

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
JUNE 16, 2008**

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

Chairman Davidson called the meeting to order at 7 p.m.

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

Mr. Murphy inquired what type of engineer he would obtain a report from. Chairman Davidson stated George Forman who had been working on Mr. Murphy's plans would be able to handle this report or suggest someone who could. Mr. Murphy inquired if he is required to appear at the July 21st meeting. Town Attorney Avigdor stated he did not have to appear but if the report can be submitted then, he would advise Mr. Murphy to appear. Mr. Murphy inquired if any further public comment could be received. Town Attorney Avigdor stated the Public Hearing would remain open and the public is still able to make comments. Mr. Murphy inquired if the adjoining neighbors would require further notification. Chairman Davidson stated the Public Hearing was adjourned and therefore no further notification was required.

Town Attorney Avigdor stated it could generate interest if those who were concerned about drainage were aware that a drainage plan was to be submitted. Chairman Davidson stated that at this point of the application, Ted Serbalik of DPW had no jurisdiction in the issue of drainage plans. Mr. Murphy stated his frustration is that a comment made at the Public Hearing that none of the Board Members are qualified to look at an engineered drawing and deem it an excellent drawing. Town Attorney Avigdor stated this Board does not do engineering, architectural, etc. opinions, navigation impacts or road safety but the Board does rely on experts who do. He further stated if Mr. Murphy provides an engineered drainage plan which states there is no drainage problem and no impact on neighbors and no one else comes in with information that disputes that report, he does not anticipate any difficulties. However, if

another party approaches the Board with credible information that disputes the engineered plan; the Board would have to make a decision. Town Attorney Avigdor stated this Board does not have any expert submissions and if they have only one, his advice to the Board would be that due to the fact that the Board Members are not engineers, they would accept the submitted engineered report as valid. If there are two experts who disagree, then the Board will have to draw their own conclusions and they are competent to do that.

Minutes Motion by Judy Traeger, seconded by Board Member Lang to approve the minutes of the May 19, 2008 meeting. Ayes: Dave Davidson, Judy Traeger, Hank Lang, Ken Johnsen. Carried: 4-0.

**McLAIN, Paul 07-04ZBA
Tax Map #41.-1-11 Area Variances**

Chairman Davidson stated a review of last month's minutes fairly reflect the discussion between the applicant, his attorney and the Board. He has also reviewed the application process. The issue in front of the Board is a motion to reopen the hearing which requires a unanimous vote. Chairman Davidson stated the same procedure would take place within context of a Public Hearing which would include public comment if the hearing is reopened. He further stated if the decision is changed, it must be changed by a unanimous vote. Board Member Lang inquired if the unanimous vote is by all members of the Board or only those present at the meeting. Town Attorney Avigdor stated by those present at the meeting.

Mr. Seiffert, attorney for Mr. McLain, stated there was a notification issue with the APA and how it would affect the unanimous decision if the decision that was made was void ab initio. Town Attorney Avigdor stated if the previous decision making was improperly done, it may be void ab initio. Chairman Davidson stated he discovered the procedural error. Town Attorney Avigdor requested Mr. Seiffert review which variances were applied for. Mr. Seiffert stated on Lot 1, variances for both road frontage (263 feet where 300 feet are required) and acreage (7.4 acres where 8.5 acres are required) and on Lot 2, a variance for road frontage requirement (169 feet where 300 feet are required).

Town Attorney Avigdor stated APA has jurisdiction over lot sizes in general but does not have regulations over road frontage. The Town of Day has an APA approved land use program. Our Boards have the jurisdiction to grant certain APA results which are valid actions under the APA law. In the cases of subdivisions, site plan reviews, etc. APA can appear at the Public Hearing as a party in interest. Zoning variances are different and can be granted by this Board but APA has an opportunity to overrule the variance if it is a variance to APA law. Town Attorney Avigdor stated because this application was a variance to an APA law and he believes they should have been notified. He inquired if thereafter APA was given notice of our action. The Secretary stated it was sent on January 24, 2008 at the time the resolution was signed. Chairman Davidson stated they were not notified beforehand. Town Attorney Avigdor stated the notice at the time of application is a courtesy. The fact that they had no comment at the time of notification by resolution, and they would probably not have a comment because the application was denied, speaks to whether our action was valid. There is a memorandum of understanding between the Town of Day and the APA which calls for is submission of the resolutions which gives them an opportunity to reverse them.

Chairman Davidson inquired if any of the other Board Members had any further questions or comments. There were none.

Motion by Ken Johnsen to reopen the hearing on Paul McLain, Tax Map #41.-1-11, 07-04ZBA.

Chairman Davidson asked for a second to the motion. There was none and on that basis, the hearing will not be reopened.

New Business: None.

Correspondence: None.

Secretary's Report: None.

Public Participation: None.

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Adjourn

At 8:30 p.m. a motion was made by Hank Lang, seconded by Board Member Traeger to adjourn the meeting. Ayes: Davidson, Traeger, Lang, Johnsen. Carried: 4-0.

Respectfully submitted,

Diane R. Byrne
Secretary