

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
DECEMBER 15, 2008**

Members Present: Dave Davidson, Chairman **Members Absent:** Pat Volpe
Judy Traeger
Hank Lang
Ken Johnsen
David Avigdor, Town Attorney

Motion by Judy Traeger, seconded by Board Member Lang to approve the minutes of the November 17, 2008 meeting. Ayes: Davidson, Traeger, Lang, Johnsen. Carried: 4-0.

Old Business: **OLINSKY, Lawrence & Michelle 08-05ZBA**
Tax Map #33-11-2-16 Area Variance

A Public Hearing was held for the Olinsky area variance last month for setback requirements for a garage on Kathan Road. Previously, a discussion regarding garages prompted the Zoning Board to change their application requirements and require a “survey map drawn by a licensed professional showing precise dimensions of existing and proposed structures, locations, setbacks, lot area and lot dimension, height from grade of the proposed new structure, wetlands, water courses, wells, septic, town taking line of road indicating the road right-of-way, and other information required by the Town Zoning Ordinance.” This language is contained on page 2 of the Zoning Application. At the time of the Public Hearing, Mr. Olinsky submitted a plot plan drawn by a licensed architect. Town Attorney Avigdor stated a licensed architect can certify the plans for the structure but cannot certify that the boundary line would be seven feet from the side line because the architect is not measuring where the side line is.

Chairman Davidson stated both the ZBA and Code Enforcement Officer needs to stress to the applicant that a survey map with its required dimensions, etc. must be submitted with the application. It will also be put in bold print on the application.

Hilicus, Christine/Peek, Donna 08-02ZBA
Tax Map #31.15-2-16 Area Variance

Chairman Davidson and the Secretary had been in contact with Mike Valentine of Saratoga County Planning regarding the timely submission of the Hilicus/Peek application. It was agreed by all Board Members that their decision would be deferred until after

County Planning's meeting which is on the third Thursday of the month for any future applications.

Adirondack Park Law Change:

Town Attorney Avigdor stated the APA administratively by rule change made the following determination: Previously, structures which were within the setback distance of a body of water were grandfathered because they existed prior to the APA and could be expanded provided the expansion did not make the structure any closer to the water. The expansion could be wider and/or taller. In some instances the actual setback line may have been through the existing structure but they were still able to be expanded as long as that expansion did not expand closer to the water. APA will now require a variance for any expansion of these structures and APA generally does not grant variances. Town Attorney Avigdor stated if a property owner wished to expand behind the setback line, it would be allowed but once the change becomes effective after the first of the year, no expansion would be allowed without an APA variance.

Town Attorney Avigdor stated the controversy of the change is that it was done administratively rather than requesting that the Legislature change the law. He further stated in general, legislatures pass laws and based on that law, administrative agencies pass regulations which need to be within the scope of the law. Therefore, is this regulatory change promulgating a new rule within the scope of the statute which the Legislature passed? He stated this is difficult to determine. APA is taking the legal position it is within their right to make this rule change. Counties which have part of the Adirondack Park within their boundaries are taking the position that APA does not have that right. At the Day Town Board meeting last week, they authorized \$3,000 to be contributed toward Saratoga County's efforts to have this ruling overturned. Subsequently, the counties will unite to hire attorneys to at the very least study if that dispute is worthwhile. Town Attorney Avigdor stated he did receive an email from APA that this law will be effective on January 1, 2009.

Town Attorney Avigdor stated it would have little effect on this Board. The Town has an APA approved land use program which allows this Board to grant variances which can be overturned by APA which they have done in the past in the Town. He further stated there is a rear yard setback which is between a privately owned parcel and Hudson River Black River Regulating District lands and a setback from the water; and, our requirement may be more intrusive. The water setback would not impinge on what a property owner may wish to build. However, the opposite could

also be true if the water setback was greater than the rear yard setback which would impinge on the property owner. It would depend on the APA land use area and there are two or three different land use areas which would mean it is a case by case issue. Town Attorney Avigdor stated he could answer questions on a particular parcel but could not answer as a general question. He stated the high water mark is fixed by law at 771 feet. Board Member Traeger stated Professor Lamb will be generating maps which could indicate those setbacks and high water marks.

Town Attorney Avigdor stated under Article 4 of the Zoning law, it states all setback requirement amounts for the applicable zone. Board Member Lang inquired if the mean high water mark was in the zoning law. Town Attorney Avigdor stated in Appendix D, "The mean high water mark is the annual average high water level of a body of water. The mean high water mark of Great Sacandaga Lake is 771 feet above mean sea level." He reminded the Board there is more than one lake in the Town of Day. Code Enforcement Officer Metzler would be able to determine if such a variance from APA would be required. To reiterate the change: the building expansion which was previously grandfathered will no longer be grandfathered and the dimensions and locations have not changed with respect to zoning districts, those setbacks are still in force. Town Attorney Avigdor stated he did not feel there is any need to map them because they are stated in the zoning law. All applications would be referred to the Zoning Board and we would handle those applications because the Town has an APA approved land use program.

New Business: None.

Correspondence: None.

Secretary's Report: None.

Public Participation: None

Motion by Ken Johnsen, seconded by Board Member Traeger to adjourn the meeting at 7:30 p.m. Ayes: Davidson, Traeger, Johnsen, Lang. Carried: 4-0.

Respectfully submitted,

Diane Byrne
Secretary