

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
FEBRUARY 20, 2008**

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

Chairman Davidson called the meeting to order at 3:05 p.m.

Minutes Motion by Judy Traeger, seconded by Board Member Volpe to approve the minutes of January 24, 2008 meeting. Ayes: Dave Davidson, Judy Traeger, Hank Lang, Pat Volpe, Ken Johnsen. Carried: 5-0.

Old Business None

New Business None

Other Business Chairman Davidson appointed Board Member Traeger to be Vice-Chairperson.

Application Submission: Survey Map Requirement

Chairman Davidson inquired if there were any questions or comments on the proposed motion to require survey maps at the time the application is submitted.

Board Member Lang stated if an applicant only wished to construct a \$300 shed would this Board expect them to expend as much as the cost of the shed for a survey. Chairman Davidson stated that was the reason he worded the motion “As a matter of practice...” is if the conditions did not seem to warrant that expense, i.e. the boundaries and issues are clear. Board Member Volpe stated at least the boundary line which is directly affected by the variance should be clear and a survey of the entire parcel may not be necessary. Chairman Davidson stated that in the case of the \$300 shed, the issue is how close it is to the line. He further stated that if the wording included “matter of practice” and there were a compelling hardship case and boundaries clearly defined, it could be waived. Board Member Volpe stated it would at the discretion

of the Board. Board Member Johnsen stated it could state “at the discretion of the Board, they may request or require the submission of a survey map.” Chairman Davidson stated that choice of wording may prolong the process. He stated the applicant would appear before the Board and the application would be deemed incomplete because the information is not able to give the Board a clear understanding of what all the circumstances are. Chairman Davidson stated the application process must be very clear of what we are asking the applicant to submit. Board Member Volpe stated when an applicant is only able to state he is assuming the stake located on the corner is the correct boundary that should trigger the requirement of a survey.

Town Attorney Avigdor stated this Board cannot state in procedurally “at the discretion of the Board” without defining how the Board is to exercise that discretion. He further stated in other words, variances in general are at the discretion of the Board in addition to the five criteria to be considered by the Board. The problem is that some Boards would exercise their discretion by resident lines, racial lines, etc. so the Board would need to specify if the physical parameters are well defined without a survey and Town Attorney Avigdor stated he did not know how the boundaries could be well defined without a survey. Chairman Davidson stated he was having a similar problem rectifying that issue. Town Attorney Avigdor stated a person who wished to put a house in the center of a hundred acre parcel would not need a survey. He stated they would not need a variance. He stated in the case of a variance, it would need to be considered how extensive the variance is. For instance, an applicant applies for a variance to build 20 feet from the property line and there is some discrepancy if it is 17 or 15 or 20 feet from the property line. Town Attorney Avigdor stated his quandary is what is the situation of why a survey would be needed in the first place.

Chairman Davidson stated without knowing the boundaries, it would be a difficult to access what this Board is doing. Board Member Lang stated rather than state “as a matter of practice” it could be stated “as a matter of policy” and be waived in the appropriate circumstances. Board Member Johnsen agreed that the wording could be “as a matter of policy, it could be waived...” if there are no questions regarding the application. Town Attorney Avigdor inquired how a Board would know there were no questions about the boundaries because few applicants would state

there were. Board Member Johnsen inquired if this Board was ready to add another burden on the public.

Town Attorney Avigdor stated if henceforth the Board would have this requirement, it would need to be consistent and the applicant should know up front what all the requirements are. He further stated when Code Enforcement Officer Metzler reviews building plans and informs the property owner that he cannot locate a structure in a particular location without a variance and the process to obtain a variance includes a survey; this may lead them to locate it where no variance is required. Town Attorney Avigdor stated Code Enforcement Officer Metzler should be the first place where the applicant should be informed a survey is required for an area variance. Board Member Volpe stated it was always his opinion is that is where the process should start.

Chairman Davidson stated the case of the Olinsky application where the application was deemed incomplete due to insufficient information, triggered this discussion, that this Board should know beforehand all aspects of the application and that includes most importantly where the boundary lines are. Board Member Johnsen inquired if there were written guidelines the applicant receives that states clearly what is required. Town Attorney Avigdor stated there is and this requirement would be added to that application package. He further stated that an application from a ski resort would be considered differently than that from a single property owner in conditions such as noise in the case of a ski resort and view in the case of a property owner which is why declaring an application complete is a Board action and a matter of discretion.

Town Attorney Avigdor stated the place to start would be to adopt the motion. The application process would state a survey is required and the Board decides if they wish to have topo lines on the map because of slope or if there are erosion issues. It would not be reasonable to require topo lines on all surveys. There would have to be a balance between Town, neighbors and applicant needs. If it is going to be required at all times, make it part of the application process. Board Member Traeger stated this issue was what caused the Board to require a survey in the Olinsky application which was new construction, that the boundaries were not clearly defined and the Board was not sure what was correct. She stated in the case of previously constructed or "old" construction, the majority of those property owners do not know

where their property lines are located. Board Member Volpe stated on some properties lines were blazed into trees and there were no markers. Board Member Lang stated this was why a matter of policy rather than practice would allow the Board to waive the requirement. He further stated in the instance of “matter of practice”, it is not necessarily written practice. Board Member Volpe stated Code Enforcement Officer Metzler is this Board’s first line of defense. Chairman Davidson stated he did not wish to argue over the wording unless there was some substance to it but he has no problem changing the wording. Board Member Johnsen stated it should simply state the Zoning Board of Appeals would require and not state whether it was a policy or practice. Board Member Lang stated he did not wish to shut down someone from doing something on their property because of a requirement. He further stated it should state the policy is required practice which may be required and may not. Town Attorney Avigdor the Board Members may argue about semantics but it sounds like the Board will be requiring it.

Chairman Davidson stated that the proposed motion states “As a matter of practice, the Town of Day Zoning Board of Appeals will require...” and would strike “As a matter of practice”.

Motion Motion by Chairman Davidson, seconded by Board Member Johnsen: “The Town of Day Zoning Board of Appeals will require that applications for an Area Variance contain a survey map created by a licensed surveyor showing: 1. All boundaries, including the Town Taking Line indicating the road right-of-way. 2. The size and location of all existing buildings. In addition, applicants will provide the location, dimensions and height from grade of the proposed new structure. Location will be described in terms of the property boundaries. Ayes: Dave Davidson, Judy Traeger, Hank Lang, Pat Volpe, Ken Johnsen. Carried: 5-0.

Chairman Davidson stated he discussed this matter with Code Enforcement Officer Metzler at the conference in Saratoga last month and he stated he has been looking for this requirement from the ZBA for over ten years but it was turned down by the Board. Chairman Davidson stated he spoke with Supervisor Johnson because he thought the issue may have been with Town Board and she had no issues with it and wasn’t aware of the Town Board having a problem with it during her tenure. Town Attorney Avigdor stated the Town Board could override this motion but they did not have to approve it.

Correspondence None

Secretary's Report None

Public Participation None

Adjourn At 3:30 p.m. a motion was made by Ken Johnsen, seconded by Board Member Volpe to adjourn the meeting. Ayes: Davidson, Lang, Traeger, Volpe, Johnsen. Carried: 5-0.

Respectfully submitted,

Diane R. Byrne
Secretary