

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
AUGUST 18, 2008**

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

Minutes Motion by Ken Johnsen, seconded by Board Member Volpe to approve the minutes of the July 21, 2008 meeting. Ayes: Dave Davidson, Judy Traeger, Pat Volpe, Ken Johnsen. Carried: 4-0.

Old Business: **HOFFMAN, Richard/PETRO, Richard
08-03ZBA Tax Map #33.14-17-2 Area Variances**

Chairman Davidson stated the Board would deliberate on the Hoffman/Petro application this evening. Board Member Johnsen proposed the wording of a motion “to deny the variance for 16 feet in lieu of the 900 feet road frontage required”. Town Attorney Avidgor stated the Board should review the five criteria. Board Member Johnsen withdrew the motion.

The Board reviewed the area variance criteria:

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

The Board finds that the benefit could be achieved by other means feasible to the applicant. Board Members Johnsen, Traeger and Volpe stated there are other road alternatives.

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

The Board finds that the granting of this variance will cause an undesirable change in the neighborhood. Board Members Johnsen, Traeger and Volpe stated it would add to the problems of drainage being experienced by adjoining property owners. Chairman Davidson stated the only change is undeveloped land would now become developed.

- **Is the variance substantial?**

All Board Members agreed the variance is very substantial.

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

Board Members Traeger, Volpe and Johnsen stated it would have an adverse physical or environmental effect on the neighborhood exacerbating the current drainage problems.

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

The Board states it is not self-created. The difficulty exists because the lots do not have sufficient road frontage.

Town Attorney Avigdor stated the Board may wish to include in their motion the potential impact on access by emergency vehicles to address the needs of multiple houses. Board Member Johnsen inquired if this did not come under the purview of the Planning Board. Town Attorney Avigdor stated it would have a potential effect on the neighborhood or district. He further stated if a town road were constructed and there was frontage on the road which would be sufficient width with sufficient paving standards, slope, etc., town vehicles and emergency vehicles would have access to the residences. He stated lack of frontage would in his opinion have a bearing on the criteria. Town Attorney Avigdor stated it would be the Board's decision to include this in their motion. Comments were received from the public regarding safety and access and Town Attorney Avigdor was refreshing the Board's recollection of those comments.

Motion by Ken Johnsen, seconded by Judy Traeger to deny Application No. 08-03ZBA, Richard Hoffman/Richard Petro, Tax Map # 33.14-17-2 based on the four criteria which state the benefit can be achieved by other means, that it is an undesirable change to the neighborhood, the variances are substantial, and it would have an adverse effect on the physical environment of the neighborhood. Ayes: Ken Johnsen, Judy Traeger, Pat Volpe. Nay: Dave Davidson. Carried: 3-1.

New Business: The Secretary stated Mr. Logan representing Hoffman/Petro had inquired about the Hoffman lot where a proposed garage/dwelling unit would be located and the need for a variance for setback requirements. Mr. Logan had submitted an application via fax. Code Enforcement Officer Metzler stated the parcel currently has a

house on it, the remaining portion is contiguous to the same deed and a second home would not be allowed. Therefore, an application for a variance could not be allowed until the applicant subdivided the parcel. Town Attorney Avigdor stated this could be accomplished by either obtaining a use variance for a second home on a single parcel or under Subdivision Law, an applicant can, without invoking the jurisdiction of the Planning Board or the Adirondack Park Agency which has a similar law, divide property along a public road on their own.

Code Enforcement Metzler agrees this could be done but it would create a substandard building lot which would be non-buildable. Town Attorney Avigdor agreed and stated under Town of Day Subdivision Law an applicant would not be in violation if a subdivision was made along a public road. However, under Zoning Law because it would be a newly created parcel, it would not be grandfathered and may not have the dimensions for road frontage and a variance would then be necessary. This would be an application for an area variance because this would be a lot which would be substandard in acreage and road frontage but generally more attainable than a use variance. Town Attorney Avigdor stated it may or may not be attainable but under legal standards but more approachable. Therefore, the options are to apply for a use variance as the property currently exists or an area variance after a new deed is filed indicating a subdivision by road had taken place and then apply for an area variance.

Town Attorney Avigdor stated, given those factors, the applicant may wish to review the Town laws and determine how they would wish to proceed. The applicants stated they would review the Ordinance and then decide how to proceed.

Correspondence: None.

Secretary's Report: None.

Public Participation: None.

Page 4

August 18, 2008

Motion

At 8:40 p.m. a motion was made by Ken Johnsen, seconded by Board Member Traeger to adjourn the meeting. Ayes: Dave Davidson, Judy Traeger, Pat Volpe, Ken Johnsen. Carried: 4-0.

Respectfully submitted,

Diane Byrne
Secretary