

APPROVAL OF MINUTES DATED March 23, 2023

Neftali Dejesus - Use Variance

Due to minutes of above meeting being mailed to all members of the Zoning Board  
I the undersigned do hereby approve said minutes as mailed, or disapprove with comments below.

Signed 

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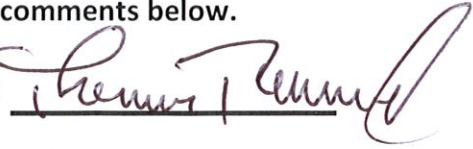
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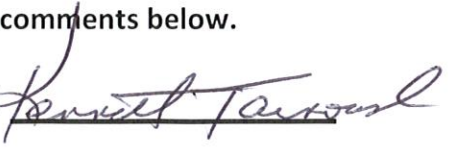
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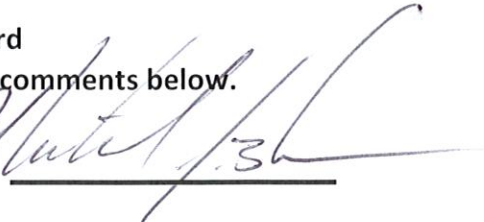
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**MEETING OF THE ZONING BOARD OF APPEALS  
TOWN OF DUNKIRK MARCH 23, 2023  
NEFTALI DEJESUS – USE VARIANCE FOR ADDITIONAL SHED**

The Town of Dunkirk Zoning Board of Appeals held a Zoning meeting at 5:15 p.m. on Thursday March 23, 2023 at the Town Hall, 4737 Willow Road, Town of Dunkirk with Scott Pagano presiding as Chairman.

**PRESENT:** Scott Pagano, Thomas Tarnowski, Michael Miller, Michael Bohn and Kenny Tarnowski.

**ALSO, PRESENT:** Supervisor Pagan, Councilwoman Penfold, Town Clerk, Rebeca Yacklon, Code Enforcement Officer, Ryan Mourer, Ronald Tiller, Neftali Dejesus, Aida Dejesus, and Kyle Coughlin, Zoning Clerk.

The Meeting was opened at 5:17 P.M. and started with the pledge to the flag.

Chairman Scott Pagano read the legal notice that was posted on March 15, 2023:

” **NOTICE IS HERBY GIVEN** that a public hearing before the Zoning Board of Appeals of the Town of Dunkirk will be held, March 23, 2023 at 5:15 p.m. at the Dunkirk Town Hall, 4737 Willow Road to consider the following application:

In the matter of the application of Neftali Dejesus for property located at 11181 Urban Rd., Tax Map No. 80.03-3-7 for a use variance to erect an additional accessory building on the above referenced property. This is in violation of Article XXI Section 156 Accessory Building Law stating that there shall be no more than 2 accessory buildings allowed in any residential district. Any person may appear in person, agent or attorney. All interested persons shall be heard at said public hearing. If you have any questions regarding the above, please contact me at the Town Clerk’s Office at (716) 366-3967.”

An affidavit of this posting is available in the clerk’s office.

Chairman Pagano explained to the applicant that the meeting was a 2-part meeting. The first part was for discussion and second was for only Zoning Board Member discussion.

**PART 1**

Chairman Pagano asked Neftali if he could explain to the Zoning Board what he wanted to do and why.

Neftali explained to ZBA members that he was simply out of storage space and needed an additional shed to store his stuff in. He stated that he has stuff sitting outside of his sheds currently and needs the additional space.

Chairman Pagano asked if the shed was on skids or a concrete pad.

Neftali stated that it was on skids.

Member Miller asked if Neftali would be willing to take one of his smaller sheds down to be within the code.

Neftali stated that he couldn't do that he has already taken one down.

Chairman Pagano asked if he could minimize to 2 sheds on the property and make this one larger for more storage space.

Neftali stated that he could not do that.

Member Tarnowski asked if all the sheds on the property were on skids.

Neftali stated that they were and proceeded to show members pictures of the property and need for storage.

Member Tarnowski asked about the big white shed on the property.

CEO, Ryan Mourer stated that was the shed he was asking for a variance for. He was sent a cease-and-desist letter because he did not go through the proper channels.

There continued to be more discussion and pictures shared with the board.

Member Miller asked if there would be any way to remove one of the smaller sheds on the property.

Neftali stated that he would be willing to remove a small shed if he had to.

CEO, Ryan Mourer informed the Board that the new shed on the property is built to the maximum allowed size at 600 sq. ft. Since he built without permission he will be fined for the violation.

Chairman Pagano stated that they felt comfortable with the pictures and wanted to move forward with the meeting.

Before moving to the next part of the meeting Chairman Pagano shared correspondence sent to the ZBA on this project.

A letter was received from a taxpayer that stated "Sirs, please look into the construction of a garage/barn at 11181 Urban Rd. (Rear) it does not appear that a building permit was issued.

Also, as it is a free-standing building with more than 100 ft from the main building the owner should have applied for a variance. As a town taxpayer I expect all residents to follow the same rules. Please look into this.”

A letter was also received from the Chautauqua County Department of Planning.

“Dear Chairperson Pagano,

This letter is in response to your municipal zoning referral received in full by this office on March 15, 2023 regarding a use variance approval to erect an additional accessory building at 11181 Urban Rd. Tax Parcel 80.03-3-7. This parcel is located in the R2 Zoning District. As one of the designated staff to the Chautauqua County Planning Board, I have reviewed the above noted referral. With regard to General Municipal Law 239-m, this proposal is subject to a referral to the County since it is within 500 feet of a County Road. I have reviewed the pertinent inter-community and county-wide considerations with respect to this proposal and its effect on the relevant concerns that are listed under General Municipal Law 239-1. Based on this review I find that the proposed action would be a matter of local concern. However, to assist the Town with its decision, I offer the following informal comments:

Use variances should be granted only in strictly controlled, occasional circumstances when an unnecessary hardship is demonstrated. The formal criteria for granting a use variance were set forth by the New York State Court of Appeals in *Otto v. Steinhilber*. New York State codified those criteria into Town Law 267-b, Which states:

1. No such use variance shall be granted by a board of appeals without showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,
  - A. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - B. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - C. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - D. That the alleged hardship has not been self-created. TWN section 267-2(2)(b)
2. If the board of appeals does grant a variance, they shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. TWN Section 267-b (2) (b)

Again, use variances should be used sparingly and only if all the above stated conditions are met and sufficiently demonstrated by the applicant. If the Town finds that the current zoning regulations are no longer relevant, then we would encourage the Town to examine this further

and consider rezoning to ensure that allowed uses are compatible with its comprehensive plan and community's welfare.”

## **PART 2**

With no further discussion from the Zoning Board, they began reviewing the use variance application.

1. The applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence.

The Zoning Board agreed with the applicants answer of no because the shed was already purchased and placed on the property. The applicant would not receive their money back.

2. The alleged hardship relating to the property is unique, and does not apply to a substantial portion of the district or neighborhood.

The Zoning Board agreed with the applicants answer that the shed was purchased without knowing that a variance would be required.

3. The requested use variance, if granted will not alter the essential character of the neighborhood.

The Zoning Board agreed with the applicants answer that stated that no it will not change the neighborhood because many neighbors have more than one shed/building on their property.

4. The alleged hardship has not been self-created.

The Zoning Board agreed that the applicants answer that stated that storage is necessary and they were unaware of what the rules are in terms of receiving a variance,

It was determined by the ZBA based on the factors above that the benefit to the applicant does outweigh the detriment to the neighborhood or community. However, they felt stipulations needed to be made in order to grant the variance. Members agreed that Neftali would have 3 months to remove the old shed, in order to finish the current shed. They also felt that a stipulation stating that the shed cannot exceed 600 sq. ft. in size was necessary.

Member Miller made a motion to approve the use variance with the stipulation that a shed on the property is removed within 3 months and the new shed does not exceed 600 sq. ft. in size. The motion was second by Member Tamowski and carried.

A roll call vote was taken.

AYE:  
Member Miller  
Member Tarnowski  
Chairman Pagano  
Member Tarnowski  
Member Bohn

NAY:

**ADJOURNMENT:**

A motion was made by Member Miller to adjourn the meeting. The motion was seconded by Chairman Pagano and carried. The meeting was adjourned at 5:35 p.m.

Respectfully submitted,

Kyle Coughlin  
Secretary to Zoning