

# **TOWN OF DAY ZONING BOARD OF APPEALS**

## **Public Hearing – June 18, 2007**

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

**Members Absent:** None

**Public Present:** Peter and Jean Murphy

Proof of notice having been furnished, the Public Hearing regarding Peter and Jean Murphy, Tax Map #43.14-1-16 was opened by Chairman Lang at 7 p.m.

Chairman Lang inquired if any Board Members had visited the site. Board Members Traeger, Johnsen and Davidson stated they had. Board Member Traeger stated there was a large space to the right of the end of the driveway and could the garage be located there? Mr. Murphy stated there was not sufficient land due to the location of the new dry well and the way Gary Robinson had designed them. Board Member Johnsen inquired where the existing septic was located. Mr. Murphy stated it was under the deck. Board Member Johnsen stated there appeared to be a parking place/pull off and was it Murphy's property? Mr. Murphy stated it was not. Board Member Johnsen stated the highway property was one foot beyond the proposed garage and was it a two or three car garage? Mr. Murphy stated it was a two car garage with a stairway.

Board Member Johnsen stated there was no obstruction of view which would be created by the garage because there are no structures located beyond the drive off. He further inquired if Mr. Murphy has been in contact with any adjoining neighbors. Mr. Murphy stated he had been in touch with Mr. Piazza who is his closest neighbor. Mr. Piazza has no objections and has allowed him to cut down several trees in order to accommodate the garage. Mr. Murphy has also been in contact with the Schreiners who have no objection. The Secretary had been contacted by Mr. Usher who stated he has no objection to the granting of the variance.

Board Member Johnsen stated this is an existing property and there is no abuse of the building codes. Board Member Traeger stated it appeared the wires would be low in the vicinity of the garage. Mr. Murphy stated this was a valid issue which he did not believe would be affected by the garage and it would be 40 feet from the wires.

Board Member Traeger inquired of Attorney Avigdor if there was any restriction because the garage would be located so close to their well and issues of leaking gasoline contaminating the well should be addressed. Mr. Murphy stated this had been taken into consideration and a double floor would be constructed in the garage to prevent any

contamination. Attorney Avigdor stated there is no restriction in building codes regarding well and garage locations.

Board Member Davidson inquired if the front of the garage would be consistent with another garage located nearby the Murphy property. Mr. Murphy stated it would be relatively the same but he could not say exactly how much further it may be located from the road than the existing garage. He further stated it would be as close to the road as they would be allowed to locate it.

Board Member Davidson inquired if the garage is 24' x 30', would the stairway be six feet wide? Mr. Murphy stated it would be. He further stated in winter it would be easier to enter the house by using the stairway through the garage rather than clearing snow outside. The entrance through the garage would also bring them down to ground level and the front porch could be cleared by a snow blower.

Board Member Davidson inquired how coverage is calculated. Board Member Traeger stated it is square footage of all structures. Board Member Davidson stated he could see no greater safety issues than occur on various locations in the Town. Board Member Traeger inquired if the County should be notified regarding the driveway location. Chairman Lang inquired if the Secretary had referred this application to Saratoga County Planning. The Secretary stated the Town has a waiver with the County and reports any variances granted on a quarterly basis. Applications are only referred to the County routinely by the Planning Board.

Chairman Lang stated this proposed garage would abut the county road and in this area there are significant snowfalls which would result in snow being pushed directly in front of the garage. Damage could occur from this or it may come back into the road and create a hazard. Chairman Lang stated this Board would be reluctant to make a decision at this time and the County rejects our decision due to the stated concerns. Attorney Avigdor stated it makes sense for this Board to not take any action at this time but this Board could overrule any County decision by super majority which would be a vote of 4-1 or 3-0. Attorney Avigdor stated that while he is not predicting what this Board would decide, he would also wish to know the reasons for the County decision. Mr. Murphy stated the location of the driveway is critical.

Board Member Johnsen inquired if there could be a discussion on the sense of the Board to determine what will be decided. Attorney Avigdor stated the Board is in a Public Hearing and Board Members should not express opinions during the Public Hearing but in a regular meeting. He further stated at the Public Hearing, Board Members are receiving comments and should not form any opinions until all have had an opportunity to be heard and the Public Hearing ends. Chairman Lang stated this Board would proceed as expeditiously as possible. He further stated all discussions of this Board are subject to Open Meetings Law, must be in public and no decisions would be made in private.

The Secretary stated the deadline for submission to County Planning was today but she would fax all pertinent information and try to be added to their Thursday meeting.

Attorney Avigdor stated if they are not able to put this application on their agenda, we could request a staff review in order to have some input from them prior to this Board's meeting on July 16<sup>th</sup>. Mr. Murphy stated if this Board decided 2-1, does he have any recourse? Attorney Avigdor stated he would have to resubmit his application or at the next meeting request a decision not be made until more members of the Board would be present. Attorney Avigdor stated this Board has 62 days to make a decision.

Chairman Lang inquired if any of the Board Members had any additional questions or comments. There were none.

All persons desiring to be heard have been heard, the Public Hearing was declared closed at 7:25 p.m.