property line that if you try to clean the gutters I don't know how you would get a ladder in that space.

Mr. Strecwilk stated that he would clean the gutters from the roof.

Mr. Carpenter said that we have a problem granting variances for sheds this close, how do you get in there to maintain it. This is our concern that's it's a small set back.

Mr. Strecwilk said that it will be the same siding as on the house.

Mr. Ott stated that he does agree that we have a hard time granting variance to sheds this close to the property line because of maintenance but it's going to be hard to get in there to do any kind of work.

Mrs. Canale asked if the windows and the door will be on the patio side.

Mrs. Strecwilk said yes.

Mrs. Canale said there is also two fences there and my concern is how you can take care of that side of the building with the fence there also.

Mr. Strecwilk said how many times do you clean the leaves a year 3 or 5 and that's why I spoke with my neighbor to make sure he was fine with it.

Mrs. Canale said that he might not always be your neighbor.

Mrs. Maletsky asked if it was possible to shift the garage more towards where the shed is.

Mr. Strecwilk said that we talked to our architect about this and the way the yard is this is the best way to build it and we have two front yards.

Mr. Carpenter said that two front yards has nothing to do with this application, it's the set back of 3 feet. Mr. Carpenter said that he thinks the board is saying they are looking for some kind of alternative. We have to rely on what the engineer is telling us and we have never approved an application with a setback like this.

Mr. Carpenter said if you would like us to vote we can or if you want you can change the plans and come back next month.

Mrs. Maletsky said that it's not just what works for you and your current neighbor, it's what works moving forward. What's approved at that property stays with that property for as long as it exists.

Mr. Ott stated that you would have to go back and meet with your architect to discuss different plans but 3 feet is too close for me.

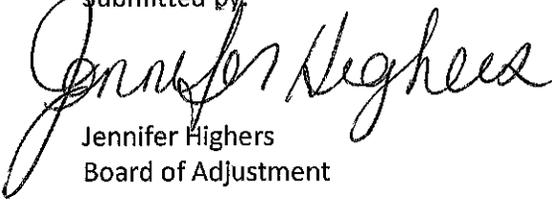
Mr. Carpenter said that basically you have 4 board members who have gave their opinion and I'm sure you can see which way this is going if we vote tonight.

Mrs. Strecwilk asked to be heard again next month.

Mr. Carpenter said the meeting will be November 1, 2016 and you have submit plans 10 days prior to the meeting.

A motion to approve Resolution No. 1437, 1438, 1444, 1446, and 1448 and adjourn at 9:45 pm was offered by Mr. Ott, second by Mrs. Maletsky with affirmative "yes" vote of all on roll call.

Submitted by:

A handwritten signature in black ink, appearing to read "Jennifer Highers". The signature is written in a cursive style with a large initial "J".

Jennifer Highers  
Board of Adjustment

Cc: All Board Members  
Board Attorney