

# TOWN OF DAY PLANNING BOARD REGULAR MEETING JUNE 7, 2010

**Members Present:** David Cox, Chairman  
Ted Mirczak  
Jack Vaillancourt  
Dick Traeger  
David Avigdor, Town Attorney

**Members Absent:** Eileen Brennan

**Motion** by Ted Mirczak, seconded by Board Member Traeger to approve the amended minutes of April 5, 2010. Ayes: Cox, Mirczak, Traeger, Vaillancourt. Carried: 4-0.

**Motion** by Ted Mirczak, seconded by Board Member Vaillancourt to approve the minutes of May 3, 2010 with the following change: Page 3, first partial paragraph, line four from "...a subdivision may still be..." to "...a subdivision may not still be...". Ayes: Cox, Mirczak, Traeger, Vaillancourt. Carried: 4-0.

**Old Business:** None.

**New Business:** **JOHNSEN, Kenneth & Gail PB10-02BLA**  
**Tax Map #42.10-1-1 & 42.6-1-17**

Board Member Mirczak recused himself. Town Attorney Avigdor stated he has represented the Johnsens on several real estate matters including these parcels.

Board Members reviewed the application and sketch submitted by the applicants. Chairman Cox stated the applicants own parcel #42.6-1-17 located on the opposite side of North Shore Road from the lake and parcel #42.10-1-1 on the lakeside. They wish to transfer a ten foot strip from parcel #42.10-1-1 (1/4 total acreage) which is adjacent to Hudson River Black River Regulating District lands to parcel #42.6-1-17 in order to enable lake access.

Chairman Cox stated it would be transferred from a very undersized parcel and is very similar to an application for a boundary line adjustment which was denied at the May meeting (Walder/Smith). Mrs. Johnsen stated she is seeking to obtain a determination from the Board on whether this would be a subdivision or a boundary line adjustment. Chairman Cox stated it would be creating a new lot due to the separation of North Shore Road making the boundaries not be contiguous. It was clarified that the lakeside parcel is owned by the Johnsen and is not Hudson River Black River Regulating District lands. Board Member

Vaillancourt agreed it would be creating a new lot. Chairman Cox stated the Board must remain consistent in its decisions and determinations.

Mrs. Johnsen stated she did not understand how this boundary line adjustment would be creating a separate lot. Town Attorney Avigdor stated to clarify Mrs. Johnsen's confusion, he would explain the Walder/Smith application which was denied at the May meeting of the Board and the reasoning of the Board. The application was very similar. Under the Town of Day subdivision laws and APA laws, if a property owner owns parcels on both sides of the road, they can as a right, subdivide one side of the road from the other without subdivision approval. The two parcels could be divided from each other. If this strip were removed from its original parcel and attached to the parcel on the opposite of the road, two different potential legal problems could ensue. The small strip subdivided from the  $\frac{1}{4}$  acre could be subdivided by virtue of the presence of North Shore Road and become a small substandard lot. The remainder of the  $\frac{1}{4}$  acre would become even more substandard.

Town Attorney Avigdor stated he was contacted by an attorney representing Walder/Smith who inquired if there was any possibility of those parties obtaining permission. He relayed the same explanation to the attorney. The only other possibility would be to appear before the Zoning Board and request a zoning variance for a substandard lot stating building rights would be deeded to the Town because the intent is not to build but to obtain beach rights. The Zoning Board may find that it would be permitted because there would not be damage to the neighborhood. While Town Attorney Avigdor could not speak for the Zoning Board, that possibility does exist. This is not a recommendation for approval or denial but simply an explanation.

Chairman Cox asked for any comments or questions from the Board Members. There were none.

**Motion** by Jack Vaillancourt, seconded by Board Member Traeger to find that Application PB10-02BLA, JOHNSEN, Kenneth & Gail, Tax Map #42.10-1-1 & 42.6-1-17 does not represent a boundary line adjustment and is hereby denied. Ayes: Cox, Vaillancourt, Traeger. Abstention: Mirczak. Carried: 3-0.

**Correspondence:** Majestic Mountain Marina correspondence was reviewed. Board Member Mirczak stated the expansion appeared to be in accordance with existing town law which permits a single 25% expansion. It is a patio designated for a smoking area without any

music or service of food or alcohol. However, it would depend on State Liquor Authority law if it would permit a patron to carry a drink onto the patio from the confines of the restaurant. They propose to erect a barrier (i.e. posts with a rope) on two sides of the patio due to the slope. Code Enforcement Officer Metzler has reviewed calculations regarding number of patrons and adequacy of door size, barriers and furniture which will be placed on the patio. He found everything was in order and has issued the permits.

Board Members received information regarding training opportunities and reviewed APA Jurisdictional Determination regarding power pole replacement.

The Secretary provided all Board Members with list of "Roads in the Town of Day, September 18, 2003.

Board Member Mirczak stated at the May meeting, a surveyor inquired if a particular road was deeded to the town and if the parcel boundaries met at the center of the road creating a contiguous boundary line. Town Attorney Avigdor stated the surveyor was incorrect. A private road does not provide a subdivision by right, only a town or county road as listed on the official list of town roads.

**Secretary's Report:** None.

**Public Participation:** None.

**Motion** by Ted Mirczak, seconded by Board Member Vaillancourt to adjourn the meeting at 7:30 p.m. Ayes: Cox, Mirczak, Traeger, Vaillancourt. Carried: 4-0.

Respectfully submitted,

Diane Byrne  
Secretary