

# **TOWN OF DAY PLANNING BOARD REGULAR MEETING – SEPTEMBER 4, 2008**

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

**Members Absent:** None

**Motion** by Jack Vaillancourt, seconded by Board Member Traeger to approve the minutes of the August 4, 2008 meeting. Ayes: Cox, Brennan, Vaillancourt, Traeger. Abstention: Mirczak. Carried: 4-1.

**Old Business:** None.

**New Business:** **BERNSTEIN, Monte**  
**Conceptual Review**  
**Minor Subdivision of Land, Tax Map #41.-1-88.1**

Mr. Bernstein stated he purchased his parcel ten years ago and had anticipated subdividing it into two parcels. At that time it was located in lakefront residential district which required 1.3 acres and 150 feet of road frontage per parcel and was located 1,300 feet from the center of North Shore Road. Two years ago, the Town changed the zoning districts when it created View Shed Protection which located lakefront residential district within 520 feet from the center of North Shore Road. This changed the zoning district the majority of his parcel was located in to Residential Low Density requiring 8.5 acres and 300 feet of road frontage per parcel. Mr. Bernstein submitted several maps indicating the original location of the districts and where they are located today, lines indicating where he would subdivide and a map indicating the road frontages of surrounding parcels. The parcels would be 5.1 acres with 246 feet of road frontage and 10.49 acres with 617 feet of road frontage. He stated the immediately adjoining property owners have existing road frontages of 100 to 250 feet each.

Board Member Mirczak stated the entire parcel is 15.5 acres located on Snow Road and the total road frontage would be in excess of the 600 feet which would be required for a two lot subdivision. Mr. Bernstein stated the driveways (both existing and proposed) are located where the grade is not steep. There is a long, narrow strip located where Mr. Bernstein's property begins on Snow Road, along the boundary line indicated by 305.05' in road frontage which was quit claimed to Mr. Bernstein when the road was moved. It was not included on his surveyor's map but

does show on maps downloaded from Saratoga County's Real Property site. He stated between his parcel and North Shore Road is a parcel owned by Hudson River Black River Regulating District.

Chairman Cox stated the 5.1 acre parcel is deficient in both acreage (8.5 acres required) and the road frontage is 246 feet (300 feet required). He further stated the 10.49 acre parcel is located in lakefront residential district and is not deficient in road frontage (617 feet where 150 feet are required). Board Member Mirczak stated the 10.49 acre lot conforms to zoning. Chairman Cox stated it would not be within the jurisdiction of the Planning Board to approve this subdivision. He stated Mr. Bernstein would need to apply to the Zoning Board of Appeals for variances on the 5.1 acre parcel and would need a referral from this Board. Mr. Bernstein stated he was looking for guidance from this Board as to feasibility of this request. Chairman Cox stated if the ZBA approved the variances, Mr. Bernstein would then return to the Planning Board with more detailed drawings which would include driveways, etc.

Town Attorney Avigdor stated the Zoning Board would consider the substandardness of the parcel which is what their jurisdiction is limited to. He further stated the substandardness of the parcel if it is approved, would not be an issue for the Planning Board but location of driveways, septic separation on the lots, and visual impact from the lake would be under the jurisdiction of the Planning Board. Chairman Cox stated because a portion of this parcel is located in the View Shed Area, this Board would be interested in a house plot plan so it could be determined if the house would be located in that area or not because there are special requirements in the View Shed Area. Mr. Bernstein stated he would not be able to give an actual house plan but he could give an approximate location of the house. Chairman Cox stated he would not expect an actual house plan at this time but only the plot plan. He stated Mr. Bernstein would first apply formally to this Board and because it does not comply with the zoning law, would be referred to the Zoning Board. If he is denied at the Zoning level, he would not be able to subdivide his parcel.

Mr. Bernstein inquired if the Board would look favorably on his proposal? Chairman Cox stated he could not speak for the Zoning Board. Mr. Bernstein stated if it would be approved by the Zoning Board, would the Planning Board consider his proposal. Chairman Cox stated they would have to consider his application if he were approved by the Zoning Board. He further stated there are a

number of items as stated previously by Town Attorney Avigdor which this Board would have to consider and if Mr. Bernstein could meet all of those, he would have an approval. Town Attorney Avigdor stated based on what Mr. Bernstein has submitted and taking into consideration that issues may be raised at a Public Hearing such as wetlands, it would be fair to inform Mr. Bernstein at this time if there are any other constraints the Planning Board may see with this application other than the substandard lot size or road frontage shortage. Town Attorney Avigdor stated if there was a slope issue or the view shed issues, the Planning Board could address it now with Mr. Bernstein.

Chairman Cox stated the Planning Board would have to consider the view shed and that he felt there were ways he could develop these two lots and comply with all Town laws. Board Member Mirczak stated this is not a formal request. Mr. Bernstein submitted an application and fee to the Secretary and requested his application be considered as formal. Chairman Cox and the Board Members accepted the application as formal.

**Motion** by Ted Mirczak, seconded by Board Member Traeger, to deny Application No. PB08-09SUB, Monte Bernstein, Tax Map #41.-1-88.1 for a two lot subdivision due to one lot being substandard in road frontage (246 feet where 300 feet are required) and substandard in acreage (5.1 acres where 8.5 acres are required). Ayes: Cox, Mirczak, Vaillancourt, Traeger, Brennan. Carried: 5-0.

**Correspondence:** New York Planning Federation Conference, scheduled for October 12-14, 2008 in Saratoga was received. Chairman Cox and Board Member Mirczak will attend.

Letter from Adirondack Park Agency with maps indicating amendments to the Official Adirondack Park Agency Land Use and Development Plan Map. It indicates lands owned by Hudson River Black River Regulating District were incorrectly classified as private lands and it should be public. Board Member Vaillancourt inquired if it would change the rules by which these are governed. Chairman Cox stated he did not know but the letter indicates there will be reclassification of these lands. Town Attorney Avigdor stated reclassification could also change the rules to become much more stringent if it is classified wild forest. He further stated there were a few different classifications for state land which include wilderness, wild forest, canoe area, primitive, intensive use, historic, pending classification, scenic vista and administrative. He stated the potential for change is very large. He stated wilderness, canoe area, primitive and wild forest are forest preserves or forever wild areas. Town Attorney Avigdor

stated because he does not do this routinely, he is not familiar with each classification and its definition and this Board may need to know these classifications in the future. He stated the information is available on the APA website.

Board Member Mirczak stated the APA map is incorrect because they never reduced the zoning which was changed in the Town of Day. He inquired if APA is aware of that? Chairman Cox stated some are aware of it. Board Member Mirczak stated Brian Grisi of APA should be aware that the map has not been corrected since the Town Zoning Law was changed two years ago. Chairman Cox stated in reviewing the location of Mr. Bernstein's parcel on the APA map, it was not changed to indicate the change in zoning law. This change has been approved by APA.

Board Member Mirczak stated the comments from this Board should address that the potential for change is great, APA is not telling this Board what they intend to classify it and in order to intelligently comment on it, more information would be needed. Town Attorney Avigdor stated he anticipates their response would be that the change is necessary, this is state land, it was a mistake and they will notify us of the classification. He further stated he has no objection to this Board responding to the letter. Chairman Cox stated there is a time limit of September 10<sup>th</sup> to respond. He inquired if any Board Member wished to suggest any action. There was none.

**Motion** by Jack Vaillancourt, seconded by Board Member Brennan to adjourn the meeting at 7:30 p.m. Ayes: David Cox, Jack Vaillancourt, Dick Traeger, Ted Mirczak, Eileen Brennan. Carried: 5-0.

Respectfully submitted,

Diane Byrne  
Secretary