

TOWN OF DAY ZONING BOARD OF APPEALS

Public Hearing – August 18, 2008

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

Members Absent: Hank Lang

Public Present:	Jeff & Shannon Gray	Ernie & Dee Ziobrowksi
	Robert Dewey	Faye & Paget Newbury
	Ted Mirczak	Peter O'Connell
	Suzanne Denn	Phillip Logan
	Gil VanGuilder	Caitlin & Mark Souweidane
	Richard & Joanne Hoffman	Katharine Bamberg
	Lynne Rayfiel	Jack Vaillancourt
	Mary Ann Johnson	Ken Metzler
	Bill & Cynthia Cromie	Frances Cromie
	Robert Damberg	Roy & Deborah Meyers
	Vic & Merle Huebner	

Proof of notice having been furnished, the Public Hearing regarding Richard and Joanne Hoffman and Richard Petro, Tax Map # 33.14-17-2 was opened by Chairman Davidson at 7:05 p.m.

Chairman Davidson stated for public information that the decision this Board would be making would be regarding land use which would not restrict members of the public from making comments about issues not involving land use. He further stated the decisions of this Board live with the land in perpetuity. The decision of this Board is whether or not to grant a variance only involving the lack of 900 feet of road frontage on a public road required for each subdivided lot of a 29+ acre parcel owned jointly by the Hoffman and Petro families. The Secretary read two letters which were submitted by Supervisor Mary Ann Johnson in response to a letter from the Chairman of the Zoning Board of Appeals (copies attached) and a letter from adjoining property owners Roy and Deborah Meyers (copy attached).

Phillip Logan, representing Hoffman/Petro, presented a colored drawing of the proposed subdivision stating the access to the 29+ acre parcel was a 16 foot skid road which was the only road frontage on a public road for the parcel. He stated the parcel now consisted of overgrowth resulting from previous logging with erosion occurring. The Petro family has been attempting to save the property from further run off. The Hoffmans and Petros are natives to the area with lakefront homes directly in front of the 29+ acre parcel and together they were trying to establish a family compound accessed by a private driveway. Mr. Logan stated they were working with APA with respect to

density and were attempting to cause minimal impact on the environment by utilizing one narrow driveway for the three residences. It was the intention to also build as “green” as possible and Mr. Logan is in partnership with a landscape architect with that same intention. He stated under APA regulations 8.5 acres were required for each residence which they were able to meet. The map indicated pull off areas where a vehicle could pass another in a few areas up the proposed driveway.

Chairman Davidson stated if the ZBA grants the variance, the site planning would be under the jurisdiction of the Planning Board and the role of the ZBA is just access. Mr. Logan stated Gil VanGuilder, the original surveyor of the parcel, was attempting to plot the sites of each lot taking into consideration drainage issues, septic systems, etc. with a more detailed submission to follow. Chairman Davidson asked for any public comment.

Ken Metzler, Code Enforcement Officer, stated in reviewing the application found it to be confusing as to which kind of variance the applicants were applying for, i.e. a use or area variance. He stated a use variance would change the use of the 29 acre parcel from one residence to three residences and an area variance would be required for 884 feet from the 900 feet requirement for road frontage. Chairman Davidson stated the Board was remiss in dealing with the application and discussed it later with the Board with the agreement they would proceed with the application. He stated the Board was focused on the appended material rather than the front page of the application. Chairman Davidson stated they are concerned with the 29 acre plot and the required 300 feet of road frontage. Code Enforcement Metzler stated the ZBA inquired of the Town Board the reasons for required frontages and he was present at the original meetings of the committee which authored the ordinance. He further stated numerous private roads accessing “ribbon” lots were being created which were so small it was difficult to accommodate septic systems and wells. The gravel driveways were steep and dangerous so the Zoning Board at that time felt it necessary to require proper frontage which was worked out mathematically with the Town’s consultant and the results have been positive. He further stated there are continual problems with private roads which he deals with at least three times per week regarding plowing and repairing. He stated lots being divided on private roads rather than public roads historically do not work. Code Enforcement Officer Metzler referring to Section 11.5(a)(2) which stated variances will be granted for minimal amounts and not substantial and this variance is nearly 98% of what is required. He stated the lot widths are important and that information could be found on page 85 of the Ordinance. Chairman Davidson confirmed that the variance sought is an area variance. Town Attorney Avigdor inquired of the applicants if they are applying for an area variance for 16 feet in lieu of the 900 feet that are required. Mr. Logan agreed and stated in the form letter to adjoining property owners; it was indicated as an area variance.

Town Attorney Avigdor stated Ken Metzler and Mary Ann Johnson are correct in stating that there are no original members of the Board available and Ken was present during the discussions of the zoning laws. He stated the Town Board was concerned about access of emergency vehicles and the lack of access of non-emergency vehicles (for example, trash pick-ups).

Peter O'Connell, attorney representing Bill and Cynthia Cromie, long time residents and adjoining property owners, presented the Board with a memorandum stating opposition to the variances (copy attached). In his presentation, Mr. O'Connell reviewed each of the criteria the Board must consider regarding the variances. He stated much has been stated about the parcel being divided for the purpose of a family compound and however, when dealing with variances, the Board would be dealing with the land and not the persons involved and it is not part of the decision making process. He stated the existing logging road dips and sends the run off directly on the Cromie property. In winter, any snow plowing would deposit the snow on the Cromie property. Attorney O'Connell reviewed APA Guidelines which would be most relevant to this application suggesting roadways of 26 feet in width (18 feet driving surface and 4 feet of shoulder width on each side). He further stated the proposed roadway could be better served with switchbacks. A structure is placed on the juncture of the roadway which appears on the applicants' map to make it appear it is an access to the property and an alternative location could not be utilized. He stated that that situation is of the applicants' creation.

Lynn Rayfiel, 1266 Kathan Road, stated during planning stages of her fairly new home, the run off from the mountain was taken into consideration. The cellar walls and first floor are constructed so that the drainage flow is around the house and not into the house. She further stated there are still problems with considerable flow down the mountain and into the lake area. Mrs. Rayfiel stated the Town of Day has constructed an area on one side of their property to deal with excessive run off and on the other side there is a small stream which will flood often. She felt if there were changes in the mountainside from excavation for new homes, there would be greater problems with run off.

Ernie Ziobrowski, Kathan Road, stating previously Al DePaulo clear cut the side of the mountain with the intention of building and then was denied the ability to build. He stated he is concerned this area will be as overdeveloped as Saratoga Lake with rows and rows of homes resulting in septic overflow and excessive weed growth. He stated he moved away from those problems, the Town has rules regarding this situation and we should not be discussing this situation. His concern was for future generations, this is a very special area and overdevelopment would spoil it.

Paget Newberry, 1260 Kathan Road, stated he is a former fire inspector of the Village of Nyack and former Planning Board of the Village of Nyack. He stated this proposed road has numerous problems without the consideration of emergency vehicles.

The inability of emergency vehicles to be able to turn around, tanker trucks would not be able to make the grade and the drainage issues are the major issues he is concerned with. He stated examples of road wash outs from excessive run off would be located at 1321 Kathan Road near Nancy Rayfiel and Jenny Lane and the Schuler residence at 1198 Kathan Road is also a continual problem. He suggested Highway Superintendent Scott York be contacted about the problems encountered over the last 30-60 days with run off. He stated this is a very ambitious project and a substantial variance of over 800 feet. He further stated this Board has not granted variances for 40 foot setbacks for garages. He is also concerned that there are other large parcels on Kathan Road which are currently not developed and contiguous with this property and he is concerned what may occur in the future if this variance is granted. Mr. Newberry stated the Town has a master plan and it took into account during the initial deliberations, the problems with private roads. He stated there is a paper road which runs the across the mountain and parts of it have been put into place. He is aware the master plan is being updated and he is not sure if this is one of the reasons for the update but his concern is virgin land available for development and that future planning should take this into consideration. He understands this is going to be a family compound at the present but circumstances change and it may become three individual properties and increase the services of the Town. Mr. Newberry stated the Town should consider a moratorium until that update is completed.

Jeff Gray, 1212 Kathan Road, stated his family has owned property on Kathan Road since the 1950's. He stated while he understands this would be a family compound, the Hoffmans have one child and the proposal is for three residences. His concern is the issues with water run off more so in the spring and winter. He stated there is an area on South Shore Road where the parcel has been clear cut and it is an eye sore. He further stated there is no way to predict if there will be septic run off problems with the hard pan soil, what would happen if those problems occurred and who would be responsible for correcting them. Mr. Gray stated the Rayfiel property has numerous run off problems and they are not located in that steep of an area.

Suzanne Denn, 1155 Kathan Road, stated this was a very substantial variance and should not be considered in view of the resulting problems stated by others and is in agreement with the statements made by others.

Mary Ann Johnson stated she is speaking as a private citizen and has great concern about private roads. She stated the Highway Superintendent is not obligated to make any repairs on private roads. She stated recently there were considerable problems on Jenny Lane and private vehicles could not get out onto Kathan Road and an emergency vehicle would not have been able to gain access there. Mrs. Johnson stated there is no such thing as a "minimal driveway" as vehicles need room to pass and emergency vehicles need room for access. She considered a 98% variance as an insult to the Zoning Law and the road frontage requirement is being treated as a moot point in the application. She further stated there have been previous denials for lack of required road

frontage on public roads previously by this Board. She feels this application needs very serious deliberations.

Lynn Rayfiel, speaking for the driveway at Nancy Rayfiel's house, stated the house situated as high as it is, has always flooded due to the water run off and the basement has always needed to be pumped out every winter. She feels the main problem is water and if the area is disturbed what will be the result.

There was discussion of another property and the reason for denial of building permits. Town Attorney Avigdor stated there was never an application and if another government agency took action, he was not aware of it. He further stated all discussion should be made regarding this application only.

Mr. Logan stated he would like to address the comments of the public. He stated he is a professional and those others involved in the planning of this project are also professionals experienced in dealing with most of the issues which concern those of the public who spoke. If the area is left as it is, erosion will continue to occur. Mr. Hoffman has been creating banks to elevate some of the problem. He further stated this type of problem has been a huge issue in his profession and careful management on how to control run off will create solutions through the development of these properties. Mr. Logan stated his office promotes native species and avoid nutrients which would mix with the run off and cause problems.

Town Attorney Avigdor stated the next step for this Board would be to close the Public Hearing if they are comfortable with the information they have received. The Board would need to make a decision within 62 days. If the Board would require any further information, they should hold the Public Hearing open until they received further submission. This Board would only be deciding on the area variance for 16 feet where 900 feet are required. If the Board grants the variance, the Planning Board would receive it as a three-lot subdivision. This application was originally before the Planning Board and the subdivision was denied due to lack of road frontage and referred to the ZBA. Mr. Logan asked if there is an appeal process. Town Attorney Avigdor stated there is an appeal process through State Court under a judicial review. Chairman Davidson stated the applicant can return to the Board with a substantially different application or wait one year to return with the same application. Town Attorney Avigdor reviewed different scenarios to indicate how substantially different the application must be.

Mr. Gray inquired if the adjoining property owners would be advised what the Board's decision would be in this application. Town Attorney Avigdor stated it would be public information and the Board may decide on this application at this meeting.

Gil VanGuilder asked for a clarification on requirements for frontage on private roads versus public roads. Town Attorney Avigdor stated the requirement is that it must have road frontage on a public road.

Mr. Logan, speaking for the family, would like to request a continuance to modify the design as the drawing may have been confusing. He stated he would create a switchback and utilize the front property as an entrance way. He further stated two of the lots are grandfathered with the ability to produce two dwellings but he would like to work with the community. Town Attorney Avigdor stated in terms of what the Board has just learned, it may be advisable to hold the Public Hearing open. He reminded the applicants the decision this Board would make would be for the road frontage requirements and design changes would be under the purview of the Planning Board. This Board has no jurisdiction to approve the driveway plans, only frontage and he is not certain if any changes made would affect the Zoning Board. Town Attorney Avigdor stated if the applicants would request the Public Hearing to remain open, they should make that request at this time. Joanne Hoffman stated it was the intention of the family in purchasing this parcel to stop the degradation of the property. She stated she and her brother, Richard Petro, who own the property jointly have three children who would share the property. Bill Persons, previous owner of the parcel, was responsible for the major destruction of the mountain.

Mr. Newberry stated the grandfathering was eliminated when the property was subdivided. Town Attorney Avigdor stated he did not have any knowledge that the property was subdivided and for the time being, he is taking as truth the representation of the applicant that this is a lot which existed before the Town has a Zoning Law and prior to APA law and accordingly has a grandfathered building right. That will be critically reviewed by the Town either on an application before the Planning Board or on an application for a building permit but that is not before this Board and Town Attorney Avigdor has not researched it. Supervisor Johnson stated she was aware that the applicant was given a "JIF" form for the APA and when that is completed, it will answer any questions on previous subdivisions. Code Enforcement Officer Metzler stated the change in the shape of the driveway does not change the requirement for road frontage.

Mrs. Hoffman stated she would request the Public Hearing be closed, that the family have heard the comments from the public and they were making a good faith attempt to preserve the property.

Motion by Judy Traeger, seconded by Ken Johnsen to close the Public Hearing at 8:15 p.m. Ayes: Dave Davidson, Judy Traeger, Ken Johnsen, Pat Volpe. Carried: 4-0.