

Approved: March 20, 2023

TOWN OF KENT
ZONING BOARD OF APPEALS
FINAL ADOPTED MINUTES
FEBRUARY 22, 2023

The Zoning Board of Appeals of the Town of Kent held their February 22, 2023 meeting at the Kent Town Hall. Mr. Gordon Moccio called the meeting to order at 7:30 P.M. Mr. Moccio asked that the audience and ZBA join him in the Pledge of Allegiance. Mr. Moccio asked that applicants come forward to the podium, sign the sheet provided and submit the green postal cards to the ZBA when their names were called.

Present:

Mr. Gordon Moccio, Chairman
Mr. Ronald Hansen, Vice Chairman
Mr. Joseph Greico
Mr. Robert Ulich, Alternate ZBA Member
Mr. Bill Walters, Building Inspector
Mr. Andrew Wells, Alternate ZBA Member

Absent:

Mr. Brett Harrison
Mr. Travis Hunt

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Town of Kent will hold a Public Hearing on **Wednesday, February 22, 2023** at the Kent Town Hall, 25 Sybil's Crossing, Kent Lakes, NY at 7:30 p.m. to review the following applications

1. Stefanie Mount
42 Dellacona Rd.
Carmel NY 10512
ZBA-23-001

Renewal of an existing accessory apartment permit for 5 years, Tax Map # 11.16-1-15 2

Ms. Mount advised the Zoning Board members that she has resided in this house for many years and every five years she needs to renew her permit for an accessory apartment because her elderly mother lives with her. Ms. Mount is once again asking that the permit for an accessory apartment be renewed for another five years.

Mr. Moccio asked the ZBA if they had any comments. Mr. Hansen verified that this was a renewal of a permit for an accessory apartment, that the applicant had appeared before the ZBA previously, and that there was a certificate on file.

Mr. Moccio asked for a motion to grant approval of this accessory apartment. The motion was made by Mr. Ulich and seconded by Mr. Greico. Following were the roll call votes:

Gordon Moccio, Chairman	<u>Aye</u>
Ronald Hansen, Vice Chairman	<u>Aye</u>
Joseph Greico	<u>Aye</u>
Brett Harrison	<u>Absent</u>
Travis Hunt	<u>Absent</u>
Robert Ulich, Alternate Member	<u>Aye</u>
Andrew Wells, Alternate Member	<u>Aye</u>

The motion carried.

2. Dale Thomas- Madison
23 Harvard Dr.
Carmel NY 10512
ZBA-23-003

The applicant requested a variance for an 11'.5" ft. Rear variance for a 23' rear addition to an existing dwelling - Tax Map# 22.74-1-84

Mr. Madison advised the Planning Board that he would like to obtain a variance for a 400' square addition to be added to his house. Two bedrooms will be moved to the addition and the existing bedrooms will be used to enlarge the living room and kitchen.

Mr. Moccio asked for comments and there were none so he asked for a motion to grant the variance. The motion was made by Mr. Hansen and seconded by Mr. Greico. Following were the roll call votes:

Gordon Moccio, Chairman	<u>Aye</u>
Ronald Hansen, Vice Chairman	<u>Aye</u>
Joseph Greico	<u>Aye</u>
Brett Harrison	<u>Absent</u>
Travis Hunt	<u>Absent</u>
Robert Ulich, Alternate Member	<u>Aye</u>
Andrew Wells, Alternate Member	<u>Aye</u>

The motion carried.

3. Positive Science Center
170 Waywaywanda Ct.
PKent Lakes, NY 10512
ZBA-23-002

The applicant requested an Interpretation of Town Kent code 77-7(c) (5) for use of eleemosynary institute Tax Map# 41.-1-8

The applicant and Frank Smith III, his attorney from the Shilling Law Firm, appeared before the ZBA. Mr. Smith. The property consists of 5.69 acres in the R-80 zoning district. The code states that Special Uses are permitted subject to approval by the Planning Board in accordance with section 77-59 of this chapter, which outlines the Planning Board's standards in evaluating a Special Use application. Section © (5) continues that one special use is that of an eleemosynary institutions other than correctional institutions, drug rehabilitation centers or institutions for the insane but excluding administrative headquarters or branch office buildings subject to a minimum lot area of 5 acres, no building, lot, parking or loading area may be located within 150 feet of any street or lot line. This code section also requires conformance with section 77-60 Site Plan Approval. In support of this application, the following items were submitted to the ZBA: Memorandum of Law, a client affidavit, a survey, a letter of support from neighbors, a definition of eleemosynary from Black's Law Dictionary and Miriam Webster. Also provided was a letter from the IRS designating the Positive Science Center as a 501© (3) tax exempt public charity, a letter from the NYS Attorney General Charities Bureau recognizing the Positive Science Center as a registered not-for-profit organization. A NY State exempt organization certificate, a copy of the NY Stater Department of State Division of Corporations Information page showing that the Positive Science Center is a domestic not-for-profit corporation and is in the charitable not-for-profit category. Mr. Smith also submitted the business action plan and a copy of the Corporation's Building Loan Agreement specifically to construct the headquarters located at 170 Waywaywanda Court.

In September of 2016, the Positive Science Center Incorporated was filed with NY State as a not-for-profit organization. In October of 2016, the subject property was purchased and title is vested in the Corporation's name. In September of 2018, a building loan was obtained from Walden Savings Bank in order to construct the entity's headquarters and conference center located at 170 Waywayanda Court. Following construction of the headquarters the applicant applied to the Planning Board for a Special Use Permit under section 77-7 © (5) and they referred this matter to the Zoning Board of Appeals for an interpretation of this code section. Mr. Smith reminded the Board that they must use their interpretive powers to determine whether or not the Positive Science Center met the definition of eleemosynary institution under 77-7(c) (5).

For the following reasons Mr. Smith believed that the applicant met the definition:

The code permits eleemosynary institutions subject to the standard of Planning Board review and site plan approval, Black's Law defines eleemosynary as "of or relating to or assisted by charity or not-for-profit". Miriam Webster Dictionary defines eleemosynary as "of related to, or supported by charity".

Black's Law defines institution as "an established organization especially one of a public character".

Miriam Webster defines institution as "an established organization or corporation especially one of a public character".

The Positive Science Center is a NYS designated not-for-profit corporation governed by NY state not-for-profit corporation's laws. Section 102 (3) (a) defines charitable corporation as "any corporation formed or for the purposes of this chapter deemed to be formed for charitable purposes".

Section 102 (3) (b) defines charitable purposes as one or more of the following purposes:

Charitable, educational, religious, scientific, literary, cultural or for the prevention of cruelty to children or animals. The Positive Science Center is an Internal Revenue Service designated 501(C) (3) tax-exempt corporation.

The exempt purposes set forth are:

Charitable, educational, religious, scientific, literary, testing for public safety, fostering national or international amateur sport competitions, and the prevention of cruelty to children or animals. The IRS continues that the term charitable is used in its legal sense and includes relief to the poor, distressed, underprivileged, advancement of religion, education or science, erecting or maintaining public buildings, monuments or works.

In addition, organizations described in 501(C) (3) are referred to as charitable organizations.

As stated in the Positive Science Center's Business Action Plan, the organization was established to study and accumulate knowledge about positive psychology in order to offer people ways to utilize this information to promote greater well-being, personal achievement and to have a positive impact on groups and communities. Mr. Smith stated that the Positive Science Center meets the definition of Eleemosynary and that the Zoning Board of Appeals should render an interpretation in the applicant's favor.

Mr. Moccio asked who the current owner of the property was and was told that the Positive Science Center owns the property and Mr. Smith presented a deed for the property.

Mr. Hansen reiterated that the original application was for a single-family residence and that the bank loan indicated that the agreement was for a conference and learning center, at no time during the construction was this ever noted. Mr. Hansen said also that the applicant stated previously that this was to be a humble, cabin in the woods for the applicant. Mr. Smith said that the previous application was misguided and that the Board rendered the correct decision regarding a home occupation. However, the matter before the ZBA at this time regards an interpretation of eleemosynary institution. Mr. Moccio asked the applicant what had changed since the original application was submitted. Mr. Smith said that Dr. Rydner always intended for this structure to be the corporate headquarters.

Mr. Moccio asked for articles of incorporation for the Positive Science Center.

Dr. Ryder said that the Planning Board never asked what his plans were for the property. Mr. Hansen said that the Planning Board went by the information presented on the application, which was for a single-family residence.

The Zoning Board of Appeals requested the following items for the next meeting:

Tax returns for 2021 and 2022; a cover sheet from the Corporation showing a breakdown of all donations received and what percentage was given to charities.

Mr. Smith said that he believed that the material presented to the Board at the meeting would also be helpful because they also pertained to donations received. Mr. Moccio also requested a list of the Positive Science Center's Board of Directors with names and titles. Dr. Ryder said that the building was to have been an informal setting for people to enjoy and that he and friends cleaned up the area and filed all the necessary paperwork for a residence. Mr. Moccio asked if the building was open to the public and Dr. Ryder said that it was open to the public. Dr. Ryder said he does not support others and that donations that he receives were only to support the Positive Science Center. Mr. Smith said that this is a common practice for non-profit agencies. Mr. Ulich asked what grants the applicant had received and he said he had only received one due to the pandemic. Dr. Ryder said that he and his staff do not Receive a salary.

Mr. Moccio asked for a motion to close the Public Hearing for this application. The motion was made by Mr. Greico and seconded by Mr. Hansen. . Following were the roll call votes:

Gordon Moccio, Chairman	<u>Aye</u>
Ronald Hansen, Vice Chairman	<u>Aye</u>
Joseph Greico	<u>Aye</u>
Brett Harrison	<u>Absent</u>
Travis Hunt	<u>Absent</u>
Robert Ulich, Alternate Member	<u>Aye</u>
Andrew Wells, Alternate Member	<u>Aye</u>

The motion carried.

Mr. Moccio asked for a motion to adjourn the meeting at 8:00 PM. The motion was made by Mr. Wells and seconded by Mr. Hansen. . Following were the roll call votes:

Gordon Moccio, Chairman	<u>Aye</u>
Ronald Hansen, Vice Chairman	<u>Aye</u>
Joseph Greico	<u>Aye</u>
Brett Harrison	<u>Absent</u>
Travis Hunt	<u>Absent</u>
Robert Ulich, Alternate Member	<u>Aye</u>
Andrew Wells, Alternate Member	<u>Aye</u>

The motion carried.

Cordially Submitted,

Vera Patterson

Vera Patterson

CC:

Town Clerk
Town Board
Zoning Board of Appeals Members
Planning Board Clerk
Wm. Walters, Building Inspector

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25 Sybil's Crossing
Kent Lakes, NY 10512
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The Zoning Board of Appeals will entertain any other business, which is properly presented to the Board.

SITE INSPECTIONS ARE THE 2nd. SUNDAY OF THE MONTH. Between 9am & 10:00am

CC: Town Clerk
Town Board
Zoning Board of Appeals Members
Planning Board Clerk
Wm. Walters, Building Inspector