

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
AUGUST 17, 2009**

Members Present: Ken Johnsen, Chairman **Members Absent:** None
Judy Traeger
Hank Lang
Dave Davidson
Pat Volpe
David Avigdor, Town Attorney

Motion by Dave Davidson, seconded by Board Member Lang to approve the minutes of July 20, 2009 with a correction to Page 3, line 3 change from “pole barn could be located back ...” to “pole barn could be located back further from what was designated”. Ayes: Johnsen, Traeger, Lang, Volpe, Davidson. Carried: 5-0.

Old Business: **MARTIN, Donald 09-03ZBA**
 Tax Map #30.-2-9 Area Variance

The Board reviewed the area variance criteria:

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

Chairman Johnsen stated the Board does not have information on the cost of additional excavation and only if Mr. Martin was indigent; could he not be able to afford the cost of excavation. Board Member Lang stated it could be moved but whether it would be economically feasible, he would not have an opinion on. Board Member Traeger stated she believed it was feasible to move the building back but the Board would not know if it would be cost prohibitive. Board Member Volpe stated it could be achieved but difficult to predict how costly. He stated Mr. Martin owns 23 acres and should be able to site the pole barn in a different area not requiring a variance. Board Member Davidson stated from his observation at the site, the site has been graded and to change the location would require excavation. He stated perhaps he was considering feasibility differently but did not believe it would be worth the effort to make the change.

- **Undesirable change in the neighborhood?**

All Board Members stated it would not.

- **Is the variance substantial?**

Board Member Lang stated 20 feet where 75 feet are required would be substantial. Board Member Traeger stated it would be more than she would like but was not huge. Chairman Johnsen and Board Members Volpe and Davidson stated considering the neighborhood, they would not consider it 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 was self-created.

Town Attorney Avigdor stated the Board should now base their decision on the information he provided during the Public Hearing regarding Subsection (c), determine if the variance should be granted or denied. Or, grant a different variance because as Subsection (c) states, the Board should grant the minimum variance that it shall deem necessary and adequate at the same time.

Motion by Dave Davidson, seconded by Board Member Lang to grant a 20 foot area variance to Donald Martin, Tax Map #30.-2-9. Ayes: Johnsen, Traeger, Lang, Davidson, Volpe. Carried: 5-0.

Motion by Dave Davidson, seconded by Board Member Traeger to declare Town of Day Zoning Board of Appeals lead agency for SEQR purposes. Ayes: Johnsen, Traeger, Volpe, Lang, Davidson. Carried: 5-0.

Motion by Dave Davidson, seconded by Board Member Lang that this project will not have a negative environmental impact. Ayes: Johnsen, Traeger, Volpe, Lang, Davidson. Carried: 5-0.

Board Member Lang stated he would like to work from a checklist at the time of the public hearing to be certain all resolutions and procedures are followed. Town Attorney Avigdor stated the Board has not been remiss in their duties by not having made the last two motions at previous public hearings but it does complete the process. There could be a

challenge on the grounds that this Board did not consider the environmental impact.

Town Attorney Avigdor stated there may be cases in the future which may create an environmental impact. He further stated contained on the DEC website is a SEQR guide and “cookbook” which would serve as a checklist for Board Members.

Mr. Martin inquired if he should change the dimensions of the pole barn to 24 x 40, would he be required to reappear before the Board. Town Attorney Avigdor stated if the building is smaller he would not have to come back before this Board. However, if he increases its size or if the setback is changed, he would be required to submit a new application.

New Business: None

Correspondence: Chairman Johnsen stated he will be attending the Planning Federation conference to be held in Lake Placid in September.

Town Attorney Avigdor stated he will be on vacation from September 7th through September 21st and will not be at the September Zoning Board meeting.

Board Member Lang stated he will not be attending the November 16th meeting.

Secretary’s Report: None

Public Participation: None

Motion by Dave Davidson, seconded by Board Member Lang to adjourn the meeting at 7:30 p.m. Ayes: Johnsen, Traeger, Davidson, Lang, Volpe. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary