

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
AUGUST 21, 2006**

Members Present: Kearney Mason, Chairman
Judy Traeger
Pat Volpe
Ray Ives
Hank Lang
David Avigdor, Attorney

Members Absent: None

Chairman Mason called the meeting to order at 7:05 p.m.

Minutes Motion made by Judy Traeger and 2nd Hank Lang to accept the minutes of July 17, 2006 regular meeting. Ayes: Kearney Mason, Judy Traeger, Hank Lang, Pat Volpe, Ray Ives. Carried 5-0.

New Business **D’Allaird, Donald & Rebecca 06-03ZBA
Tax Map #32.19-1-24.00 Area Variance**

The D’Allaird are applying for two area variances for side yard setbacks of 13 feet where 15 feet are required and 8 feet where 15 feet are required due to the property line being at a slant in order to construct a 16 feet wide by 30 feet long garage. Chairman Mason inquired if the garage would be the same dimensions as the end of the existing house. The D’Allairds stated it would be. Mrs. D’Allaird also stated there may be a discrepancy in the survey map. She stated she ran a tape along the property line and according to that measurement no variances would then be necessary. Chairman Mason inquired when the lot was last surveyed. Mrs. D’Allaird stated three years ago. She also stated there is a paper right-of-way on the property. Attorney Avigdor stated the applicants had to decide which way they wished to proceed: i.e. contact Joe Fuerst, surveyor, to remeasure the lines and put in stakes and no variances may be necessary. Or, continue to pursue the variances. Attorney Avigdor stated both remedies could be pursued at once. Mrs. D’Allaird stated they wished to proceed with the variance application.

Mrs. D’Allaird also submitted several pictures showing the location of the proposed garage and property line locations. Chairman Mason asked for any additional questions from the other

August 21, 2006

Board Members. All stated they had none and all stated the application was acceptable. Attorney Avigdor stated in light of the fact that Board Member Ives is related to the applicants, he should recuse himself. Board Member Ives stated he is a property owner within 500 feet of the D'Allaird property and would be speaking in that regard. Attorney Avigdor stated Board Member Ives would have a right to speak as an adjoining property owner but a member of the public could perceive his representation on the Board as an appearance of impropriety. Board Member Ives inquired if this was "supposed" or stated by law. Attorney Avigdor stated it is stated in law that a person might perceive he may be influenced by his relationship to the applicant. Board Member Ives stated he wished to be part of accepting the application as complete as he is more familiar with this application than any other and he would be only part of that acceptance. Attorney Avigdor stated it would not be proper because it would still be perceived as the appearance of impropriety. Board Member Ives stated he wished the record to reflect that he was only abstaining on the request of Town Attorney Avigdor and for no other reason.

Motion by Judy Traeger and seconded by Hank Lang to accept the application as complete and set September 18, 2006 for the Public Hearing. Ayes: Kearney Mason, Pat Volpe, Judy Traeger, Hank Lang. Abstention: Ray Ives. Carried 4-1.

Board Member Ives inquired if he should sit in the audience at the time of the Public Hearing on September 18th. Attorney Avigdor stated he should.

Old Business

**Szyfman, Leon & Petra 06-02ZBA
Tax Map #43.6-2-10 Area Variance**

Mrs. Szyfman presented a letter to the Board stating the practical difficulty of the garage location. The Szyfmans also submitted a copy of the deed as requested by the Board at last month's meeting along with additional pictures.

The Szyfmans pointed out that their home is constructed on a sloping lot with the ground floor being open in the front but underground in the rear. It is this situation which would prevent the garage from being constructed in the only other area on the property. It is this ledge rock which could only be dealt with by blasting. They wish to leave open a clear pathway to their well which is located on the opposite side of their house to the rear of the lot. Mrs. Szyfman stated springs located on the mountain

August 21, 2006

flow down the property to a natural ravine on the right side of the property making construction in that site impossible. She also stated Mr. Szyfman is disabled and cannot climb and this garage location would be his best access. They stated that while their front yard setback for the garage would be technically 20 feet, there are 30 feet between their boundary line and North Shore Road so in affect, it would be 50 feet from the road, just not from their physical property line. Mr. Szyfman stated by locating the garage in this location, it would shore up the driveway of their neighbor which is currently being held in place by decaying tree trunks. Currently the Szyfmans' excavator added boulders to this area.

Attorney Avigdor stated he represented the Szyfmans in the purchase of this property but was now representing the Town of Day. Board Member Lang stated he noticed some discrepancies in the tax maps showing a 30 feet difference in the favor of the Szyfmans in the front yard setback. Board Member Lang stated it was unclear who owned the 30 foot strip, the Szyfmans, the County or Hudson River Black River Regulating District. Attorney Avigdor stated it is general knowledge that the legal road is always wider than the physical road and in his opinion this land was legally part of North Shore Road.

Board Member Lang and Attorney Avigdor referred to the deed and it was determined the Szyfman property is 125 feet wide by 150 feet deep and did not include the 30 feet at North Shore Road.

Motion by Judy Traeger and seconded by Ray Ives to accept the application as complete and set the Public Hearing for September 18, 2006. Ayes: Kearney Mason, Judy Traeger, Ray Ives, Pat Volpe, Hank Lang. Carried 5-0.

**Fedorowicz, John & Laura 06-01ZBA
Tax Map # 43.6-2-20 Area Variance**

No further application changes or additions were received from the Fedorowicz and the application would remain on the agenda.

Correspondence

Registration and conference materials from the New York State Planning Federation were received and the deadline for registration is September 15th which is prior to the September ZBA meeting. The Secretary notified members they would need to decide prior to that date. Judy Traeger submitted registrations

for herself and Dick Traeger. Hank Lang would be attending and would submit his registration later in the week. Pat Volpe was undecided. Rays Ives would not be able to attend due to health and family matters and Kearney Mason has work commitments.

Secretary's Report None.

Public Participation None.

Adjourn At 7:40 p.m. a motion was made by Board Member Ives and 2nd by Board Member Volpe to adjourn the meeting. Ayes: Kearney Mason, Judy Traeger, Hank Lang, Pat Volpe, Ray Ives. Carried 5-0.

Respectfully submitted,

Diane R. Byrne
Secretary