

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
APRIL 23, 2007**

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

Members Absent: None

Chairman Lang called the meeting to order at 7 p.m.

Approve Minutes Motion by Judy Traeger, seconded by Board Member Davidson to approve the minutes of the March 19, 2007 meeting. Ayes: Hank Lang, Judy Traeger, Pat Volpe, Dave Davidson, Ken Johnsen. Carried 5-0.

Old Business None.

New Business None.

Correspondence Capital District Regional Planning Local Government Planning and Zoning Workshop to be held on May 7th at York will be attended by Chairman Lang and Board Members Johnsen and Davidson.

There was no interest in the conference on Zoning Board Procedures to be held in the Town of Hague.

Secretary's Report None.

Public Participation John Jordan stated he was gathering information regarding variances, how they are issued and if they can be revoked. Mr. Jordan stated he owns the parcel where the Carbone Stump Dump is located and has been operating with an invalid permit since 2003. He understood a variance was issued by the Zoning Board in 1994 or 1995 granting a use variance. He inquired how does a person receive a variance and how long does a variance exist.

Chairman

Lang inquired if it was an illegal variance. Mr. Jordan stated the variance was not illegal but the permit

was.

parcel to
There is or was a
predecessor as landowner
Avigdor stated there
issues on the validity of that

Attorney Avigdor stated this matter is before the Planning Board. Mr. Jordan is the current landowner and that the previous landowner leased a 3 acre portion of this Mr. Carbone to be used as a stump dump. lease between Mr. Jordan and his and Mr. Carbone as tenant. Attorney is or was because there may be

Avigdor
stump dump a legal

lease based on whether Mr. Carbone has violated the lease. Attorney Avigdor further stated neither the Planning Board nor the Zoning Board have jurisdiction over the lease as this is a civil court matter. As Attorney recalls, the Zoning Board designated a

Day
were a
permit

use in that zone. At the time the original permit was issued as an APA Regional Permit through the Town of Planning Board. The Department of Environmental Conservation issued also issued a permit. There number of conditions including the filing of the within 60 days with the County Clerk which was not done. Mr. Carbone's permit was revoked and he came before the Planning Board with an application to either reissue the permit or forgive the non-filing. A Hearing has been scheduled for May to determine if permit will be reissued.

Public
this

Attorney Avigdor stated that the decision of the Zoning Board in 1994 to issue a variance would last forever and run with the land and not the owner. This does not mean Mr. Carbone can operate illegally. However, if the use is abandoned for a number of years, a variance could expire and cease to exist. Attorney Avigdor stated he would have to research to see if this was a typical scenario regarding these variances. He further stated Mr. Jordan should bring the matter of Mr. Carbone exceeding the limits of the variance before the Planning Board. Mr. Jordan inquired how Mr. Carbone would exceed the limits of the variance. Attorney Avigdor stated he did know because he was unaware of what was going on at the site. He sited an example would be of a highway variance where 100 feet are required and a variance allowing 85 feet is granted. The highway is then constructed

it to be
and it

is 82 feet wide. While this does not make it illegal, it can be corrected and the issue would fall with the enforcement agency and in the case of the stump dump, that would be

Ken Metzler.

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Board Member Volpe inquired if the land changes ownership, the variance would remain? Attorney Avigdor stated it would not go away with a change in ownership. Board Member Volpe stated he understood that but a new owner may not want the stump dump even though it was allowed. Attorney Avigdor stated the validity of the lease would come into question and whether or not the permit would be reissued and only a civil court could determine that and not the Boards. Board Member Volpe stated the new purchaser may not be aware of the presence of the stump dump and may not have purchased the property if he knew it contained a stump dump. Attorney Avigdor stated that is why the Planning Board required it be filed so it would be in the chain of title.

Mr. Jordan stated that a lack of legal operation for one or two years would cause the variance to expire. Board Member Volpe stated if it were used illegally, it would create grounds to withdraw the variance. Attorney Avigdor stated he is not aware of a variance being withdrawn, however, if the grandfathered use is discontinued, it would expire. He would have to research the matter and obtain a copy of the variance which was issued in 1994. Chairman Lang this Board should adjourn this meeting because it is outside the jurisdiction of this Board with any further discussion to be heard outside of the meeting.

Adjourn

At 7:15 p.m. a motion was made by Ken Johnsen, seconded by Board Member Traeger to adjourn the meeting. Ayes: Hank Lang, Judy Traeger, Pat Volpe, Dave Davidson, Ken Johnsen. Carried 5-0.

Respectfully submitted,

Diane R. Byrne
Secretary