

Town of Day Zoning Board of Appeals Minutes – Regular Meeting – June 20, 2005

Members Present: Kearney Mason, Chairman
Judy Traeger
Ray Ives
Pat Volpe
Kathy Prud'homme
David Avigdor, Attorney

Absent: None

Minutes: A Motion was made by Kathy Prud'homme, 2nd by Raymond Ives to accept the minutes of the May 16, 2005 regular meeting. Motion carried 4-0.

Old Business: **Paige, James and Jean 05-02 ZBA Tax Map No. 43-1.9**
2790 South Shore Road
Application for a sideline setback (after the fact). The Board reviewed the area variance criteria:

- **Can the benefit be achieved by other means?**
Ray Ives stated he reviewed the site and it appears that the corner of the mobile home may be over the property line, therefore, is not a matter for the ZBA but a problem between property owners and no action should be taken. He was concerned that this may also set a precedent. Pat Volpe stated this shows the necessity of obtaining a survey prior to construction commencing. Town Attorney David Avigdor stated the ZBA cannot grant a variance for someone else's property. Judy Traeger stated the property owner should know where the property line is prior to construction. Kearney Mason stated this application should be considered on an individual basis.

- **Undesirable change in the neighborhood character?**
Since this structure has been in placed since 1998, all Board Members felt it would not result in an undesirable change in the neighborhood.

- **Is the request substantial?**
Pat Volpe stated this application could not be more substantial in that it would be a zero variance. Ray Ives also felt this would be substantial.

Town Attorney David Avigdor stated that a zero variance is a substantial variance.

- **Will this have adverse physical or environmental effects?**

Ray Ives, Judy Traeger and Pat Volpe stated it would have an adverse effect on the adjoining property owner.

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

Ray Ives and Pat Volpe stated it was self-created due to the absence of a survey.

After extensive discussion of the application, the ramifications of granting a variance in the absence of a survey, the opinion that this matter should be handled between the property owners in court, the future implications of granting a zero variance, reviewing the concerns of the adjoining property owner, and accepting information submitted by attorneys for the Paige's and adjoining property owner Brett Horton and a motion was made by Raymond Ives and seconded by Pat Volpe to deny the application for an area variance. Motion carried 3-2.

New Business: None.

Correspondence: Letter received in the matter of the Paige Application from Hudson River Black River Regulating District.

Notice from The Capital District Regional Planning Commission presenting a Local Government Planning & Zoning Workshop.

Notification of publication in the Post Star Legal Notices of the Paige Application.

Secretary Report: None.

Public Participation: Walter Fletcher appeared before the Board with questions regarding the disposal of a mobile home on a neighbor's property. Town Attorney David Avigdor referred Mr. Fletcher to either the APA, DEC or Town Supervisor Johnson.

Meeting Adjourned: At 8:30 p.m. a motion was made by Ray Ives and was 2nd by Pat Volpe to adjourn the meeting. Motion carried 5-0.

Respectfully submitted,

Diane R. Byrne
Clerk

