

TOWN OF DAY ZONING BOARD OF APPEALS
Public Hearing – November 17, 2008
HILICUS, Christine/PEEK, Donna

Members Present: Dave Davidson, Chairman
Judy Traeger
Pat Volpe
Hank Lang
Ken Johnsen
David Avigdor, Town Attorney

Members Absent: None

Public Present: Mr. and Mrs. Herbert Hilicus
Carl Thurnau
Larry Olinsky
Mr. and Mrs. Chip Johnson
Donna Peek
Steven Dweck

Proof of notice having been furnished, the Public Hearing regarding Christine Hilicus and Donna Peek, Tax Map # 31.15-2-16 was opened by Chairman Davidson.

Herbert Hilicus, speaking for the applicants, reviewed the application. He stated Ms. Peek and his wife, Christine Hilicus wished to subdivide the parcel which they owned in common into two lots, could not meet the acreage requirement and were referred to the Zoning Board of Appeals by the Town of Day Planning Board. Currently, there are two separate residences on the parcel, two driveways, two wells and two septic systems.

Board Member Lang inquired of Town Attorney Avigdor, if the ZBA were to grant the variance; under zoning law would the setback rules which currently apply on the parcel apply to each new subdivided lot? Town Attorney Avigdor stated if this Board approves the variance and the Planning Board approves the subdivision, there would be two lots and the setback requirements would apply to each lot. Board Member Lang stated he wished to make the applicants aware that once subdivided; the setbacks would become much narrower than they are currently if they had any building plans they wished to do in the future. Mr. Helices stated he was aware of this and simply wished to have two separate deeds on the properties.

Chairman Davidson stated for those in attendance, the issue with this parcel is that there are two residences on this single parcel which predate zoning and to divide them as requested by the applicants would create two substandard lots. He further stated what this Board decides will exist with the land. Board Member Johnsen stated he felt there was more to issue than that, it was acknowledging what has already occurred and no new building was planned. He further stated nothing in his opinion would change or be affected by an approval of this Board. Chairman Davidson stated while that was true, he

was confused why this application was referred to the Zoning Board. He stated he was not present at the October meeting but there was an alternative way to achieve this through a gift lot exemption. Chairman Davidson stated if this Board is to grant a variance, they are charged with granting the minimum. He stated this subdivision was approved many years ago by the Adirondack Park Agency (copies of Project Permit dated April 10, 1986 and Jurisdictional Determination dated May 6, 2008 attached). Town Attorney Avigdor stated the conveyance to each other may not be a gift. He further stated that it is unlikely either would convey their portion of the parcel if in exchange, the remaining portion is not conveyed back. Therefore, it would not be a gift. Town Attorney Avigdor stated even if it were a gift, there may be a reason for the applicant to appear before this Board. The applicants may in the future tear down a structure and would wish it to remain a building lot. If it is an approved lot, it would remain a building lot. Chairman Davidson stated he understood.

Chairman Davidson asked for any other comments from the public or the Board. Board Member Volpe stated if this variance is granted, the applicants need to understand the setback requirements may prevent them from doing any future building.

Motion by Board Member Lang, seconded by Pat Volpe to close the Public Hearing at 7:10 p.m. Ayes: Dave Davidson, Judy Traeger, Pat Volpe, Ken Johnsen, Hang Lang. Carried: 5-0.