

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
DECEMBER 18, 2006**

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

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

Old Business **Kyarsgaard, Matthew**
Ratcliffe, Michael
06-05ZBA – Area Variance
Tax Map #33.18-1-36 & 37

The Board reviewed the area variance criteria:

- **Can the benefit be achieved by other means?**

Board Member Lang stated he felt this was covered very thoroughly by Attorney Ray and Mr. Kyarsgaard at the November 20, 2006 meeting. All Board Members agreed it could not.

- **Undesirable change in the neighborhood character?**

All Board Members agreed it would not.

- **Is the variance substantial?**

Board Member Lang stated it is substantial but adequately explained as to how it will adversely affect Mr. Ratcliffe provided this Board receives an affidavit from Mr. Ratcliffe.

- **Will this have an adverse physical or environmental effect?**

All Board Members agreed it would not.

- **Is the alleged difficulty self-created?**

Board Member Lang stated he has no exception to this. All Board Members agreed it would not.

Motion by Hank Lang, seconded by Kearney Mason to grant Resolution No. 06-05ZBA for area variance as set forth in the application and would be effective upon the presentation of a letter or affidavit that Michael Ratcliffe is aware he is limited in future applications to the Zoning Board of Appeals and in a form acceptable to the Town Attorney. Ayes: Mason, Volpe, Lang, Traeger. Carried 4-0.

Attorney Avigdor stated he would be agreeable to Attorney Ray composing a letter to this Board stating that he discussed the matter of future variance applications by Mr. Ratcliffe with him and send a carbon copy to Mr. Ratcliffe. Board Member Lang stated his concern is that Mr. Ratcliffe be fully aware of the limitations this variance puts on his ability to apply to the Zoning Board of Appeals at a later date.

Minutes Motion by Board Member Traeger, seconded by Board Member Lang to approve the minutes of the November 22, 2006 meeting. Ayes: Mason, Volpe, Traeger, Lang. Carried 4-0.

**Perryman, Arthur & Kristine 06-04ZBA
Tax Map #25.1-22-2 – Area Variance**

Mr. Perryman presented a letter and new map to the Zoning Board, which addressed the questions of his legal basis for presenting these lots as buildable and whether this parcel to be subdivided is located on a public road. Board Member Lang inquired if the parcels shown on the map as Lots 1 and 2 are listed as a single parcel on the tax rolls. Mr. Perryman stated they were with deeded access on a 40-foot right of way. Board Member Traeger inquired of Attorney Avigdor if this subdivision were granted, would they still be grandfathered. Attorney Avigdor stated he has represented the Perrymans in the past and would the Perrymans be comfortable with him now representing the Zoning Board's interests. Mr. and Mrs. Perryman stated they would be.

Attorney Avigdor stated this is a legally existing 28-acre parcel with no interest of this Board of anything, which

may be grandfathered. The only interest of this Board would be if the new lot were subdivided because it would not meet the road frontage requirement which zoning law requires. Board Member Lang asked under which section of zoning law this requirement appears. Attorney Avigdor stated it is in Subdivision Law, Section 8, "Blocks and Lots", paragraph 3. Attorney Avigdor stated this was adopted in 1992 and the Town Board's purpose in requiring frontage on a public road was due to concern that private roads would not be continuously maintained or were too narrow and emergency vehicles would not be able to access parcels. Attorney Avigdor stated Mr. Perryman was correct in applying to the ZBA and the purpose of tonight's meeting was to deem the application complete or incomplete.

Board Member Lang inquired who currently owned the right of way. Attorney Avigdor stated it was owned by Charles Dreyer. Board Member Lang stated the current lot is legal because it has 240 feet of frontage on Conklingville Road. Discussion ensued regarding which zoning district the parcel would be within. It was determined that the lot Mr. Perryman wishes to subdivide would be in Residential Moderate Density requiring 3.2 acres. Board Member Lang asked Mr. Perryman when he purchased the parcel. Mr. Perryman stated two years ago and he said Mr. Dreyer also traded some property to gain more road frontage at that time also. Board Member Lang inquired if the tax maps in the Town Hall are up to date. Attorney Avigdor stated the tax maps are updated each year but each Town must purchase them and he was not aware how current the tax maps were in the Town Hall.

Mr. Perryman inquired if any of the Board Members had visited the site in question. None of the Board Members have. Mr. Perryman stated if someone physically looked at the site and right of way, they would look more favorably on the application. Board Member Traeger inquired who currently maintains the right of way. Mr. Perryman stated no one but it would be a very easy road to be plowed. Board Member Traeger stated if someone were to purchase the property and build a home there, it would need to be maintained and plowed. Board Member Lang stated there are public safety concerns such as fire and ambulances

vehicles being able to access the properties. He further stated who is going to insure that the road will be adequate for public safety. Board Member Volpe stated the maintenance of the road ten years from now was also a concern. Chairman Mason stated a good example would be the road, which follows Sand Creek, which for many years was a well-maintained road by Mr. Farrell until he died and then it fell into disrepair and has been closed. Mr. Perryman stated Sand Creek Road had damage from water and that was not the case with the right of way in his application. It was a solid road with no water or rocks to disturb the surface of the road.

Board Member Lang stated as the parcel stands presently it is a buildable lot with 240 feet of road frontage if it were not subdivided. Attorney Avigdor stated that Board Members previously had visited sites routinely but it would be designated as a meeting if more than two members attended and that would require additional record keeping. However, if any Board Members wished to visit the site, they would be encouraged to do so.

Motion by Hank Lang, seconded by Judy Traeger to accept the application as complete and schedule the Public Hearing for Thursday, January 18, 2007 at 7 p.m. Ayes: Mason, Lang, Traeger, Volpe. Carried 4-0.

Correspondence

NYS Legislative Commission on Rural Resources brochure "Promoting the Training of Municipal Planning and Zoning Officials" which was distributed to all members. This is a law, which had been enacted which requires all Zoning and Planning Board Members to receive four hours of training each year.

Secretary's Report

The Secretary reminded members who wished to attend the January Saratoga County Planning Annual Conference that they would need to get their registrations at this evening's meeting due to very limited space. Board Member Volpe will be attending. Board Member Ives will be contacted to determine if he will be attending.

Public Participation

None.

Page 5

December 18, 2006

Adjourn

At 7:45 p.m. a motion was made by Board Member Traeger and 2nd by Board Member Volpe to adjourn the meeting.
Ayes: Mason, Traeger, Volpe, Lang. Carried 4-0.

Respectfully submitted,

Diane R. Byrne
Secretary