

Borough of Kinnelon

Board of Adjustment

May 2, 2017

The regular monthly meeting of the Kinnelon Board of Adjustment was called to order by Chairman John Carpenter at 8:00p.m., Tuesday, May 2, 2017 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 2017 and by sending the meeting date to the Daily Record and Herald News on January 2017.

Present and answering roll call were Mr. Carpenter, Mrs. Minett, Mr. Ruocco, Mr. Ott, Mrs. Canale and Mr. Diani. Mrs. Maletsky was absent from this meeting.

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

A motion to approve the April 4, 2017 minutes was offered by Mrs. Minett, second by Mr. Ruocco with the affirmative "yes" vote of all on roll call.

**Application #1460 Jim and Lauren Canning, 46 Fayson Lakes Road.** Applicant is seeking approval for a shed under 100 square feet and is asking for a front and side yard variance.

Mr. Canning stated that he was here last month and was asked to come back with a better site plan with the septic location and accurate measurements. Mr. Canning stated that he has had one done professionally. Mr. Canning stated that the variances would be side yard of 11.9 feet and front yard of 13.8 feet. Mr. Canning said that there is a dotted line around the dwelling that shows the setback lines. Mr. Canning stated that he has two front yards and they both face streets and call his house sideways. Mr. Canning also stated that he has a shared driveway and a steep slope in the backyard that requires thirty steps to come up to the deck. The property levels out by Fayson Lakes Road where would be the only place the shed could be located. Mr. Canning stated that it is in the corner of his property where it is protected by bushes and trees. Mr. Canning stated that in his eyes it matches very nice with the landscaping. Mr. Canning said that he would paint the shed brown and will plant coniferous plantings by the back of the shed.

Mr. Carpenter asked if any electric was proposed and Mr. Canning said no.

Mr. Bacchetta stated that on the original application the side yard was 19 feet and the front yard was 15.8, on this site plan the side yard is 11.9 feet and the front yard is 13.8 feet.

Mr. Canning said that he had done the measurements himself and since then had a professional do them.

Mr. Ott stated that this was a very nice plan and this is what I was expecting to see.

Mr. Bacchetta swore in Mrs. Lauren Canning.

Mr. Canning is still under oath from the meeting last month.

Mrs. Minett asked if the shed could be put at the top left corner of the site plan closer to Fiddlers Elbow and Mr. Canning stated that there is a wall there, some tress and it slopes down there.

Mr. Carpenter opened the meeting to the Public.

Mr. Bacchetta swore in Mr. Ginty and Mrs. Joan Ginty.

Mr. Ginty stated that this is a very thorough plan but its dated August 2016 and will this still be a current plan.

Mr. Diani stated that February 2017 is the revised date.

Mr. Ginty stated that there were two items the board mentioned last meeting. The first one was to look at the neighborhood to see similar structures. Mr. Ginty stated that he looked at 24 houses, 23 of them don't have sheds or a structure in the front property. The one that does is behind a large fence. Mr. Ginty stated that that raises the question if it really fits in with the neighborhood. Mr. Ginty stated that the second one was that it's a distraction. Mr. Ginty stated that it catches the driver's eye and it's by a blind curb. Mr. Ginty also stated that its 65 feet away from a bus stop. Mr. Ginty stated that painting it brown might still make it a distraction.

Mr. Carpenter stated that if there is an issue with traffic we would go to the Police Department to have them review it. Mr. Carpenter said that he drives passed their everyday and didn't notice it until the application came before the board.

Mrs. Minett stated that she also drives passed their everyday and noticed it.

Mr. Ginty stated that neighbors have questioned him about the shed asking why it was there and if there was a variance granted. Mr. Ginty stated that he understands that there is some variance relief on this property but in his opinion there is only two options. The first would be more buffering maybe a stockade fence and some evergreens and the second to reposition it. Mr. Ginty stated that the property offers many different flat areas behind the seepage pits or the overflow parking. Mr. Ginty stated that he hasn't seen a car parked in the overflow parking for over 24 years. Mr. Ginty stated that the bootstrap argument the applicant is using is inapplicable and what we have is a structure that was erected without approvals.

Mrs. Canale asked if the shed could go in the over flow parking and Mrs. Canning said that it's a shared driveway with the neighbor and it would be more visible there.

Mr. Ott stated that if the shed is moved to the overflow parking your still in the same position. Mr. Ott said that if the shed is painted and has plantings around it the shed would be better camouflaged.

Mr. Ginty stated that the shed could be moved behind the overflow parking and Mr. Canning stated that there are two trees, a large stump, bushes and a garden there.

Mr. Ruocco asked how big the shed is and Mr. Canning said it is an 8x10 shed.

Mr. Ginty said that if you look at the slope number there is very little in all of the area in front of the 50 foot setback line that was drawn.

Mr. Ott asked Mr. Ginty if the planting and painting isn't screening enough what is the problem you are having with it there and Mr. Ginty said the neighborhood and this doesn't fit with the neighborhood.

Mr. Ott stated that he has seen Mr. Ginty's property and has seen scaffolding up for months and Mr. Ginty stated that he had someone working on the weekends as a side job but the weather got to cold. Mr. Ginty stated that he can't control the weather.

Mr. Ott asked Mr. Ginty when it was going to be done and Mr. Ginty stated that he reached out to him and will be done in the next week or two.

Mrs. Ginty stated that the shed is too close to the property and takes away from the value of the house. Mrs. Ginty also said that they weren't consulted or asked they just put it up. Mrs. Ginty said that there are laws and regulations for setbacks and we should enforce them. Mrs. Ginty said what is the sense of having them, if you don't punish people for doing whatever they want.

Mr. Canning stated that if you look at photo 6 it shows the tarps on his property along the property line and the dog pen that is collapsed. Mr. Canning stated that he should look at his own property before looking at others. Mr. Canning said that I have a small shed that keeps everything all neat and my yard doesn't look like a refuse yard.

Mr. Carpenter stated that most of the board has been to the property and knows this situation. Mr. Carpenter also stated that Mr. Canning's yard is very clean.

Mr. Ginty stated that we don't need to have hyperbole here, we are talking about a variance for 46 Fayson Lakes Road.

Mr. Carpenter opened the meeting to the public and hearing no one opened it back up to the board.

Mr. Ruocco asked how many houses in that area had to get variances because of the odd size and small lots. Mr. Ginty stated that knows that a variances is required but the question is if an 11 and 13 foot setback is best for the neighborhood.

Mr. Ott stated that typically the board has approved sheds 4-5 feet from the property line because of the situation and every property is unique. Mr. Ott stated that anytime someone does something in Fayson Lakes it triggers a variance.

Mrs. Canale asked if there were other areas that the shed could go that wouldn't inconvenience you are the neighbors and you also put this up without permission. Mrs. Canale said that it also isn't always about where you want it to be variance notwithstanding.

Mr. Canning said that you are welcome to visit the property and give some suggestions that often plans don't give it justice.

Mrs. Canale said that she was there and understands but this is an entire board decision this is just my opinion.

Mrs. Minett stated that 3-4 coniferous trees of some sort, paint it brown it will blend in with everything around it.

A motion to approve this application with the coniferous plantings, painting the shed Raven Raisin was offered by Mr. Diani, second by Mr. Ruocco with the affirmative "yes" vote of all on roll call.

**Application #1462 Lisa Locarno, 11 Decker Terr.** The applicant is asking for a side yard variance for a 12X14 Shed.

Mr. Carpenter read the Engineers report into the record.

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

Mr. Bacchetta swore in Lisa and Michael Locarno.

Mrs. Locarno stated that there was an existing structure since 1999 on the property and it was a deck with a gazebo on it. Mrs. Locarno stated that over the years it deuterated and that we thought since there was an existing structure we didn't need a variance to take down the gazebo to put a shed in its place. Mrs. Locarno said that she would like to keep the shed where it is because if it were to be moved into the backyard it's very wet there.

Mr. Locarno stated that if the shed was brought forward the access to the backyard would be blocked and the other side of the yard is rocky and hilly. Mr. Locarno stated that was the best place to put the shed because the decking was already there. Mr. Locarno stated that the people the put in the shed said a variance wasn't needed because we were replacing an old structure with a new one, so we were guided the wrong way. Mr. Locarno stated that the neighbors might be upset if the shed was moved back because it would be in-between the houses and we would also maybe be rerouting water.

Mr. Carpenter stated that he was told the neighbor on the right side complained.

Mrs. Canale stated that it was a lovely piece of property and that there is a lot of room for a shed within the setbacks. Mrs. Canale also said it wasn't her place to tell them where the shed should go but there are options.

Mrs. Locarno stated that if it's moved forward a variance will still be required.

Mr. Locarno stated that we wouldn't have access to the backyard.

Mrs. Canale stated that maybe to have another look at the site plan for other options.

Mr. Diani stated that the dog was out and couldn't get into the backyard. Mr. Diani asked what the foundation was and Mr. Locarno said it on footings like you would build a house.

Mr. Diani stated that the Borough Engineer made a comment of making sure the shed and foundation is meeting all structural requirements because of the size. Mr. Diani stated that he was wondering if the board required some additional impute based on the comment that Borough Engineer made.

Mr. Carpenter said what he believes the Engineer is saying is that there needs to be some kind of footings because of the size of the shed.

Mr. Ott stated that the old building was removed and rotten wood was replaced and did they secure the shed to the deck and Mr. Locarno stated that they slid it across the driveway onto the deck.

Mr. Diani said how do we know if its meeting all the requirements to leave the shed there.

Mr. Carpenter stated that the code official will have to take a look at it no matter what the board says.

Mrs. Canale stated that part of the shed has the fence for the pool attached to it. Mrs. Canale said she didn't know what the code is for fences around pools. Mrs. Locarno said that the fence was attached to a whole lot less and we got out permit. Mrs. Locarno said it was in there opinion it's stronger and safer. Mrs. Locarno also stated that they had friends that are Engineers and they came to look at it to make sure it was structurally sound and could support this type of shed.

Mrs. Canale stated that we need to know what the zoning and building requirements are before we can offer an opinion.

Mr. Bacchetta stated that if the board is up in the air as far as what Mr. Boorady said in his letter the board can ask for a letter explaining or you can approve the application subject to the construction official being satisfied all construction codes were met. Mr. Bacchetta said that Mr. Boorady must have thought a zoning permit or construction permit was needed.

Mr. Ott said it's a plus the metal shed is being removed and asked if another place can be considered because it's a large piece of property.

Mrs. Locarno stated that the neighbor has complained about a lot of things and we thought it would aid on privacy and also picked a neutral color and to move it back would be more visible.

Mr. Carpenter said that he thinks the other issue is the size of the shed.

Mr. Carpenter also said that if the board can't make a decision the board can go back to Mr. Boorady.

Mrs. Canale suggested that we ask what Mr. Boorady meant by his comment because it's a bit vague.

Mr. Carpenter stated that we would do a straw poll if the board would like more information regarding Mr. Booradys comment.

Mr. Ruocco – No Mr. Ott – No Mr. Diani – No Mrs. Canale – yes Mrs. Minett – yes Mr. Carpenter yes

Mr. Bacchetta stated that Mr. Boorady is saying that if the application is approved the applicant is required to confirm with the building department that the foundation meets all the required codes. Mr. Boorady isn't saying that it's a stipulation of approval. Mr. Bacchetta said that the board can carry this and ask for more information but I think he is going to say it's up to the construction official if more of a foundation is needed.

Mrs. Canale stated that I also need to understand clearly that once we have that information it's not an approval for the location of the shed.

Mr. Ott stated that the neighbor is also not hear to voice their opinion.

Mr. Carpenter opened the meeting to the public and hearing no one opened the meeting back up to the board.

Mrs. Canale said that she didn't have enough information to make a vote tonight and Mr. Carpenter asked what other information is needed.

Mr. Canale said that she would like to hear what Mr. Boorady has to say and to clarify the fence against the shed.

Mr. Bacchetta asked what the fence was tied into before and Mr. Locarno said the exiting structure which was a bench on top of a deck.

A motion to approve the application subject to the construction code official determination if a building permit is required, foundation is adequate, meets all codes, the fence is up to code and Mr. Booradys letter was offered by Mr. Diani, second by Mr. Ott. Mr. Ruocco, Mr. Ott and Mr. Diani voted "yes", Mrs. Canale, Mrs. Minett and Mr. Carpenter voted "no". This motion fails.

Mr. Carpenter stated that is his opinion that to come in and say this is where we want it and offer no other solutions isn't good enough and this is why I voted no.

A motion to carry the application and to clarify comments #4 and #5 of Mr. Booradys letter was offered by Mr. Ott, second by Mr. Diani with the affirmative "yes" vote of all on roll call.

Mrs. Locarno said that she wasn't aware she should have brought other options and living there she doesn't see any other options.

**Application #1463 Noreen Cuccinello, 15 Fiddlers Elbow.** The applicant is asking for a side yard variance to install an A/C unit.

Mr. Ott stated the he didn't think the application is complete but there is good information in the packet. Mr. Ott stated that there is not any dimensions shown to the AC unit and when we vote we have to vote on exact dimensions. Mr. Ott stated that he can't vote on completeness because of that.

Mrs. Cuccinello stated that she spoke with the contractor and got that information and I didn't see that in the instruction packet. Mrs. Cuccinello asked if she could verbally swear to the numbers.

Mr. Carpenter said you would have to live with those dimensions, what we need is the exact setback, how far from the house and the size of the pad.

Mr. Bacchetta stated that if the board wants to hear the application and wants to vote on it all the proper documents (site plan) would have to be submitted with all the dimensions properly shown, not hand drawn.

Mrs. Cuccinello asked if it had to be redrawn and Mr. Bacchetta said not to hear the application tonight but if it's approved it will have to be.

Mr. Ott asked Mrs. Cuccinello what dimensions the contractor gave her and she said the size of the pad and how far away from the house it will be.

Mr. Ott asked if he gave the dimension to the property line and Mrs. Cuccinello said no.

Mrs. Canale asked if the contractor gave the dimensions from the side property line to the concrete pad and Mrs. Cuccinello said he didn't know because he has never done a variance.

Mrs. Cuccinello asked if she needed a new survey and Mr. Bacchetta said that the board isn't telling you to resurvey your property.

Mr. Ott stated that for him to be satisfied have a professional strike a line and put the dimensions on it.

Mrs. Minett asked if we needed to know the weight and Mr. Carpenter said maybe when she comes back.

Mrs. Cuccinello asked if the site plan was satisfactory and Mr. Ott said not to him.

Mrs. Cuccinello asked if the contractor could work on this site plan.

Mr. Bacchetta asked Mr. Ott if the contractor wrote the proper dimensions on this site plan would that be satisfactory. Mr. Ott said for him yes.

Mr. Bacchetta stated to have the contractor take the site plan and put the dimension, not free hand with a pencil and should look professional.

Mr. Ott said to have the side, rear and the edge of the house on the corner dimensions.

Mr. Diani asked what the size of the pad was and Mrs. Cuccinello said 36x36 and 3 inches high.

Mr. Diani asked how far from the house it is and Mrs. Cuccinello said 12 inches.

Mr. Carpenter stated that the meeting for June will be June 13<sup>th</sup>, if you have any problems to call Jenn and have everything in 10 days prior to the meeting.

Mr. Ott stated that over the years we have been getting these kind of applications for sheds, AC's, generators and we have to have them come back. Mr. Ott asked if we need to come up with a set of guidelines.

Mr. Carpenter said that we have had this conversation many times and was told not to do that that we aren't consultants.

Mr. Diani asked if this could be done in advance to the meeting, that way someone could have reached out to Jenn to call the applicant so she would have those dimensions for the meeting.

Mr. Bacchetta stated that you can have a subcommittee for completeness.

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

A motion to approve Resolution #1459, Pio Costa was offered by Mr. Ott, second by Mr. Ruocco with the affirmative "yes" vote on roll call.

Mr. Diani asked what happened with Mr. Maturo and that the two drawings that were submitted don't agree with each other.

Mr. Bacchetta stated that we can't discuss the merit of the application because the applicant isn't here that we will ask that at the meeting.

Mr. Carpenter reminded the Board that the Financial Disclosure Forms are due.

A motion to adjourn at 10:02 p.m. was offered by Mr. Ott, second by Mr. Ruocco with the affirmative "yes" vote of all on roll call.

Submitted by:

Jennifer Highers  
Board of Adjustment

Cc: All Board Members  
Board Attorney