

TOWN OF DAY PLANNING BOARD REGULAR MEETING – NOVEMBER 2, 2009

Members Present: David Cox, Chairman **Members Absent:** None
Ted Mirczak
Dick Traeger
Jack Vaillancourt
Eileen Brennan
David Avigdor, Town Attorney

Motion by Dick Traeger, seconded by Board Member Jack Vaillancourt to approve the minutes of August 3, 2009. Ayes: Cox, Brennan, Traeger, Vaillancourt. Abstention: Mirczak. Carried: 4-1.

Old Business: **RONDEAU, Joseph/GEREMICK, Barbara & Kelly
Tax Map #42.11-2-41.1 & 41.2 Illegal Subdivision**

Barbara Geremick, mother of Kelly contacted the Planning Office in an effort to commence an after-the-fact subdivision process. She was informed that the lots were substandard and would require area variances. Both Zoning and Planning applications were sent to Mrs. Geremick.

Mr. Rondeau was recently deceased and his portion of the parcel was transferred to his daughters from a previous marriage. The remaining portion was in Mrs. Geremick's daughter, Kelly's name and no longer included Barbara Geremick on the deed. Mrs. Geremick was informed that the application needed to be submitted by the property owners or the property owners would need to authorize her to represent them in the application process. She was also informed that the parcels which were illegally subdivided had been flagged by both the Planning/Zoning and Building Departments and no permits would be issued.

New Business: **BRADLEY, Alan R. Jr. PO09-06-SPR
Tax Map #42.-1-73 Viewshed Protection**

Board Member Mirczak recused himself due to his long standing friendship with Ken Johnsen, the former owner of the parcel and his joint economic interest in the access to the property with Mr. Bradley. Town Attorney Avigdor also recused himself because he drew up the access agreement between the property owners and it would also be inappropriate for him to be involved. Chairman Cox stated if there are some generic questions, he would ask Town Attorney Avigdor's advice.

Chairman Cox stated he and Code Enforcement Officer Metzler flew balloons at the site Monday afternoon, November 2nd from a height of 35 feet which was below the tree line. The structure will be 30 feet. Chairman Cox provided the Board Members with two line of sight drawings from two different locations from the lake along with a copy of Mr. Bradley's three page submission. All drawings show that if trees were cut between the structure and the lake, the house would be clearly visible from the lake. Chairman Cox further stated it was not in a hollow, but on a level plane on the top of the hill. Board Member Vaillancourt inquired how far back the trees would have to be cut to make the structure visible. While Chairman Cox was not sure of the exact distance, he did not believe it would be too far. Chairman Cox stated they stopped at three different locations on South Shore Road and while the balloons were not visible from two of the sites, he stated the actual balloons were not seen but there was a reflection from the writing on the balloons at another site. The writing was metallic and when the sun shone on the balloon, the metallic writing did flash. He further stated it is within the Viewshed and would be possible to cut the trees and make the structure visible.

Chairman Cox clarified for the record that at the last meeting there was discussion of this lot being created through a boundary line adjustment on the part of Ken Johnsen who appeared before this Board in that matter and that is incorrect. This lot is a pre-existing, grandfathered parcel which does not have the required road frontage and it would not be required due to the grandfathering.

Board Member Traeger stated if the glare from the balloon was visible, the glare from the glass of the windows may also be visible. It was agreed that the glare from a galvanized metal roof or lights at night may also be visible. Chairman Cox stated the procedures for a site plan review as outlined in zoning law should be followed.

Mr. Bradley stated the balloons were 40-45 feet high and the house would be 15 feet below the balloons. The glass would not be located on the roof and the structure would be behind a stand of hemlock trees which do not lose their needles and hide the structure. Due to these factors, Mr. Bradley stated the concern of the house being visible would be diminished to zero. Chairman Cox stated Mr. Bradley is both fortunate and unfortunate being the first applicant in the Viewshed Protection Area to come before the Board as the Board will also be learning as the process proceeds. However, the site is nearly invisible but not completely. Some sites would require plantings and screenings to be installed which would not be required at the Bradley site. Chairman Cox stated

that while Mr. Bradley would not cut the trees, a future owner may do so in order to obtain a view of the lake which would make the structure clearly visible and the Town would have to be protected from that situation. It is the visibility which makes the Site Plan Review necessary.

Chairman Cox stated the following items would be part of the Site Plan:

- Prohibition of any further tree cutting on the lakeside.
- Site of the house.
- Driveway - if it were to go straight up the hill to the house, it would be visible from the lake and be considered a “scar” on the mountain. In Mr. Bradley’s case, it zigzags and the entire driveway would not be visible from the lake. This would have to appear on the site plan.
- How power will be provided (may be required to be underground).
- Roof materials – no highly reflective materials which would be clearly visible in sunlight from many areas on the lake
- Outside lighting – types of flood lighting and if it will be aimed toward the lake.
- Several other additional requirements which would pertain to Mr. Bradley and that complete section of the law would be provided to him.
- The house plan of the outside of the structure together with well and septic locations would be required submissions.

Chairman Cox reviewed in general the requirements of Site Plan Review. Mr. Bradley inquired if the building material issue would apply to his house. Chairman Cox stated it would. Mr. Bradley stated he understood the concern with the roof but if the house is below 45 feet and below the tree line, would this requirement apply to his review. Chairman Cox stated that while the balloons were below the tree line, the reflective materials were clearly visible through the trees. Chairman Cox recommended Mr. Bradley read through the section of zoning law. He further stated there is some galvanized material on window sills which is highly reflective which could be covered. He stated Mr. Bradley should simply keep in mind materials which do not reflect.

Chairman Cox stated in this Site Plan Review process, the Board and Mr. Bradley would meet informally early in the review process to insure both parties are moving in the right direction and there are no misunderstandings. At these meetings, it would be determined which requirements would need to be met. The Planning Board has the authority to waive any requirements. For

instance, if a structure were located in a hollow where it could never be seen, all requirements would be waived because it would not be visible in spite of being in a Viewshed Protection Area but this is not the case here.

Mr. Bradley inquired if he would be able to continue to submit materials via emails to the Secretary and directly to Chairman Cox as he did in the case of the topography maps. Chairman Cox stated all future emails should be sent directly to the Planning/Zoning email address. However, all information would be brought to the next Planning Board where it would be discussed. If Mr. Bradley chooses not to attend these meetings and there were any questions, the Chairman would need to contact Mr. Bradley for his answer and the matter would be discussed at the next Planning Board. It is always more advantageous for the applicant to attend the meetings. A special meeting could be held in the event of an emergency.

Mr. Bradley stated he was hoping to obtain a building permit as soon as possible in order to start excavation. Chairman Cox stated prior to that, there would be many details for Mr. Bradley to submit.

There was a discussion between Board Members Vaillancourt and Traeger regarding the types of trees on the lakeside of structure. Chairman Cox stated as he was standing on the house site, the lake was not visible but it was when starting to drive down the hill. Chairman Cox stated there is an exemption from the Viewshed Regulations if the balloons are not visible. The review must still take place and would also include the line of sight drawings which in this case would indicate this structure would be clearly visible if there were no trees. The Viewshed Regulations insure the trees remain to prevent the structure from being seen.

Town Attorney Avigdor stated the Board needs to react to applications and what the applicant proposes. The Board needs to be sensitive to what will be on the parcel forever and if the next owner will also honor those regulations. The Board will only be able to supply answers to the information Mr. Bradley provides. Town Attorney Avigdor stated once Mr. Bradley reviews the site plan review information and has questions, he would be able to contact the Chairman. Town Attorney Avigdor agreed that utilizing emails between Board Members and applicants would not meet the State law requirement since there must be a physical meeting of Board Members with a quorum. Email correspondence leaves no opportunity for discussion between Board Members.

Motion by Eileen Brennan, seconded by Board Member Vaillancourt that Application PB09-06SPR, Alan R. Bradley, Jr. follow the normal viewshed requirements. Ayes: Cox, Brennan, Traeger, Vaillancourt. Abstention: Mirczak. Carried: 4-1.

Mr. Bradley was provided with a site plan review application and will be mailed the portion of Zoning Law which pertains to site plan review. Town Attorney Avigdor reviewed the specifics of site plan review and what would be required to be submitted using Zoning Law as the guide. The Board or Town Attorney Avigdor will review the regulations to determine if notification to APA may be necessary.

**CRONK/OTTMAN Tax Map #42.11-2-12.1
Gift Lot Exemption**

Mr. Cronk stated they were anticipating submitting an application for a gift lot exemption but were not prepared to begin the process at this time as they were still reviewing details with Mr. Ottman, brother of Nancie Cronk. Chairman Cox stated the Town of Day requirements differ from APA requirements and the strictest standard would apply. Town Attorney Avigdor stated the Cronks would have to determine if they are eligible for the gift exemption. The Town of Day requires it is truly a gift and it is between natural persons as opposed to corporations. APA adds one important restriction which is the person who is making the gift must be the current owner in May, 1973. If those requirements cannot be met, the applicants would not be eligible for the gift exemption.

Town Attorney Avigdor further stated APA subdivision regulations would need to determine how many lots have been created from the 1973 parcel, the size of the proposed lots and do wetlands exist on the parcel. It may not be necessary to obtain an APA permit. If that is the case, it would revert to the Town of Day requirements and would only be buildable if it meets the requirements of zoning law. Mr. Cronk stated there were 9 25' x 100' lots which are all on the same parcel with two existing structures. There were other family members listed as owners on the deed but Mrs. Cronk and Mr. Ottman purchased their portions. Mr. and Mrs. Cronk are now retired and would like to spend more time here and would also like to expand the residence. It was also their desire to clarify ownership through a subdivision and/or gift lot exemption. Mr. Ottman may tear down and rebuild the structure on his portion of the lot. Mr. Cronk stated the lots may be 100' x 125' and 50' x 200' due to the original parcel being in an "L" shape.

Chairman Cox stated the Planning Board would determine if it is a gift exemption or subdivision which may require submission to the Zoning Board for an area variance. He could not state whether or not the Zoning Board would grant the variance. There may also be issues with setbacks.

Chairman Cox stated he believed APA requirements would not allow an existing property owner to be the recipient of a gift. Town Attorney Avigdor stated the APA requirement would not apply in this case because the 1973 grantor is not involved in the gift. However, there would be an APA variance which could be granted by Town of Day Zoning Board and overridden by APA.

Chairman Cox stated the Cronks can submit a sketch of their proposal to Code Enforcement Officer Metzler who will provide guidance and can consult with Town Attorney Avigdor to determine how to proceed with the application.

Correspondence: Each Board Member received the article “Within the Definition of Agricultural Use Structures and Therefore Exempt from Adirondack Park Agency Jurisdiction” and made no comment on it.

Secretary’s Report: Saratoga County Planning will provide training on their GIS website with the date to be determined. It was agreed it does not need to be held on the same night as a Planning Board meeting with a projected date of the fourth Monday of January or February (January 25 or February 22). The Secretary will check with the Zoning Board for time availability.

Public Participation:None

Motion by Ted Mirczak, seconded by Board Member Traeger to adjourn the meeting at 8:05 p.m. Ayes: Cox, Mirczak, Brennan, Traeger, Vaillancourt. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary