



**TOWN OF PEMBROKE
ZONING BOARD OF APPEALS
Minutes for the regular meeting held on May 20, 2015**

ATTENDANCE:

- Nathan Witkowski — Chairman
- John Kadziolka
- Terrance Daniel
- Donald Dylag
- Donald Showler
- Diane Denton — ZBA Secretary

MEETING called to order at 7:30 pm.

A Motion to Approve the Minutes from April 15, 2015 was made by Mr. Kadziolka; second to motion made by Mr. Dylag.

Voice Vote—**ALL AYES—MOTION PASSED.**

Public Hearing
Use Variance/Double D Kennels/Deborah Kirkum
2436 Beckwith Rd., Town of Pembroke
Tax Map #13.-1-6.2; Zoning District: Agricultural
Referred to Genesee County

PUBLIC HEARING was opened at 7:31pm. The Notice of Public Hearing ran in the Batavia Daily News April 25, 2015, was posted on the Town's Bulletin Board and letters were sent to adjoining property owners.

- County disapproved the application for a use variance to operate a kennel, explaining that under the criteria set forth in NYS Town law, the proposal does not appear to meet the thresholds for the granting of a use variance. The hardship clearly appears to be self-created as the parcel is not owned by the applicant. The applicant also fails to adequately address the other tests required under NYS Town law of unique hardship, will not alter the essential character of the neighborhood, and failure to realize a reasonable return. Under the Law, the applicant must meet all four tests in order for the Zoning Board of Appeals to grant the use variance. Possible inappropriate application of use variances may pose significant development policies/processes of the Town.

- At the discussion in April the ZBA board agreed that the Town should look at changing the law to allow kennels in an Agricultural district as they already are in AG/RES. Chairman Witkowski went to the last Town Board meeting. The Town Board seemed receptive to doing so, and possibly also changing the definition of “kennel”.
- Possible change to Section 401 B, uses requiring a Special Use Permit in an Agricultural district, would be to add kennel as #9.
- After discussion, the board agreed that the definition of “kennel” was generic enough and didn’t need to be changed.
- Chairman Witkowski said he would bounce the change off several other people before the next Town Board meeting in June, include it in his report out at the meeting and introduce Ms. Kirkum in case the Town Board members have any questions for her. Ms. Kirkum gave Chairman Witkowski a letter for the Town Board.
- If the Zoning Changes are approved, Ms. Kirkum will still have to go before the Planning Board to apply for a Special Use Permit, so the matter will take a few more months to finalize.

PUBLIC PARTICIPATION—None

Motion to Close the Public Hearing made by Chairman Witkowski and seconded by Mr. Daniel.
Voice Vote: All Ayes—motion passed.

The Public Hearing Closed at 7:43pm

Public Hearing
David Brumsted
 Main Rd., Town of Pembroke
 Tax Map #20.-1-62; Zoning District: AG/RES
Referred to Genesee County

PUBLIC HEARING was opened at 7:44pm. The Notice of Public Hearing ran in the Batavia Daily News May 14, 2015, was posted on the Town’s Bulletin Board and letters were sent to adjoining property owners.

- County approved the application with the modification that the building permit be issued only for an agricultural building and agricultural use only—no living space, residential or any other nonagricultural use be allowed. With this required modification, the proposed variance should pose no significant county-wide or inter-community impact.
- Mr. Brumsted claims the property is not landlocked because there are easements to get to it. Chairman Witkowski explained that, under the Town Zoning Law, it is, because he doesn’t actually own property with frontage on Main Rd.
- In December Mr. Brumsted applied for a building permit to build a hunting cabin, but Charlie Reid told him that he couldn’t build on the property. As County determined that he could build a structure for agricultural use, he has now applied to build a pole barn.

- Mr. Brumsted claims he did get permission from Niagara Mohawk and a permit from the State DOT to make a driveway in the easement.
- Chairman Witkowski said that the easement is noted as 10 ft. in Town records. The Board discussed the length and width of easement.
- Mr. Brumsted supplied the board with plan for the 30 ft. x 16 ft. pole barn he would like to build. The width of the property it would go on is 65 ft. It would be 750 ft. from road and 50 ft. from power line.
- Chairman Witkowski said that Mr. Brumsted locating a barn on the property isn't the issue, but the zero frontage is.
- Mr. Kadziolka wanted better clarification from Niagara Mohawk on the dimensions, etc. of the easement, as the current survey is from 1989.
- Mr. Brumsted offered to get a letter from Niagara Mohawk stating their stipulations and clarifying the location and size of the right of way.
- Mr. Dylag questioned where Mr. Brumsted's name was on the easement. It was explained that Mr. Brumsted was given access of the easement in his deed to the property in question.
- Comments/questions by the public included:
Whose house the pole barn would go behind? (Mr. Marchese's)
Driveway is in a tight spot, the easement bordering right on the eastern line of Brad Swab's property, Mr. Swab stating that he wants to make sure there isn't more traffic than there currently is.
- Chairman Witkowski said that the board's concern is in looking down the line. If the property is sold and uses change, there might be more and more traffic.
- Mr. Daniel reiterated the main issue: that a 250 feet frontage variance was needed, and any structure built must be strictly for agricultural purposes.
- Mr. Brumsted said that he recently planted apple trees. Chairman Witkowski read from the definition of 'Agricultural Use': at least five acres of raising food products for profit.
- Mr. Brumsted asked about putting up a cabin. Chairman Witkowski stated that he could not do so, as the frontage variance needed was substantial and a self-created hardship.
- Board looked at SEQR to see if the location of the pole barn would affect wetlands.
- Mr. Brumsted wondered why the width of the easement was an issue, and Chairman Witkowski explained that it needed to be wide enough for emergency vehicles, including fire trucks.

Motion to Close the Public Hearing made by Chairman Witkowski and seconded by Terry Daniel.
Voice Vote: All Ayes—motion passed.

The Public Hearing Closed at 8:25pm

On **MOTION** made by Mr. Daniel and seconded by Mr. Showler: **to approve a road frontage variance of 250 ft. for the construction of a 30 ft. x 16 ft. pole barn located more than 50 ft. from the property yard on the basis of County's modifications that the building permit be issued only for an agricultural building and agricultural use.**

Contingent on Mr. Brumsted supplying the board with documentation verifying the easement across the Niagara Mohawk land lines up with the public property easement, and is at least 20 ft. wide.

ROLL CALL VOTE: Mr. Kadziolka - Nay; Mr. Daniel-Aye; Mr. Dylag - Nay; Mr. Showler -Aye; Chairman Witkowski-Aye.

THREE AYES, TWO NAYS—MOTION PASSED.

Zoning Board Decision: APPROVAL of Area Variance with stipulations.

Old Business: None

New Business: None

A **MOTION** to close the meeting was made by Mr. Daniel, seconded by Mr. Kadziolka.

Voice Vote—ALL AYES

MOTION PASSED

Meeting adjourned at 9:06pm.

Respectfully Submitted,
Diane Denton-ZBA Secretary
Nathan Witkowski-ZBA Chairman

These minutes are not final but subject to the approval of the Town of Pembroke Zoning Board of Appeals