

Town of Day Zoning Board of Appeals Public Hearing – December 19, 2005

Members Present: Kearney Mason, Vice-Chairman **Absent:** Kathy Prud'homme
Judy Traeger
Ray Ives
Pat Volpe
David Avigdor, Attorney

Public Present: Timothy Neet
Robert Smith
Willard Smith
Greg Weaver

Proof of notice having been furnished, the Public Hearing regarding Timothy Neet, Tax Map No. 43-1-46 was opened by Vice-Chairman Mason at 7:05 p.m.

Attorney Avigdor stated he had represented adjoining property owner Richard Quodomine at one time and Mr. Quodomine contacted Attorney Avigdor in reaction to this application. Attorney Avigdor informed Mr. Quodomine that he would not be able to represent him due to a conflict of interest in his representation of the Town of Day. Mr. Quodomine was informed he would have to seek other counsel. Applicant Neet stated he had spoken with Attorney Melissa Lescault who was representing Mr. Quodomine and cleared up the confusion on which boundary the area variance was being sought for. Mr. Neet had sent out the first notification stating the area variance would be sought for Lot 45 (the Quodomine parcel) when it should have read Lot 47 (the Smith parcel). Attorney Avigdor read into the record a letter received from Attorney Lescault stating Mr. Quodomine wished a stipulation be added to the motion approving the Neet variance that would state if Mr. Neet changed the location of the structure, a new application would be required. It was noted that Mr. Quodomine objects to any variance would impact on his property line.

Mr. Quodomine also objected to the first notification due to the fact it was sent to the wrong address and due to the fact that the second notification was faxed to Attorney Lescault, Mr. Quodomine was not certain that all the other adjoining property owners were notified properly. Therefore, Mr. Quodomine objects to the defective notification. Attorney Avigdor stated Mr. Neet would have to sign the affidavit stating all adjoining property owners that Mr. Neet would have obtained all the addresses from the tax rolls and could not be responsible for those records.

Mr. Neet stated it was necessary to locate his structure 25 feet from the property line due to massive ledge rock, which would require extensive blasting to locate a structure in the center of the lot, which was narrow to start with. Mr. Neet stated the well and septic were in place. Board Member Ives stated he visited the site and there was massive ledge rock present.

Mr. Robert Smith, affected adjoining property owner, stated he did receive notifications and had concerns with the granting of the variance. He stated he was able to meet all side yard setbacks with added expense. Mr. Smith stated while he did not wish to start difficulties for Mr. Neet, he felt there was an alternate location for the structure, which Mr. Neet wished to construct and be able to comply with the requirements. He stated that the location of the Neet structure would be closer to his home and higher than his home, looking down and into it. He also stated that when Mr. Neet commenced excavating his site, he pushed stumps and fill on Mr. Smith's property and cut trees on the Smith property. Also, a pin was missing after Mr. Neet's excavation making exact location of the property line questionable. He wished stipulations to be added to the approval if the Board grants it to accommodate his concerns, i.e.: returning the land to its pre-excavation condition and obtain a survey. Board Member Volpe stated these were civil matters. Attorney Avigdor stated it could be added to the motion. Mr. Neet stated that while the excavation problems were not as extensive as Mr. Smith described that some had occurred and he admits he was wrong and he will correct those problems for Mr. Smith. Mr. Neet also stated he would not be opposed to a survey. Attorney Avigdor stated that Mr. Neet appears to be consenting to the conditions of Mr. Smith. Mr. Neet stated he was not opposed to the conditions.

Attorney Avigdor stated the Quodamine concerns could also be added as stipulations to the motion as the Board desired to do so.

Greg Weaver stated variances put pressure on neighbors to respond. He felt that ordinances have requirements and they should be followed. Granting variances in effect bring the laws back to 1950's requirements, which was what the ordinance was trying to eliminate. Attorney Avigdor stated the law provides a provision for variances. He further stated there are balancing tests to be considered before the variance is granted.

Willard Stone stated it was a difficult place to build.

All persons desiring to be heard have been heard, the Public Hearing was declared closed by the Vice-Chairman at 7:40 p.m.