

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
JUNE 15, 2009**

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

Motion by Dave Davidson, seconded by Board Member Lang to approve the minutes of the May 18, 2009 meeting. Ayes: Johnsen, Traeger, Lang, Davidson, Volpe. Carried: 5-0.

Old Business: None.

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

Mr. Martin provided the Board Members with his survey map indicating the location of a 30' x 40' pole barn to be located 60 feet from Yates Hill Road where 75 feet are required on this 23.91 acre parcel. Mr. Martin stated he was unable to move the pole barn site to the required 75 feet setback due to the ledge and huge boulders located at that site. Board Member Davidson stated the Zoning Board added a condition to all applications which states as follows: *“Survey map drawn by a licensed professional surveyor showing precise dimensions of existing and proposed structures, locations, setbacks, lot area and lot dimension, height from grade of the proposed new structure, wetlands, water courses, wells, septic, town taking line of road indicating the road right-of-way, and other information required by the Town Zoning Ordinance.”* Board Member Davidson stated this requires that the surveyor must locate the building on the survey map.

Committee Member Davidson inquired why this pole barn could not be placed in a different location on this 23+ acre site and not require any variance. Mr. Martin stated the driveway to his home is a steep incline of 700 feet and this location is street level. Mr. Martin stated the pole barn would house a pontoon boat and recreational vehicles and this level portion of his lot would grant easy access to unload these items. He also stated he would have to remove some mature trees if the proposed site were moved. Mr.

Martin stated the location of the pole barn will not be visible from the road and would be below the tree line.

Chairman Johnsen stated he visited the site and there is a mountain behind the proposed site and he did not believe the pole barn could be located any further away from the property line but the Board Members were advised to visit the site. Board Member Davidson stated he would consider making a motion to remove the requirement of the siting of the building on the survey map by the surveyor in the case of this application. He stated the intention of the requirement was due to congestion of buildings in particular areas and small lot sizes. Board Member Lang stated if Board Member Davidson made such a motion, there should be a well detailed reason for the waiver since this motion may affect future applications. Chairman Johnsen stated the other option would be to relocate the pole barn to meet the requirements of the setbacks. Mr. Martin stated he would be required to remove hundreds of yards of fill along with trees and vegetation. Chairman Johnsen suggested various other possibilities of siting the pole barn. Mr. Martin stated it would be difficult to move vehicles in and out of the building if it were placed on an angle. There are no other structures located on the opposite side of the road from it and complete wilderness surrounding this chosen site.

Town Attorney Avigdor stated if Mr. Martin measured the distances from the road's edge, this may not be an accurate measurement and a larger variance may be needed. The distance must be measured from the property line of Mr. Martin's parcel. He further stated it would be beneficial to Mr. Martin, without providing legal advice on his part, to determine how far back the building would need to be without impinging on the slope. Chairman Johnsen stated a survey including the building would show the exact location taking into consideration the setback distances. Mr. Martin inquired if it would be likely that the variance would be granted prior to going through with the expense of a survey. Board Member Volpe stated it would not be possible to arrive at any decision without the measurements.

Town Attorney Avigdor stated the face of slope is also not shown on the map and would the Board wish that to be included. Board Member Lang stated elevations are required to be listed on the survey. Board Member Davidson stated only elevations of buildings are required. Town Attorney Avigdor stated the term "elevation" would refer to buildings and the term relating to land would be "contours". Chairman Johnsen stated if the applicant and his surveyor are going to determine the location of the building as

it relates to the slope, it will be located on a buildable portion of the parcel. Town Attorney Avigdor stated the surveyor is not an architect but would simply draw lines on the survey map indicating this is the area where the applicant would wish to locate the building. Board Member Davidson stated the requirement of locating the building on the survey map does not indicate the buildability of that site. Board Member Lang stated if the slope does not permit the pole barn to be located in a particular site, Mr. Martin would not be constructing the building there.

Motion by Pat Volpe, seconded by Board Member Traeger to declare the application incomplete pending additional data be included on the survey map showing the size and location of the pole barn and the location of the property line along Yates Hill Road.

Town Attorney Avigdor inquired if the Board wished to include in its motion the requirement to show the base of the slope. Board Member Davidson stated the motion does not require that the base of the slope be indicated. He stated further the basis for finding that the application is incomplete is based on the Zoning Board's existing process which included submission of a survey map including precise dimensions of existing and proposed structures. Board Member Lang stated the survey would locate the building in the location where it can be constructed.

Ayes: Johnsen, Traeger, Volpe, Davidson, Lang. Carried: 5-0.

Correspondence: None

Secretary's Report: The Secretary notified two members (Lang and Volpe) that they were two hours short of the four hour training requirement. A check of 2008 year end report indicated that Board Member Lang had received 16 hours of training and Board Member Volpe had received 9 hours. Town Attorney Avigdor stated they would be allowed to carry over these hours and apply them to the 2009 required training. Board Member Lang stated as a practicing attorney, he would be exempt from training and be provided with a waiver from the Town Board. Town Attorney Avigdor did not find a specific exception within his downloaded version of the statute but did find a related exception which states "The training requirement may be waived or modified by resolution of the Town Board when in the judgment of the Town Board; it is within the best interests of the Town Board to do so." Board Member Lang would write to the Town Board Members addressing this issue. Board Member Volpe inquired if there were tapes which board members could borrow with training materials. The Secretary stated there are tapes which she has in the office for training

purposes. New York Planning Federation website also has training programs online for members of both Planning and Zoning Boards.

Board Members were provided with information on the September 13-15 NY Planning Federation conference to be held in Lake Placid this year.

Public Participation:None.

Motion by Hank Lang, seconded by Board Member Davidson to adjourn the meeting at 7:35 p.m. Ayes: Johnsen, Volpe, Traeger, Davidson, Lang. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary