

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
JULY 21, 2008**

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

Old Business: **MURPHY, Peter & Jean 08-01ZBA**
 Tax Map #43.14-1-16 Area Variance

Chairman Davidson stated this Board has accepted the drawing as being sufficient to meet the intent in dealing with a potential drainage problem for variances and the expansion of the lot coverage to 27 percent from 25 percent.

With regard to the garage, Board Members Lang and Traeger stated they had no comment. Chairman Davidson stated he felt the difference was substantive and substantial.

With regard to overage on the lot, Board Member Volpe stated he had no comment at this time. Chairman Davidson stated on a different lot, he may take a different perspective but on a lake lot it would be different in terms of what effective coverage versus actual coverage would be. Board Member Traeger stated she did not find it to be a major difference. Board Members Lang and Johnsen had no comment.

Chairman Davidson inquired if it were necessary to review each criteria. Town Attorney Avigdor stated the Board must state their reasons which must be based on the legal factors. He further stated if anyone challenged the decision that would be a clear basis for reversal.

The Board reviewed the area variance criteria:

- **Can the benefit be achieved by other means?**

Board Member Lang stated the applicant seems to have demonstrated attention to all details to satisfy everyone. Board Member Traeger had no comment. Chairman Davidson stated he felt it was sufficiently off the road and

out of the way of things and the scale fits. Board Members Volpe and Johnsen agreed with Chairman Davidson.

- **Undesirable change in the neighborhood character?**

Chairman Davidson and Board Members Volpe, Traeger and Lang see no effect. Board Member Johnsen felt it was an improvement.

- **Is the variance substantial?**

Board Members Lang, Traeger and Johnsen stated they did feel it was substantial. Board Member Volpe felt it bordered on substantial. Chairman Davidson stated he did not feel it was substantial considering it was a lake lot.

- **Will this have an adverse physical or environmental effect?**

Chairman Davidson and Board Members Traeger, Volpe and Johnsen did not feel it would have an adverse physical or environmental effect. Board Member Lang was concerned about any liability to the Town without an engineered plan. Board Member Volpe stated he was also concerned about the liability.

- **Is the alleged difficulty self-created?**

Board Member Lang, Traeger and Johnsen stated it is self-created but considering what they had to deal with, this is the best solution. Board Member Volpe stated it is self-created but the scarcity of land contributed to the problem.

Motion by Ken Johnsen, seconded by Board Member Traeger to approve the area variance of 12 feet and 4.3 feet from the sideyard where 15 feet is required and 3 feet from the road for an accessory building (garage) and increase the lot coverage restriction from 25% to 27.1%. Ayes: Dave Davidson, Judy Traeger, Pat Volpe, Ken Johnson. Nay: Hank Lang. Carried: 4-1.

Minutes Motion by Judy Traeger, seconded by Board Member Volpe to approve the minutes of June 16, 2008. Ayes: Dave Davidson, Judy Traeger, Pat Volpe, Ken Johnsen, Hank Lang. Carried: 5-0.

New Business

HOFFMAN, Richard PETRO, Richard

**Tax Map #33.-3-5.51
08-03ZBA Area Variances**

Chairman Davidson stated this application for area variances is referred to this Board from the Planning Board where the applicant represented by Phillip Logan has submitted an application for a three lot subdivision on a 29+ acre parcel. The Board has been furnished with minutes from the Planning Board.

Phillip Logan reviewed the intentions of the applicants to build a family compound with a garage/living unit on a grandfathered lot, a second home on another grandfathered lot and a proposal to build three homes on a three-lot proposed subdivision on the 29+ acre parcel which is jointly owned by Mr. and Mrs. Richard Hoffman and Mr. and Mrs. Richard Petro. He further stated the zoning and density requirements of APA have been met but the road frontage requirement of Town of Day Zoning Law would be 300 feet for each lot (900 feet total) and currently there is a 16 foot skid road accessing that parcel with Kathan Road. Mr. Logan stated the Hoffmans had considered constructing a road to highway standards and then dedicate it to the Town but they wished it to remain a private road and the codes are too stringent. They also felt it would be a detriment to the community and environmentally create more problems than it would solve. He further stated a private road maintained by the family which would not be as wide and not be a hard surface would be aesthetically more pleasing to the neighborhood.

Town Attorney Avigdor stated while the Planning Board denied the subdivision due to substandard road frontage, this Board should not base their decision on the Planning Board's denial. The Planning Board had to deny it because they had no discretion which the ZBA has. Chairman Davidson stated as it stands currently the applicants can build one dwelling unit on each parcel without any variances. Town Attorney Avigdor stated it is the need for subdivision approval which creates the need for the area variances for road frontage. Mr. Logan stated it was the

wish of the applicants to limit development along Kathan Road while attempting to stay within the guidelines of zoning law and maintain their seclusion by not having a public road. Board Member Traeger stated access by emergency vehicles is necessary and could that be achieved on a road only 16 feet wide? Chairman Davidson stated the Public Hearing would address that subject. He further stated if one dwelling unit could be built on the 29 acres, the driveway requirements would meet that need and then meet the needs of two additional residences. He further stated a separate issue is the two grandfathered lots which can be built on but due to the small size of these lots, it seems very likely they will require variances for setbacks pending building plans. Mr. Logan inquired if there were setback requirements? Chairman Davidson stated there may be 35 foot setbacks on an 82 foot wide lot which would require variances. Town Attorney Avigdor stated setback variances are the only variances he could envision on the front lots. He further stated they are both substandard in road frontage and acreage but remain buildable because they are pre-existing. Town Attorney Avigdor stated he wished to comment on the statement "if one house could be build, why not three?" He stated there may be something wrong with one house, the fact that it is legally allowed because it is grandfathered does not make it good nor does not make it bad. However, this Board does not have review authority of that but they do have authority to allow them to build more than one and the fact that they can build one should not dictate this Board's answer. Chairman Davidson stated he felt the meeting was only to deem the application complete and gather information.

Mr. Logan stated the adjoining property owners consisted of mostly family and he wished to make a presentation of to the Board at this time to ascertain the feelings of the Board regarding the proposal. Town Attorney Avigdor stated it would be appropriate for the Board Members to state their opinion of the application so that any others who may wish to attend the Public Hearing and read these minutes would be better able to prepare for the Public Hearing. He further stated it would not be appropriate to state if they were going to approve or deny the variances because they have not received all information which would be submitted at the time of the Public Hearing.

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Board Member Traeger inquired if there is no subdivision for the three houses and they remain on one parcel, would that fall under APA regulations? Town Attorney Avigdor stated if the applicants are successful in obtaining the area variances, they would subdivide the parcel into three separate parcels. He understands that for the present, the applicants are seeking to build a family compound but in the future from his experience, a member may wish to sell their house and if it is not subdivided, they would be prevented from selling. He further stated these variances would be the major hurdle if they are granted. Mr. Logan stated he felt the family would be interested in a subdivision. He further stated he understood that the family could enter into a shared driveway agreement. Town Attorney Avigdor stated banks are requiring maintenance agreements for shared driveways to insure driveways remain open during the winter months. Mr. Logan inquired if the maintenance agreements are part of the zoning variance application? Town Attorney Avigdor stated they are not but the Planning Board may require it as part of the subdivision application. He asked if the Board agreed. Board Member Johnsen stated his concern would be width of the access road being wide enough to accommodate emergency vehicles. Mr. Logan stated most common driveways are 14 feet wide and the existing skid road is 16 feet wide which was created by the repeated use of the logging vehicles. Board Member Johnsen inquired if it would be an approved asphalted road? Mr. Logan stated it would not be asphalt but the typical gravel road which is found predominately in the area. Board Member Volpe stated it would need to be passable in mud season. Board Member Traeger stated a turnaround would be necessary especially for a vehicle as large as a fire truck. Board Member Volpe inquired if it would be a cul-de-sac? Mr. Logan stated it would be as large as required.

Mrs. Hoffman stated she grew up in the area and has lived here all of her life and her mother had a dream that the family be here together. Presently, her brother, Richard Petro owns the maternal home. The 29 acre parcel was purchased after logging occurred with the intention of

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dividing it. She further stated they wish to do the right thing for the Town of Day and for the environment by locating the homes off the road away from the frontage and back up the hill. Board Member Lang stated this Board must enforce the Ordinance which includes density and making certain the road is adequate. Chairman Davidson stated Board Member Lang's opinion would indicate that the homes not being located on Kathan Road is a positive and not a negative thing. Board Member Lang stated it could be stated in that way. Board Member Traeger inquired if there a Town regulations covering roads. Town Attorney Avigdor stated Town Law states any subdivision should be located on a public road. He further stated the debate at the time the Zoning Law was adopted in 1990 or 1991 was both with density and access of safety vehicles. However, when Zoning Law was adopted, zoning boards of appeals were also created to consider exceptions to the law. He further stated this Board has reviewed many applications and the balancing and benefit to the applicant against the detriment to the Town and neighborhood. Town Attorney Avigdor stated that based on information gathered at the Public Hearing, there maybe no negative comment from neighbors but there may be a negative effect on the Town if the Town Board had in mind the security of the public road and access by emergency vehicles. This Board would have to exercise their discretion.

Chairman Davidson inquired if it would be appropriate for Planning Board Member Ted Mirczak who is in attendance this evening to speak to the application. Mr. Mirczak stated he is attending the meeting as a private citizen. He further stated the Planning Board denied the application based on the road frontage requirement and the fact that they did not have the jurisdiction to waive it.

Chairman Davidson stated he is a resident of Kathan Road and the parcel is located on a very steep grade but has not checked any topographic maps. Mr. Logan stated the logging vehicles created the sites by continually driving over the parcel particularly where the driveway would be located is a grade of 15 to 17% which all which would be required for a private road. Chairman Davidson stated he was inquiring about perk tests and drainage. Mr. Logan

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stated Mrs. Hoffman's brother, Richard Petro is a septic engineer and has looked at the site and done some preliminary drawings. He further stated they have walked the site and there is a low area which is buildable. Chairman Davidson stated typically the Board Members will walk the site and in the case of garage, it can be observed from Kathan Road. Would the applicants permit the Board Members access to the remainder of the site? Mrs. Hoffman stated there was no objection and she would be willing to accompany any of the Board Members. Mr. Logan stated Peter Allen, a local contractor, had been contacted to clear a portion of the skid road. Chairman Davidson inquired if the sites are marked? Mr. Logan stated they were not due the excessive foliage. Mr. Logan stated Mr. VanGuilder, one of the adjoining property owners and surveyor of the parcel was also very familiar with the site and could accompany any Board Members.

Mrs. Hoffman stated the catalyst for this subdivision is clarity at this time between herself and her brother, Richard Petro, to fulfill her mother's dream and build a home for her daughter and bring the family together. Board Member Johnsen inquired if all the structures were intended to be family homes such as a family compound and not a speculative development of the property. Mrs. Hoffman stated that was correct, she appreciated the question and they never entertained that idea. Chairman Davidson stated he understands that that is her intent now but after this Board grants the variance, anything could happen. Mrs. Hoffman stated she does not want it to be speculative but a beautiful addition to the community. Mr. Logan stated they are currently entertaining a stipulation that either brother or sister have the right of first refusal so that if one would decide to sell, it could remain with the family.

Mr. Logan inquired in Zoning Law, where the frontage requirement is located? Town Attorney Avigdor stated in Article 4 of the Zoning Law, each section of Article 4 pertaining to each different zoning district has in list or tabular form a list of requirements and each district has a requirement for lot width. The definition of lot width in Zoning Law is the distance between the boundaries of the

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lot and street right of way line measured as nearly as practically perpendicular to the depth of the lot. Mr. Logan stated there is no particular section which is titled road frontage and what the original intent was? Town Attorney Avigdor stated there is not, that the term is road width rather than road frontage. He further stated as the town attorney at that time, he is relating to the Board that the original intent pertains to both density, which loses its import when you are not on the road, and public safety and access of emergency vehicles which may gain import when you are away from the road. Mr. Logan stated there would be one driveway for all lots cut which would meet all the requirements of access, angles, drainage, etc. and not two separate driveways for the two grandfathered lots on Kathan Road. Mr. Logan stated the proposed road would be a looping road with a switchback. He further stated there would be a greater pitch at the start of the road which would then level out with areas located along the road for vehicles to pull off in order to allow another vehicle to pass. Mr. Logan stated Mr. Hoffman is a boat builder and the garage at the base of the private road would serve as his workshop and house a snow plow to clear the private road.

Chairman Davidson asked for any further comments or questions from the Board Members. Board Member Johnsen stated he would like to visit the site. Chairman Davidson stated the only thing the Board is considering at this meeting is if the application is complete. Chairman Davidson asked Town Attorney Avigdor is that starts the 62 day requirement? Town Attorney Avigdor stated that it does but the Board should not accept the application until they are satisfied all required information has been submitted. He further stated this Board has the right and opportunity to visit the site and he has no idea if by visiting the site, the Board may require additional information. He stated driveway pitch, perk tests, and water supply would a requirement of the Planning Board. This Board is concerned with lack of road frontage. Town Attorney Avigdor stated the Planning Board would have granted or denied the subdivision but they could not for lack of road frontage. If this Board grants the area variances, it will allow the Planning Board to review the application without the required road frontage or this Board finds the reason for

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the frontage is compelling and denies the variances. He further stated the Board could walk the site but he is not sure what they will gain. Board Member Johnsen stated his concern is not the site itself but the road frontage and that was what he was interested in seeing.

Board Member Volpe inquired if this Board should be concerned if there are going to three or 30 houses on the site. Town Attorney Avigdor stated it should be because the kind of access for 30 houses would be more substantial for three or the kind of access for three houses would be much substantial than for just one. He further stated the submitted drawings indicate five houses on the three parcels with three houses currently grandfathered as the parcels stands. Board Member Volpe stated an increase in the number of houses and people increases the possibilities for emergency vehicles to access the sites. Mr. Logan stated every house has a driveway which emergency vehicles can access and there will not be five fires burning at one time. Town Attorney Avigdor stated land use law always has quirks. He stated if an individual owns a 100 acre parcel and wishes to cut a 1½ mile driveway to that home, there is no jurisdiction. However, if they now wish to subdivide, the Town has an Ordinance with road frontage requirements and there is jurisdiction. He stated that would not mean that this Board should exercise that judgment poorly because another person did a poor thing before appearing in front of the ZBA. The Board would hear things as to why the applicants feel this is sensible and they will judge those arguments.

Chairman Davidson stated this Board should solicit direct input from the Town regarding the safety issues. He stated that unless there is more information which the Board Members would like to obtain from the applicants, the Board should act on the application.

Motion by Judy Traeger, seconded by Board Member Lang to accept the application of Richard Hoffman/Richard Petro, Application No. 08-03ZBA, Tax Map No. 33.-3-5.51 as complete and set it for a Public Hearing on Monday, August 18, 2008 at 7 p.m. Ayes: David Davidson, Hank Lang, Judy Traeger, Ken Johnsen, Pat Volpe. Carried: 5-0.

Mr. Logan inquired about density and requiring 8.5 acres for each parcel and road frontage, and are these the only constraints on the application? Town Attorney Avigdor stated that is correct there are two potential constraints-road frontage and area. He stated both the APA and the Town of Day require 8.5 acres per principle building which the applicant has. He stated in his opinion the density would not be the issue in this application but the road frontage and access by emergency vehicles would. He stated in their review of this application, the Board should consider future property owners of this parcel may not be as diligent in maintaining access.

Board Member Johnsen inquired if 16 feet are sufficient width for a driveway. Mr. Logan stated for 100 feet in length, the driveway is 16 feet wide but then it widens out to 20 feet wide and if there is a need to pass, there will be shoulders to pull off to allow a vehicle to pass. He further stated no driveways are constructed to allow two vehicles to pass. He stated the applicants wish to minimize the environmental impact on the area. Board Member Johnson stated a driveway servicing a single residence would not require as much space as a driveway servicing three houses and three families. Mr. Logan inquired how wide Board Member Johnsen's was. Board Member Johnsen stated he does not have three homes located on his driveway and his concern was two vehicles coming from different directions and the ability to pass. Mr. Logan stated there are several other driveways of the same width located on Kathan Road which service five or six houses. He stated they wish to be sensitive to the land and not use asphalt. The applicants intend to construct a driveway with a drivable surface on either side of the driveway to permit pull offs.

Mr. Logan reviewed the requirements of the legal notifications of the application.

Correspondence None.

Secretary's Report None.

Public Participation None.

Adjourn

At 8:30 p.m. a motion was made by Hank Lang, seconded by Board Member Volpe to adjourn the meeting. Ayes: Davidson, Traeger, Lang, Johnsen, Volpe. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary