

**TOWN OF DAY ZONING BOARD OF APEALS  
MINUTES – REGULAR MEETING  
NOVEMBER 19, 2007**

**Members Present:** Judy Traeger, Vice-Chairperson    **Members Absent:** Hank Lang  
Pat Volpe  
Ken Johnsen  
Dave Davidson  
David Avigdor, Attorney

Vice-Chairperson Traeger called the meeting to order at 7:15 p.m.

**Old Business**            None.

**Other Business**            **Pritchard, Robert & Ericka  
07-03ZBA – Tax Map #33.11-1-10 Area Variance**

Vice-Chairperson Traeger stated the Board was in receipt of a faxed letter from Mr. and Mrs. Pritchard requesting a postponement of any discussion of their application until January due to the absence of the ZBA Chairman. Board Member Davidson inquired what this Board would be postponing. Town Attorney Avigdor stated that at the October meeting a motion was made to approve the variance and it resulted in a 2-2 vote. He further stated because it was a 2-2 vote, the motion failed but the variance did not and remains on the agenda for possible future action. The Board has a deadline of 62 days, which expired yesterday (November 18, 2007) and he stated he determined as a matter of law when the 62 days expires on a Sunday, the Monday is included and the deadline would be Monday at midnight.

Town Attorney Avigdor stated the Board and the applicants must agree to extend the 62 days and the Board received a request from the applicant to do the same. The purpose in making that request is she is aware there will be only three Board Members present to vote and all must vote together. He further stated it makes more sense to try a revote when four members are present than only three. The December meeting is only a few days prior to Christmas and the Pritchards' personal schedule does not permit them to be at the meeting. Town Attorney Avigdor stated that while he is not aware if any Board Member will change their mind,

does not see any harm in permitting the Pritchards' request.

Board Member Johnsen inquired if the January meeting would fall beyond the 62 day limit. Town Attorney Avigdor stated the 62 day period ends today. Board Member Johnsen stated would this extension add an additional 62 days. Town Attorney Avigdor stated it would not but it would be whatever time period the Board sets. He further stated if this Board would make a motion this evening, it would cover the Board in terms of time limits. Board Member Volpe inquired if the vote would need to be unanimous to accept or reject the motion to extend. Town Attorney Avigdor stated that was correct.

**Motion** by Ken Johnsen, seconded by Vice-Chairperson Traeger to grant an extension of the 62 day time limit to the January 2008 meeting. Ayes: Johnsen and Traeger. Nays: Volpe. The motion fails 2-1.

Vice-Chairperson Traeger directed the Secretary to send a letter to the applicants notifying them of the failure of the motion. Mr. Riccio inquired how an applicant would be able to reappear before the Board. Town Attorney Avigdor stated the applicant could resubmit their application in a year or submit a substantially different application. Mr. Riccio stated the change may sway the Board to change their vote. Town Attorney Avigdor stated the application must be changed enough that the Board feels it is a different application. This prevents an applicant from returning each month, month after month with the same application.

**Correspondence**

Saratoga County Annual Planning & Zoning Conference information was provided to each Board Member and the Secretary stated any member interested in attending needed to return the information as soon as possible.

APA Topic Survey regarding subjects the APA would cover during their March conference to be completed by Board Members.

The Secretary had received a telephonic request for the ZBA minutes of the 2000 Huebner application from Ericka Pritchard.

**Secretary's Report**

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

At the October meeting, it was determined that the Murphy application had been carried on the agenda for six months with no recent activity and it was removed. The Secretary inquired if a motion was required to remove it. Town Attorney Avigdor stated it did not and would be returned to the agenda if Mr. Murphy contacts the Board.

**Public Participation**

Sharon Crofoot stated in reference to the Pritchard application, that at the last meeting there was a great deal of confusion regarding the setback measurement and whether it was two feet or 14 feet. She inquired if the issue was resolved. Town Attorney Avigdor stated the matter is moot because no variance was granted. Ms. Crofoot stated Mr. Johnsen stated at the October meeting if it were substantial, he may change his mind. She further stated it was determined to be two feet and not 14 feet. Board Member Johnsen stated he did not see where that determination has been made. David Cox stated he used a tape measure from the center of the road to the string Mr. Pritchard had on his property denoting the location of the garage and that the distance from the center of the road was 25-27 feet. He further stated it was two feet from the right-of-way. Board Member Johnsen inquired if Mr. Cox was certain the string represented the garage. Mr. Cox stated the string was in a 20 foot square and assumed it would be the garage. Board Member Johnsen stated he was not disputing what Mr. Cox was stating but was not aware of any change in determination.

Town Attorney Avigdor stated the issues are moot because if the meeting adjourns without any further action, the action has failed.

Vice-Chairperson Traeger stated the Board had been notified of an application request for the shed on the Crofoot/Dwyer parcel. The Secretary stated she had mailed an application to Robert Dwyer but had not received the completed application or had any further contact with Mr. Dwyer. Vice-Chairperson Traeger stated she wished to confirm it would not be on tonight's agenda.

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Town Attorney Avigdor confirmed that the waiting period to resubmit an application was one year and there is no particular law which states how different the application must be.

Vice-Chairperson Traeger stated there was some confusion on the location of the road or right-of-way and how it was determined. Town Attorney Avigdor stated when government assumes ownership of a road; the actual property is wider than the road itself because of snow removal and the government's desire to keep the snow on the government property. He further stated another reason the road property is wider than the road itself is because the persons involved in mapping the road are not the same as those who physically locate the roadway and the takings are angular. If you are aware that the legal takings of the right-of-way are 60 feet and the pavement is 50 feet, it is not possible to state where the roadway was built on those takings. Town Attorney Avigdor further stated that there is a survey of the roadways. Board Member Volpe stated due to many conditions, the roadway has a tendency to move. Mr. Cox stated he also determined the property marker on the Crofoot property is one to two feet from the proposed garage location and further substantiates the 25 feet of the center of the road.

**Adjourn**

At 7:35 p.m. a motion was made by Board Member Davidson and seconded by Pat Volpe to adjourn the meeting. Ayes: Traeger, Volpe, Johnsen, Davidson. Carried 4-0.

Respectfully submitted,

Diane R. Byrne  
Secretary