

**TOWN OF DAY ZONING BOARD OF APPEALS  
MINUTES – REGULAR MEETING  
OCTOBER 15, 2007**

**Members Present:** Hank Lang, Chairman  
Judy Traeger  
Pat Volpe  
Ken Johnsen  
Dave Davidson

**Members Absent:** David Avigdor,  
Attorney

Chairman Lang called the meeting to order at 7 p.m.

**Old Business**                    **McLAIN, Paul 07-04ZBA**  
**Tax Map #41.-1-11 Area Variance**

The Secretary notified the Chairman that she had not received the neighbor notification certified mailings slips nor the notarized statement of neighbor notification from Paul McLain and he is not present at tonight's meeting. Chairman Lang stated the Public Hearing will be deferred to the November meeting due to not satisfying the neighbor notification requirement.

**Minutes**                    Motion by Board Member Traeger, seconded by Pat Volpe to approve the minutes of September 17, 2007 meeting. Ayes: Lang, Traeger, Volpe, Johnsen, Davidson. Carried: 5-0.

**Old Business**                    **PRITCHARD, Robert & Erika 07-02ZBA**  
**Tax Map #43.14-1-16 Area Variance**

Chairman Lang read a memo from the Secretary which stated Mrs. Pritchard would be unable to attend tonight's meeting due to family illness and would be available by phone if the Board needed to contact her. Chairman Lang stated she did not request that the vote be deferred. He further stated Board Member Davidson as an adjoining property owner would recuse himself with the remaining voting members being Judy Traeger, Ken Johnsen, Pat Volpe and himself all present.

Chairman Lang stated the benefit sought must balance the applicant's needs and any potential detriment to the surrounding community. Chairman Lang read the five criteria and regarding number five "whether the difficulty is self-created", he stated this was not well understood. He further stated that while this criteria

must be considered, it is not inconclusive or exempt the application from obtaining a variance.

The Board reviewed the area variance criteria:

**Undesirable change in the neighborhood character?**

Board Member Volpe stated he felt this would create a dangerous situation being located on a curve.

Board Member Johnsen stated he did not feel it would create an undesirable change in the neighborhood.

Board Member Traeger stated she felt it is located on a dangerous curve and the garage location should have been taken into consideration when the house was constructed.

Chairman Lang stated he had visited the site several times and observed other garages similar to what the Pritchard's are proposing and felt there would be no detriment to the neighborhood.

**Can the benefit be achieved by other means?**

Board Member Volpe stated a retaining wall could be built to locate the garage further back from the property line and the road and the traffic.

Board Member Johnsen stated the applicants' statement was that they would back into the garage and not back out which could constitute a problem. He further stated this Board would not know if they would honor this. He further stated there are other similar garages located on Kathan Rd.

Board Member Traeger stated while there are other garages located on Kathan Road, some were constructed prior to zoning and are located on straight-aways and not a curve. She further stated there was no proof that they would only back out of their garage.

Chairman Lang inquired if there were any alternatives. He stated the Pritchards did not give the Board any alternatives. Board Member Traeger stated alternatives could have been considered prior to construction of the

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house. She further stated this is a substandard lot which left even less room to build an additional structure. Chairman Lang stated the Pritchards did not present the Board with an alternative. He further stated the height of the garage may be too high based on other garages in the area. He stated he would recommend a condition that upon approval that the roof be lowered to the minimum pitch allowed in this area taking into consideration snow load slide off which could be accomplished with a metal roof without any structural damage from the weight of the snow.

Board Member Johnsen inquired if this was a three-story garage? Chairman Lang stated he understood it to be a three-story garage but the most recent plans show it to be two-story and very steeply pitched.

**Is the variance substantial?**

Board Member Traeger stated it was substantial.

Chairman Lang stated that while he would agree it is substantial, the original proposed setback was 8.6 feet which was originally submitted to Code Enforcement Officer Metzler. He stated he understood that the Pritchards were advised that the garage would require an area variance but did not wish to delay construction of their house and the garage was removed from the permit application. The records within the Town Hall contained the garage setback of 8.6 feet as of July 19, 2007. However, the most recent application is for 14 feet.

He further stated there are two precedents on Kathan Road or similar setbacks: Cox, dated 1997 for a 12 to 14' front yard setback and Sautter in 1992 for a 14' front yard setback both located on Kathan Road.

Board Member Johnsen stated he did not consider it to be a substantial variance after traveling Kathan Road and seeing the setbacks which are there, it would appear that everyone would have to take precautions regarding traffic. He further stated he would waive the character of the neighborhood criteria due to this fact. Board Member Volpe stated it would not be possible to waive character of

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the neighborhood due to the fact of where the garage is located, you would practically be standing on the Town right-of-way.

Board Member Traeger stated she considers each application on its own merit individually and what occurred eight or ten years ago has no bearings on this application.

Chairman Lang stated past applications should be considered because this Board wished to treat everyone in a similar manner. Board Member Traeger stated all Board Members were in receipt of Highway Superintendent York's letter stating it was dangerous. Board Member Johnsen stated his letter included the fact that it would be dangerous if they backed out of the garage. Board Member Volpe stated on a snowy or rainy night, they would most likely just drive in.

**Will this have an adverse physical or environmental effect?**

Board Member Johnsen stated it would not be substantially different from other garages on Kathan Road.

Board Members Traeger and Volpe stated during the summer months of heavy traffic there would be added adverse effect on the neighborhood.

**Is the alleged difficulty self-created?**

Board Member Volpe stated it was self created because the applicants could have arranged the location and/or size of the house differently to be able to accommodate a garage.

Board Member Johnsen stated it was self created because the applicants could have built closer to the lake or built a smaller house.

Chairman Lang stated they would not have been able to meet the setback from the lake. Board Member Johnsen stated they could have built a smaller house.

Board Member Traeger stated the applicants could build a garage under the house or in line with the house. She

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stated it was obvious from the first application for a building permit that they were going to construct a garage.

Chairman Lang stated he also felt it was self created but it should not keep them from using their property. He suggested the following conditions be imposed: 1) the roof is lowered to the minimum acceptable standard; 2) the Pritchards enter into a hold harmless agreement with the Town of Day to absolve the Town if any damages results from snow removal which would include damage to equipment or employees from the Town of Day; 3) Hold themselves responsible for any damage done to the Town of Day equipment or employees in the vicinity of Pritchard garage; and, 4) contribute to Town of Day to purchase necessary signage warning of a hidden driveway.

**Motion** by Board Member Johnsen, seconded by Hank Lang to approve the area variance for 14 feet from the taking line of the road where 40 feet are required to construct a two-story garage with the following conditions that the Pritchards enter into a hold harmless agreement to be drafted by an attorney to protect the town, its equipment and employees of any liability from snow removal or injuries or damages that might be done when performing Town functions, hold the Town harmless for any damage done to the Town of Day equipment or employees or agents of the Town by the Pritchards' property in the immediate area of their garage, contribute to the cost of DOT approved road signage for hidden driveway, the roof line be lowered to the minimum acceptable architectural best acceptable level, and make the recommendation to strongly encourage the applicants back into their garage at all times. Ayes: Lang and Johnsen. Nays: Traeger and Volpe. The tie vote results in no action at this time.

Chairman Lang stated he has the authority to appoint an alternate member to break the tie but would have to consult with Attorney Avigdor to the extent that he is able to advise based on the Pritchards having been former clients on this matter of process. He further stated he would leave the matter open and no action is the result of tonight's vote.

**MURPHY, Peter & Jean 07-03ZBA  
Tax Map #43.14-1-16 Area Variance**

The Secretary stated there has been no activity on the above referenced application and it has been held on the agenda for six months. The Chairman stated it will be removed from the agenda due to inaction.

**New Business** None.

**Correspondence** None.

**Secretary's Report** None.

**Public Participation** Sharon Crofoot stated while she has spoken before the Board previously on this matter, she would like to address the two Board Members who voted in favor of the application. She stated due to the size and location of this garage, it would be a blight on the landscape and not appropriate. She would request that Chairman Lang and Board Member Johnsen visit her property and come to her front door to appreciate the effect this garage would have on her property. She stated that on the Donald White property, the view was destroyed by the erection of the York garage. Board Member Johnsen inquired whose shed is located at road side and doesn't that also obstruct her view. Ms. Crofoot stated it was a small 8 x 10 shed which she would remove if it was a problem. She also stated there would be problems created by water run off, the value of her property would decrease and it would be aesthetically displeasing. She maintained the Pritchards knew the garage would not be allowed but built their house in spite. She also stated there was a discrepancy with the front yard setback figure and that it was two feet from the town line and not 14 feet. She stated there are numerous grandchildren, the Pritchard's included within three houses of the proposed garage who would be endangered by the numerous cars and trucks which travel Kathan Road on a daily basis. She asked that the Zoning Board Members uphold the zoning laws.

Eugene DeAngelo stated if the Board required that the Pritchards only back into their garage, what would happen if they sold the property, how would the Board enforce that condition on new owners? He also stated there was an error in the exact number of feet the garage is from the road limits. Chairman Lang stated if the garage was not constructed 14 feet from the taking line of the road, it would have to come down.

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Dick Traeger stated he also felt it was a dangerous corner and he did not know if the Board can impose a condition such as requiring a person to only back out of their garage. Chairman Lang stated there was no authority to do so. Board Member Johnsen stated his home was also on a curve and County Highway Superintendent would allow him to only drive out in one direction and not back out on the highway.

Board Member Traeger stated if someone backed out of the garage into this blind curve, a car coming from South Shore Road traveling toward the dam may not see it in time to stop. Board Member Johnsen disagreed stating if they were to back into the garage only, there is six feet from the front of the car to the driver's seat and they would be able to see any cars approaching.

Mr. DeAngelo inquired who the fifth member would be to break the tie and would he or she have access to all the information in the file. Chairman Lang stated they would. Board Member Davidson stated while he had recused himself, he did wish to ask a procedural question: If the motion to grant the variance was a tie and the variance is a request for an exception to the zoning ordinance, the variance request did not pass due to a tie? Chairman Lang stated he felt no action would be taken at this time but he would need to clarify it. Board Member Johnsen stated the Board needed three votes to approve the variance and a tie would leave it in "limbo" subject to discussion and table it until the next meeting.

Chairman Lang stated all interested parties will be notified of what potential action is going to take place. Mr. DeAngelo inquired if there are new members will there be a new Public Hearing? Chairman Lang stated he did not have an answer but all information will be a matter of record. Mr. DeAngelo stated he wished to submit some additional information regarding vehicle stopping distances. Chairman Lang accepted it and asked the Secretary to note that it was received after the Public Hearing had been closed.

Board Members Volpe inquired if there could be an exchange of members between Planning and Zoning

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Boards. Board Member Traeger stated it would be a conflict of interest when handling applications referred to the Zoning Board by the Planning Board. Discussion ensued on the exact location of the Town taking line and how private property lines are pinned. Ms. Crofoot stated if it were determined that the number of feet required for this variance is more than 14 feet, would there be a revote? Board Member Johnsen stated if it were determined that the distance was a matter of a few inches, he would not be persuaded to change his vote but if it turned out to be several feet, he would change it. Chairman Lang stated the motion states 14 feet from the Town's taking line

**Adjourn**

At 7:50 p.m. a motion was made by Board Member Traeger and seconded by Ken Johnsen to adjourn the meeting.

Ayes: Lang, Traeger, Volpe, Johnsen, Davidson.

Respectfully submitted,

Diane R. Byrne  
Secretary