

**TOWN OF DAY ZONING BOARD OF APPEALS  
MINUTES – REGULAR MEETING  
NOVEMBER 20, 2006**

**Members Present:** Kearney Mason, Chairman                      **Absent:** None  
Judy Traeger  
Pat Volpe  
Hank Lang  
Ray Ives

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

**Old Business:**                      **D’Allaird, Donald & Rebecca**  
**06-03 ZBA – Tax Map #42.12-1-73**  
**Area Variance**

The Board reviewed the area variance criteria (Board Member Ives recused himself):

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

All Board Members agreed it could not.

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

All Board Members agreed it would not.

- **Is the variance substantial?**

All Board Members agreed it was not substantial.

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

All Board Members agreed it would not.

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

All Board Members agreed it would not and was due to the presence of the ledgerrock.

**Motion** by Judy Traeger, seconded by Hank Lang, to grant Resolution No. 06-03ZBA for area variances (18 feet and 7 feet where 15 feet are required). Ayes: Mason, Volpe, Traeger and Lang. Abstention: Ives. Carried 4-1.

**Minutes** Motion by Board Member Traeger, seconded by Board Member Volpe to approved the minutes of the October 16, 2006 meeting. Ayes: Mason, Volpe, Traeger, Ives, Lang. Carried 5-0.

**Old Business**

**Fedorowicz, John & Laura**  
**06-01ZBA – Tax Map #43.6-2-10**  
**Area Variance**

The Secretary reported there was no activity on this application and this would be the final time it would appear on the agenda.

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

Mr. Ray stated this would be a boundary line adjustment which would reduce the Ratcliffe parcel by five one-hundredths of an acre. Mr. Ray further stated Mr. Kyarsgaard's carport and pond were located on the Ratcliffe property and the new map would jog around each and transfer only a minimal portion along the driveway. Board Member Traeger inquired if this would eliminate the grandfathering the Ratcliffe parcel. It was noted that currently the Ratcliffe parcel is substandard but buildable lot. Attorney Avigdor stated if this Board granted a variance to the Ratcliffe parcel, it would remain a buildable lot. Discussion ensued with Mr. Ray reviewing the map with the Board Members and establishing Lot 5 of Kyarsgaard is the lot in question and the location of the driveways on both the Kyarsgaard and Ratcliffe properties.

Attorney Avigdor stated the map shows Lot 5 owned in common by Matthew and Theresa Kyarsgaard and it appears all the other lots owned by Theresa Kyarsgaard are on a common deed to the best of Mr. Kyarsgaard's knowledge. He further stated these lots would not be included in this application but indicates the character of the neighborhood.

Attorney Avigdor inquired what the Kyarsgaards' intention was when they purchased these additional lots. Mr. Kyarsgaard stated they purchased it so no one else could build on them. Attorney Avigdor stated if this Board were concerned that by granting the variance, one lot would be made smaller and there would be concerns about density. This Board could require the applicant to commit that they will not build on the lands of Theresa Kyarsgaard. Attorney Ray stated these are lands of Theresa Kyarsgaard and not part of this application and she did not wish to tie up these lots. Board Member Lang inquired if Attorney Ray was representing Mr. Ratcliffe. Attorney Ray stated he was but that the paperwork indicating the same did not arrive at his office prior to this meeting and he was unable to present it to this Board. Attorney Avigdor stated he knew Mr. Ray and would verify the accuracy of his statement of representation.

Board Member Lang inquired of the location of the sideyard setback. Attorney Ray indicated it was in the location of the carport and driveway. Board Member Lang stated a 20 foot sideyard setback was required and this would be very significant. (The sideyard setbacks vary along the property line. At the carport it would be approximately 5 feet and at the area of the driveway back-up area it is also 5 feet. From that point it would be 22.45 feet and it would gradually narrow down to 6.9 feet where it would intersect near South Shore Road.) Mr. Kyarsgaard stated only a carport and driveway was located on this sideyard and that he and Mr. Ratcliffe have worked out a reasonable agreement in which Mr. Kyarsgaard would exchange the labor and materials of an engineered septic system which would require no variances on the Ratcliffe parcel in exchange for this boundary line adjustment. Board Member Lang inquired if the Ratcliffe property slopes down to the Kyarsgaard parcel, would Mr. Ratcliffe be able to site a house, etc. on the parcel and meet all setback requirements. Board Member Ives stated this Board could make a stipulation regarding the Ratcliffe property setbacks, as the granting of this variance would make a substandard lot more substandard.

Attorney Avigdor stated if this Board is concerned about

density and taking from one substandard lot and giving to another substandard lot, they should consider that they are beginning with two parcels and ending with two parcels. They are not increasing density and the setback on the Kyarsgaard parcel would be closer to conforming.

Chairman Mason inquired if Lots 1 through 4 under Theresa Kyarsgaard's ownership would be buildable individually. Attorney Avigdor stated to the best of his understanding, Lots 1 through 4 are single lots for subdivision purposes only and they appear on a single deed. However, he cannot answer with complete certainty without reading the deed. Attorney Ray stated he was 90 percent certain Lots 1 through 4 appear on the same deed. Chairman Mason stated his concern was density. Attorney Avigdor stated this Board could request additional information from Mr. Kyarsgaard. Chairman Mason inquired if the Ratcliffe parcel was a single lot. Attorney Ray stated it was and it was .844 acres. He further stated the whole area was cut up into 50 foot strips in a survey dating back to 1928 which was an extensive subdivision. Attorney Avigdor stated the reason the Town Board defined the size of a parcel was due to not wishing to honor old maps, which included parcels which were too small prior to Town or APA adopting subdivision regulations.

Board Member Traeger stated she felt the application was complete and Board Member Volpe agreed stating it was well presented. Board Member Lang stated the applicant would need to update the date on the notification letter to adjoining property owners as it currently reads "November 21<sup>st</sup>". Attorney Ray stated it would show the correct date. Board Member Lang stated he would like assurance that the Ratcliffe property will maintain the setbacks because he did not wish to grant another variance. Attorney Avigdor stated the granting of this variance with Mr. Ratcliffe's consent would preclude any additional variances from being able to be granted because it would be a self-created hardship. Board Member Lang stated he would like assurances that Mr. Ratcliffe is aware that by granting this variance, he is of the understanding that the narrowing his property will create some restraints.

Mr. Kyarsgaard stated it would still be an approved lot with an engineered septic system approved by the Town. Board Member Lang it will limit where he locates his house and he wishes assurances that Mr. Ratcliffe is completely aware of this. Attorney Ray stated he would make Mr. Ratcliffe completely aware of all the implications involved if this variance is granted.

**Motion** by Board Member Traeger, seconded by Board Member Volpe to accept the application as complete and schedule the Public Hearing for Monday, December 18, 2006 at 7 p.m.

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

Board Member Traeger stated this area variance for the road frontage requirement would need to indicate if it is located on a private road. Board Member Lang stated the map is not helpful in clearing up questions. Attorney Avigdor stated the Planning Board minutes revealed it was not determined if was a public or private road. Discussion ensued that this was the former property of Charles Dreyer located before Walter Maxfield Road and behind the gray house. Board Members agreed they needed additional information. Board Member Lang stated the applicant needed to provide information why he believes this lot is buildable. Attorney Avigdor stated if it were located on a private road or right of way, it would be a substantial variance. Discussion ensued which determined it was currently a legal lot but would lose its grandfathering when a new parcel is created.

Chairman Mason stated a complete map of both properties would be needed, what Mr. Perryman's legal basis for presenting his lot as buildable is, and whether it is located on a private or public road. A public road is defined as being maintained by government (state, county or town), and frontage cannot be counted if it not on a public road.

Attorney Avigdor stated if this Board grants this variance then the Planning Board's decision would be fairly straightforward. The lot sizes are acceptable and the

Planning Board will not have grounds to turn down the subdivision. The real yes or no decision comes from this Board and what the applicant wants to happen stops here.

**Correspondence**

All Board Members were provided with a schedule of the 2007 meeting schedule and had no conflicts with the dates. The new mandatory training requirements were discussed. Attorney Avigdor stated previously each member was required to receive four hours training in their first year and two hours thereafter. The mandatory training would now require four hours each year, which would be approved by the Town Board instead of himself. Attorney Avigdor suggested that this Board consider requesting a blanket approval of training provided by Saratoga County Planning, the Planning Federation, APA and other organizations, which had provided training in the past. He stated that since the Town Board only meets once a month, this blanket approval would be timelier. Discussion ensued regarding how to present this to the Town Board, whether a motion would be needed, and being placed on their agenda. Board Member Lang stated he could make up a draft and review it with Planning Board Chairman Cox and bring it back to this Board at the December meeting. This would avoid troubling the Town Board with multiple requests for training.

**Secretary's Report**

None.

**Public Participation**

None.

**Adjourn**

At 7:55 p.m. a motion was made by Board Member Traeger and 2<sup>nd</sup> by Board Member Ives to adjourn the meeting. Ayes: Mason, Ives, Volpe, Lang, Traeger. Carried 5-0.

Respectfully submitted,

Diane R. Byrne  
Secretary