

# TOWN OF DAY ZONING BOARD OF APPEALS

## Public Hearing – July 16, 2007

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

**Members Absent:** None

**Public Present:** Robert & Erika Pritchard  
Eugene DeAngelo  
Robert Dwyer  
Sharon Crofoot  
Laney Quodomine  
Robert Quodomine, Jr.  
Donald White  
Floyd York

Proof of notice having been furnished, the Public Hearing regarding Robert and Erika Pritchard, Tax Map #33.11-1-10 was opened by Chairman Lang at 7 p.m.

Chairman Lang explained the Pritchards were seeking two area variances in order to construct a 24' x 24' garage which would be considered an accessory structure and would require 15' setback from the side yard and 50' front yard setback. He further stated in Code Enforcement Officer Metzler denial letter it stated "... a 50' front yard set back, except if there is a structure within 100' that is closer to the road the setback can be reduced to 40'." Chairman Lang inquired of Attorney Avigdor where this provision would appear in the Land Ordinance. Attorney Avigdor stated he had recused himself from any discussion on this application because he represented the Pritchards but could with the Pritchards' permission answer procedural questions and did not wish to give the appearance of any prejudice in this application. The Pritchards gave their consent. He stated it was Section 8.5 (a) and (b).

Chairman Lang asked for any comments from the public. Eugene DeAngelo is an adjoining property owner to the north of the Pritchard parcel (1132 Kathan Road) and he read a letter (copy attached) and submitted two photos. Mr. DeAngelo stated the notification letter sent out by the Pritchards indicated this was a use variance and if other adjoining neighbors were made aware of it being an area variance, there would be greater attendance at this Public Hearing. He also submitted the minutes of the Zoning Board meeting of June 18, 2007 highlighted in yellow which stated "Attorney Avigdor stated the following is state law and not Town law..." "He further stated if an applicant constructed a home first and then approached the Board for a variance to build a garage and stated the need for the variance was due to the house placement this would be self-

created.” “...a Zoning Board Members should consider all those criteria prior to granting a variance and take this into consideration (with) the actual facts.”

Attorney Avigdor stated he was speaking to another application and not the Pritchard's. He further stated he does not disagree with the quote but points that each parcel is unique and considered on its own merit. Chairman Lang stated the quoted phrase was given as an example and that there are criteria which are laid out in Town Law which must be taken into consideration regarding area variances. He further stated this is a quasi-judicial body. Chairman Lang stated these comments were made at the request of a Board Member by the way of an example.

Robert Dwyer addressed the Board as a property owner with Sharon Crofoot on the parcel to the south of the Pritchard parcel (1138 Kathan Road). Mr. Dwyer also objected to the content of the notification letter as vague and stated proper notice would have created a larger public turnout. Chairman Lang asked for a copy of the notification letter. Board Member Traeger stated according to the Ordinance in lakefront residential the side yard setbacks would be 20 feet for an accessory structure. Attorney Avigdor was given the Pritchard's permission to answer the procedural questions. He stated the legal standards for a use variance are different from an area variance but is the use of the wrong word a critical defect? He stated this would be a decision of the Board, however, the burden is on the property owners to review the application due to the fact that they have received notice of activity on that parcel. Mr. Dwyer stated he understood Attorney Avigdor's comments but he disagreed that it would be incumbent on the adjoining property owners to obtain certain specifics of the application. Mr. Dwyer read a letter into the record (copy attached).

Floyd York of 1182 Kathan Road stated his parcel is located approximately 100 feet from the northern boundary and he has lived in the area since 1976. He stated he has extended his home to within 17 feet of the boundary line with permits and that Mr. DeAngelo has also built closer than 17 feet on the northern side of his property line. He stated he was not certain if Mr. Dwyer was currently a resident of the Town of Day at the present time and his house on Kathan Road is not 17 feet from the property line. Mr. York stated most live in homes with exceptions and he wished the Board to take that into consideration. He further stated that Mr. Dwyer and Mr. DeAngelo have encroached on the Pritchard property line. Mr. York gave a brief history of the Kathan Road area, how it was surveyed in the 1930's and the discrepancies involved in measurements recorded as "about". Mr. York stated there are personalities involved in the discussions of this application. He also stated his garage is the length of his car from the front door of the garage to the pavement and there has never been an accident there. He does not feel there is a safety factor to be considered here.

Mr. DeAngelo wished to refute some of Mr. York's statements. He stated his deck is located 21 feet from his property and he is not and never has been in violation of any permits.

Dr. Donald White, 1124 Kathan Road, has been a resident of the area since 1971. He stated it was not his intention to take any side in this application but to watch government in action. He stated there was a time when no zoning existed in this area and during that time Mr. York constructed a garage within 18 inches of the property line. Dr. White, as a "friend of the Board" stated he wished to remind the Board that whatever action they take on this application can have long range consequences, may have serious legal liability for the Board and may affect the rights of every citizen of the community. He stated he hopes the Board makes this decision in fairness. Dr. White stated it is not pleasant to see Mr. York's "big green garage" and the Board will see that situation if they wish to do a site visit of the area.

Mr. Dwyer stated Mr. York feels there are no safety issues on Kathan Road but he is not taking into consideration the different location on Kathan Road where the Pritchard parcel is located where there is a sharp turn in that location. He stated he is appearing at this Public Hearing to inform the Board of the blight this garage would be.

Sharon Crofoot stated she is half owner with Robert Dwyer of 1138 Kathan Road. Ms. Crofoot stated she is a year round resident and is horrified by this proposal and does not want this proposed garage to look like the York garage.

Chairman Lang inquired if any Board Members had any questions of the public attending. There were none.

All persons desiring to be heard have been heard, the Public Hearing was declared closed at 7:30 p.m.