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P.O. Box 134, 7209 Rte. 28, Shandaken, NY 12480

**Town of Shandaken Zoning Board of Appeals
Minutes for Public Hearings
April 21, 2021**

PUBLIC HEARINGS:

**Patrick and Kelley McGann – Area Variances for 6ft rear yard setback, and 34’6” relief of front yard setback, additional relief for the proposed carport of 47ft at the front yard setback.
SBL# 13.4-1-7 75 Muddy Brook/Residential 1.5 acre Zoning District**

Public Hearing was opened at 7:00pm. Due to COVID-19 restrictions, this meeting was only open to the applicant(s) and/or their representative(s,) and notified abutters and/or their representatives. Patrick McGann was present, no abutters were present. Legal Notice regarding the application was read:

‘Notice is hereby given that the Town of Shandaken Zoning Board of Appeals will hold a public hearing, pursuant to section 267-b and Article XI of the Town of Shandaken Zoning Law and as prescribed in the District Area and Bulk Regulations of the Shandaken Town Code for the purpose of hearing comments relating to the following application:

Regarding an application for Area Variances submitted by Patrick and Kelley McGann, for a parcel located at 75 Muddy Brook Phoenicia, NY, further identified as SBL# 13.4-1-7 located in a Residential 1.5 acre Zoning District. The applicant would like an Area Variances of 6ft at the rear yard setback and 34’6” relief at the front yard setback, with additional relief for the proposed carport of 47 ft at the front yard setback to construct a dwelling allowable withing the Zoning Code.

The public hearing is scheduled for April 21, 2021 at 7:00pm at the Shandaken Town Hall 7209 Route 28 Shandaken, NY. All persons wishing to be heard shall be heard at the date and time of the public hearing.

Dated March 24, 2021’

The phone line was opened to the public for any comments, no calls were received. There being no further comment from the public, or questions from the Board a motion to close the public hearing was made by Chair Loete and seconded by Board Member Guglielmetti. All in favor. Public Hearing closed at 7:04pm.



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**Town of Shandaken Zoning Board of Appeals
 Minutes for Regular Monthly Meeting
 April 21, 2021**

The regular monthly meeting was called to order by Board Chair Loete at 7:05pm with the pledge of allegiance.

Roll Call by Secretary Pellizzari, with attendance recorded as follows:

Mark Loete, Chair	Present
Gary Guglielmetti	Absent
Elizabeth Kneissl	Present
Henry Williams	Present

Roll Call Summary: 4 Present, 0 Absent

Others Present: Howie McGowan-Code Enforcement Officer, Patrick McGann (applicant,) Annie Engman (Applicant), Michael Boushee (permit for fence variance from 2020)

Minutes:

The Board reviewed the minutes from the previous months meeting, having no corrections a motion was made by Chair Loete to approve the minutes as written, seconded by Board Member Guglielmetti. All in favor.

Old Business:

Patrick and Kelley McGann-Area Variances-75 Muddy Brook SBL# 13.4-1-7-R1.5 Zone

An applicant who purchased 75 Muddy Brook has applied with the Zoning Board of Appeals for three variances for a 6ft rear yard setback and 34'6" relief at the front yard setback, with additional relief for the proposed carport of 47ft at the front yard setback

There is very little discussion from the board who were all present at the last monthly meeting when the applicant presented their hardship. There was no feedback from abutters or across the street neighbors at the public hearing held in regard to this applicant. Chair Loete explains to the applicant that the county has recommended an upgrade of septic for this project. The applicant Pat McGann states to the board that he has been working with a septic engineer in regard to getting into the CWC program for an upgrade to existing

septic. CEO McGowan adds that his septic system will be a repair, because it is an existing septic system. CEO McGowan continues to point out the applicant needs approval from the DEP for a permit to construct for the septic. After which the building and zoning department of Shandaken will be able to issue a building permit. Chair Loete makes a motion that the area variances be approved with the contingent that the septic system be approved by the DEP and the Catskill watershed corporation. Board Member Guglielmetti seconds the motion with a roll call vote as follows:

Mark Loete, Chair	Yes
Gary Guglielmetti	Yes
Elizabeth Kneissl	Yes
Henry Williams	Yes

Roll Call Summary: 4 Yes, 0 No, 0 Absent

Other Business:

The applicant for new business Annie Engman is now extremely late to the order of the agenda has switched, and the board will be discussing **Other Business** before **New Business**.

Board Member Williams discusses with the board his issue with a Zoning Board Area Variance that was approved in September of 2020. Board Member Williams feels the applicant at 55 Grand View Acres Rd had been approved by the Zoning Board of Appeals for an 80-foot fence and that's what he presented to the board at the public hearing. Board Member Williams concern is that the fence is measuring 97 feet long with another panel still to be added. Board Member Williams states the applicant said he was reducing the amount of feet from 100 feet to 80 feet because there was concern with the neighbors and public safety in regard to obstruct from the fence while driving. Board Member Williams concern is with the length of the fence, and feels a man's word is his bond. That's what he told the board he wanted to do and that's what he should have done. Board Member Williams feels the motion was made by Board Member Kneissel to allow the variance for the fence as presented. Board Member Williams feels it should be re-evaluated with the municipal clerk as to what was submitted verse what the applicant did. Board Member Williams states there have been complaints against the fence and been submitted to the building and code enforcement office. Chair Loete states there have been letters in support of the fence and letters not in support of the fence. Board Member Williams remarks that the letters in support of or against bears no issue with him. How's issue is that a man's word is his bond, and this applicant was not truthful to what he said he was going to do. CEO McGowan states he referred the applicant to the Zoning Board of Appeals for the height of the fence being taller than what the code book allows. He continues to state he did not send the applicant to the board for the length of the fence, and that he is able to administer a building permit for a fence. Given the applicant lives on a corner lot he has two front yards which require a 4-foot height. Since the applicant Michael Boushee wanted to build a 6-foot fence that is why CEO McGowan referred him to the Zoning Board of Appeals. CEO McGowan states it was approved by the highway department, and it was approved by him. He states before the applicant did anything he marked all the posts. CEO McGowan says that it's a deeded road

which has nothing to do with a center of the road, which only restricts the applicant from putting a fence anywhere that will interfere with the plowing of the road. Board Member Williams interrupts CEO McGowan and states that the Zoning Board of Appeals voted on an 80 foot length fence, 6 feet tall, and 20 feet from right of way. Secretary Pellizzari is asked what the motion made by Board Member Kneissl was to which she answers "as submitted by the applicant". Board Member Williams tells CEO McGowan that he cannot change a resolution the board has made as well as the Town Board cannot change a resolution the Zoning Board of Appeals has made. Board Member Williams makes a motion based on the legal facts of the matter, and it not being reduced to the decision of the municipal clerk that there be a public hearing again for Michael Boushee to present exactly what he wants. With no other Member of the Board seconding the motion, the resolution is not made. Michael Boushee who is present is asked if he would like to speak to which he politely declines.

New Business:

Annie Engman Area Variance for violation of Town Code building a Fence to high without permit 12 Highview Rd SBL# 13.20-2-67 R1.5 Zone

Annie Engman due to tardiness has been switched in the agenda's order for the evening. This applicant has been issued a Stop work order, Violation, and Order to Remedy by the Code Enforcement Officer (CEO) McGowan. The Violations issued were for no building permit and building a fence built at 8 feet to which the code book allows only for 6 foot. Annie Engman states her lack of knowledge as a first-time home owner is why she did not know the code. She states she thought a building permit was only when you are building a new structure on your property. Annie Engman stated that the fence was chosen based on esthetic, and they have a loan at Loews because of which is the only way they could afford to buy the house. They have to do the work them self and only had the choice at Loews for a chain link fence or this panel led fence. Annie Engman states that they chose to raise the fence panels up from the ground on the posts for landscape purposes. The intention is to cover the whole thing in May with ivy. Annie Engman says based on all the construction they are doing they wanted more privacy. She states her partner prefers to smoke on the porch, and she likes to walk around naked on her property which a fence would allow them to do more easily. Annie Engman states some final touches to the fence were out on hold because of winter, and that the private road is way more of an issue. However, since she doesn't own it, she can only offer to help fix it with money. She continues with her opinion that she can't understand what would offend people with her fence, and would like to invite them over for tea and say hi my name is Annie. Chair Loete communicates to Annie that a fence is permittable to build on your property it just can't be over 6 feet and 4 feet for front of property. Annie claims there would be no point for the fence to be anything under what she has already built it at without a permit or variance, because her neighbor Jennifer spends most of her day at her kitchen window, and can see into Annie's property. Annie Engman claims that she is unable to be a part of the community because of the work that it takes to renovate this home. She states that Jen doesn't care about the fence but receives complaints because she's more involved in the community. Board Member Kneissel asks if this her primary residence. Annie Engman says it is but they will only be there six months of the year. She claims she is very strict with her Airbnb's because she has one in California as well. She claims she is stricter with her Airbnb then other people who have them. Board Member Kneissel interrupts to say this has no effect on the height of the fence it was just an observation. Annie Engman says the posts are 8 ft on her fence and some are 10 ft, because they ran out of 8ft fence posts at Loews. She continues to explain the height if the fence in

regard to its esthetic and the need for privacy claiming there are free range dogs in the area who can walk under the fence by having it raised. She continues to say her neighbors would text her when she was in her kitchen and needed privacy. Chair Loete states that fence heights are determined by our code book as to not upset the view shed of neighbors. Annie Engman states two abutting properties can see over it, and they all very much got along at the beginning. Board Member Guglielmeti points out this matter will have to have a Public Hearing held for feedback from neighbors especially since the fence was built without the variance. Annie Engman claims that the fence only effects three neighbors who have never complained to her. However, she is aware that the office of Zoning and Building has received complaints. Board Member Kneissel outlines a Public Hearing would happen at the next meeting to which all abutting neighbors input will be taken into consideration for the board to determine if a variance would be granted. Chair Loete explains they are obligated to have a Public Hearing by state law of New York. Chair Loete explains to Annie Engman that zoning laws are there to protect a community and are in place for good reasons. Secretary Pellizzari makes the point that before a motion is made for a Public Hearing there needs to be request from the applicant for the exact variance they are requesting. CEO McGowan speaks to why this applicant is here. He states his first call was for a complaint that there was a fence built on the property and that when he went to the site there was an electrician there working without a permit. The applicant was also there and when CEO McGowan told her she needed a building permit she said she didn't. He continues to explain publicly that anything structural requires a building permit. CEO McGowan asks her if she even had the property surveyed before she built a fence on it. To which the applicant says the sellers didn't allow her to have an inspection. After going on a long story about buying the property she is asked by Secretary Pellizzari to answer CEO McGowan if she had indeed had her property surveyed to understand her property lines. To which Annie Engman states she doesn't know exactly what that means. The board unanimously asked her if the fence she built without a permit indeed on her property. She claims the neighbors told her where the property lines were. To which she looked at their survey to guide them. Annie England's also states that surveyors weren't available until June of this 2021. Chair Loete asks the applicant if there is an issue with any neighbors saying the fence isn't on her property. Secretary Pellizzari interrupts to say there was another complaint about the fence and the question as to if the fence is on their property. Annie Engman believes her neighbors purposely told her that the property is smaller than it probably is. The board suggests she have it surveyed to answer that. Board member Guglielmetti brings up the point that the neighbors could sell their property and if in fact this fence is on the neighbor's property it would be a huge issue. Annie Engman regards a civil matter between her neighbors and her in regard to where the septic well and neighbors leech field is, and how the issue is depositing fecal matter into her water in which she filters out. Annie Engman claims none of this has been worked out because they were interrupted by getting what they can done on the house, and then came the matter of building permits. Board Member Kneissel brings up the point that none of this has to do with the Variance that the applicant is here for. To which the first question was are you sure your fence you already built indeed on your property? Board Member Kneissel states this needs to be answered before a Variance can be granted. The board agrees if the fence isn't on her property, they will have to tear it down and there won't be able to be a Public Hearing. It's Board Member Kneissel's opinion that she's not ready to ask for a Variance until this question of her property or not is answered. Secretary Pellizzari states that she is not allowed to be issued a building permit because she was issued a Violation for building a fence outside the zoned height without a fence permit. The board suggests that by having a survey of the property that it could benefit her as well, and she may have more land than she is aware of. The board continues to clarify what variances

are being requested by the applicant. There is question as to if it has two front yards which would require a 4ft fence on both. Board Member Guglielmeti states she will potentially need a 4ft variance on one side of the of the fence but that's the easy part because there's no knowledge of the fence is on the property. CEO McGowan interrupts Annie Engman to explain the dominos of issues. He states she needs to clear up the violation with the variance in order to get the building permit which would give her the Certificate of Occupancy to which time the house cannot physically be occupied until she gets the CO (certificate of Occupancy). He explains that if she's renting the house out without a Certificate of Occupancy it's another violation. A motion is made by Elizabeth Kneissl to schedule a public hearing for the next Zoning Board of Appeals conditional of the board receiving a stamped survey ten days prior to the meeting. Chair Loete seconds the motion. Roll call vote as follows:

Mark Loete, Chair	Yes
Gary Guglielmetti	Yes
Elizabeth Kneissl	Yes
Henry Williams	Yes

Roll Call Summary: 4 Yes, 0 No, 0 Absent

Adjournment:

There being no further business before the Board, a motion to adjourn the meeting was made by Board Member Williams, seconded by Board Member Guggleilmetti. All in favor. Meeting Adjourned at 8:22pm.