

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
JULY 20, 2009**

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

Motion by Judy Traeger, seconded by Board Member Lang to approve the minutes of the June 15, 2009 meeting. Ayes: Johnsen, Traeger, Lang, Davidson, Volpe. Carried: 5-0.

Old Business: **MARTIN, Donald 09-03ZBA**
 Tax Map #30.-2-9 Area Variance

Mr. Martin submitted a revised survey map dated July 20, 2009 to show proposed pole barn location, driveway and fence. Chairman Johnsen stated in RLD the front yard setback required is 75 feet. The proposed pole barn is 65 feet and 55 feet from the Martin property line requiring a 20 foot area variance. Town Attorney Avigdor stated the area variance is defined by the largest distance required.

Board Member Lang stated the original application requested a 15 foot variance which differs from what Mr. Martin is requesting at this time. The Board agreed they would accept a revision to the original application prior to the close of the meeting. (Mr. Martin made the corrections to the original application and initialed each corrected page).

Board Member Davidson inquired from Town Attorney Avigdor if there was anything additional the Board would need to declare the application complete. Town Attorney Avigdor stated Mr. Martin had informed the Board the reason the pole barn needed to be placed closer to Yates Hill Road was a change in grade at the rear of the pole barn. He stated he did not see anything which was submitted which indicates that change in grade. He further stated there was a discussion at the June meeting when it was determined a survey was required and if it should include contours and the Board did not require them. However, he is concerned on how the Board would make the determination whether the grade

requires the variance. It would be the Board's decision whether or not this additional information would need to be provided.

Board Member Davidson stated the denial letter received from Code Enforcement Officer Metzler did not specify any concerns regarding driveway slope. Board Member Lang stated it would not be in the purview of this Board. Board Member Davidson stated if it had been included in Code Enforcement Officer Metzler's letter, it would have also required a variance. Board Member Lang stated he believed it would be an issue with building code. Board Member Davidson stated in that case, he would consider the application complete. Town Attorney Avigdor stated he did not believe driveway slopes have anything to do with this application. The question would be terrain slope to determine if the variance is warranted.

Board Member Lang stated after reviewing Zoning Law, he does not recall any comments regarding terrain. He further stated this Board would not issue a decision which would speak to terrain but only to physical dimensions. Town Attorney Avigdor stated Board Member Lang is correct that the Zoning Law does not refer to terrain. State Law standards would refer to the standards Board Member Lang refers to. In regard to criteria, there is one criterion which states "whether the benefit sought by the applicant is achieved by other means which would be feasible for the applicant to pursue other than an area variance". If the applicant can locate the pole barn further back on the parcel without undue hardship, then it would be able to be achieved by other means. However, if that is not possible due to the terrain or any other physical obstruction, that would be the instance when an area variance should be granted. Board Member Davidson stated he believed the merits of that discussion should take place within the context of the Public Hearing. Town Attorney Avigdor stated he is merely bringing items to the attention of the Board to aid in determining if the application is complete.

Board Member Traeger stated the original application indicates the pole barn would be 30 feet x 40 feet and the survey states it will be 24 feet x 50 feet. Mr. Martin stated the structure was reduced by six feet. Town Attorney Avigdor stated it would not be consistent with the application which would be available to neighbors and result in incorrect information being disseminated. Mr. Martin will make any revisions prior to the close of the meeting.

Chairman Johnsen stated he has visited the site and would recommend all Board Members do the same. He inquired if Mr.

Martin had placed the pins he observed to site the pole barn. Mr. Martin stated he had. Chairman Johnsen stated it appeared the pole barn could be located 15 feet back from Yates Hill Road and possibly not require any area variances. Mr. Martin stated even by changing the dimensions, the pole barn would be located right to the edge of the slope. Mr. Martin stated the stakes were two feet tall with red tips. Chairman Johnsen stated he believed in spite of removal of some trees and earth, locating the pole barn in a site not requiring an area variance would not be impossible. Mr. Martin disagreed stating it would require excavating 20 feet into the mountain which is his concern due to boulders the size of automobiles. Board Member Lang stated it would be incumbent upon the Members to visit the site to determine the amount of flexibility. Board Member Volpe stated a retaining wall could be utilized.

Motion by Hank Lang, seconded by Board Member Davidson to accept Application No. 09-03ZBA, Donald Martin, Tax Map #30.-2-9 as complete contingent upon the revisions to setback distances and size of the pole barn by Mr. Martin and set for a Public Hearing on August 17, 2009. Ayes: Johnsen, Davidson, Traeger, Lang, Volpe. Carried: 5-0.

New Business: None.

Correspondence: Town Attorney Avigdor researched Planning and Zoning Board Training Requirements and each Board Member was provided with a copy of the law. The law states: "Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision." Town Attorney Avigdor stated the Town Board has the authority to accept this as part of the training requirement. The Secretary will speak with Supervisor Johnson and notify the Board Members if they would be able to transfer excess training hours to the following year.

Board Member Lang stated he is also researching whether the Town Board would waive his requirement because he is a practicing attorney. He stated there may be a ruling from a Central New York community which he will forward to Town Attorney Avigdor.

Chairman Johnsen stated the Board received a memo from Capital District Transportation Committee regarding Safety Assessments which does not pertain to the Town of Day.

Secretary's Report: None

Public Participation:None

Motion by Dave Davidson, seconded by Board Member Volpe to adjourn the meeting at 7:20 p.m. Ayes: Johnsen, Traeger, Davidson, Lang, Volpe. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary

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