

**TOWN OF DAY ZONING BOARD OF APPEALS  
MINUTES – REGULAR MEETING  
MARCH 16, 2009**

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

**Motion** by Judy Traeger, seconded by Dave Davidson to approve the minutes of the February 19, 2009 meeting. Ayes: Johnsen, Traeger, Lang, Volpe, Davidson, Carried: 5-0.

**Old Business:**                None.

**New Business:**            **OLINSKY, Lawrence & Michelle**  
**Tax Map # 33.11-2-16 09-01ZBA**  
**Area Variance**

Board Member Lang stated the survey map which was submitted did not identify the center line of Kathan Road and if this Board was going to consider an area variance from the center line of the roadway, it should be identified on the map. Town Attorney Avigdor stated it would be from the boundary between the road and the property line. Chairman Johnsen stated the edge of the property was identified on the survey map.

Board Member Davidson stated an application for the proposed garage for Mr. and Mrs. Olinsky was denied in November 2008. He requested Town Attorney Avigdor review the regulations regarding re-submittals. Town Attorney Avigdor read Section 11.16 of the Town of Day Zoning Law, Required Interval for Hearings on Applications and Appeals After Denial: *“Whenever the Board, after hearing all the evidence presented upon an application or appeal under the provisions of this denies the same, the Board of Appeals shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor or assign for a period of one (1) year, except and unless the Board of Appeals shall find and determine from the information supplied by the request for a rehearing, that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general*

*welfare, and; that a reconsideration is justified. Such rehearings would be allowable only upon a motion initiated by a member of the Board of Appeals and adopted by the unanimous vote of the members present.”*

Town Attorney Avigdor stated when a property owner is denied on an application, this Board cannot consider the same application again or one which is substantially similar for a period of a year. In the case of the Olinsky application, a year has not expired. And while it is not the same application, it is changed to some extent but the question is: Is it substantially similar? This is not a legal determination but a determination for the Zoning Board Members. If the Board finds it is substantially similar, the application cannot be accepted unless the applicant notifies the Board that there has been a change regarding the public health, safety, convenience, comfort, prosperity and general welfare and he states he should be entitled to a rehearing. The Board would then need a unanimous vote in order to rehear the application.

Chairman Johnsen stated the side variance was previously seven feet and the applicant did move the garage location to 18 feet from the side yard which would not require a variance in that location. An accessory building such as a garage would require a minimum distance from the side yard of 15 feet. He stated from that standpoint, the change is substantial. However, there has been no change in the front yard set back area variance request and would not be considered substantial. Board Member Volpe stated it was that area variance from the road which was the most serious concern for the Board.

Board Member Davidson stated there were three concerns: 1) the side yard area variance which is no longer an issue due to the change in this application, 2) the scale of the garage (obstructing the view of an adjoining property owner) which was 18 feet in height and is now 16 feet in height; and 3) the close proximity to Kathan Road. He further stated this proposed garage plan is also 22 feet deep instead of 24 feet as originally proposed. The width of the garage has also been reduced from 24 feet to 22 feet. Board Member Davidson agreed with Board Member Volpe that the distance from Kathan Road was a critical part of the Board's deliberations. Board Member Volpe stated this would be where the danger would be. Board Member Traeger stated this was her concern also. She stated she was less concerned about the side yard setback while she could appreciate the concern of the neighbor. Board Member Lang stated he considered all three, weighing them all equally and considered that since one had been

changed, the change was substantial. Board Member Volpe stated that while there are other garages located on Kathan Road close to the road, to add another would hinder traffic and create a dangerous situation. Board Member Lang stated he could appreciate that when these garages were constructed many years ago, there were not as many houses. However, since Mr. Olinsky had made a change to one of the concerns, he would still consider the change substantial. Town Attorney Avigdor stated the Board's deliberations should only include the matter of whether the application has been changed substantially.

**Motion** by Dave Davidson, seconded by Board Member Lang to consider the changes to Application No. 09-01ZBA, Olinsky, Lawrence & Michelle, Tax Map # 33.11-2-16, substantial and would allow the Zoning Board of Appeals to consider the application. Ayes: Johnsen and Lang. Nays: Traeger and Volpe. Abstention: Davidson. The motion fails.

Town Attorney Avigdor stated if the new application is substantially different from the previous one, the Board can hear it. If the change is not substantial, the Board cannot hear it unless a Board Member makes a motion which is carried unanimously to hear it.

**Motion** by Pat Volpe, seconded by Board Member Traeger to consider the changes to Application No. 09-01ZBA, Olinsky, Lawrence & Michelle, Tax Map # 33.11-2-16, as not being substantial and not allow the Zoning Board of Appeals to consider the application. Ayes: Judy Traeger, Pat Volpe, Dave Davidson. Nays: Johnsen and Lang. Carried: 3-2.

Town Attorney Avigdor stated the Secretary should inform the applicant by letter that the application is not preceding under Section 11.16 because it has been ruled by the Board to be non-substantially different from the previous application. Board Member Davidson inquired of Town Attorney Avigdor if the letter should include the reasons why it was not substantial. Town Attorney Avigdor stated the reasons were not included in the motion and would not be part of the letter. Chairman Johnsen inquired of Town Attorney Avigdor if it would be in the purview of this Board to suggest that if Mr. Olinsky were to reduce the size to a single car garage, there may not be a need for an area variance. Town Attorney Avigdor stated it would be in this Board's purview but an option for the applicant to decide if he wished to pursue it.

Chairman Johnsen inquired of Town Attorney Avigdor if there was any source for town taking line within Saratoga County regulations; for example, the taking line on Kathan Road. Town

Attorney Avigdor stated this would have to be determined by a surveyor typically parcel by parcel at the expense of the applicant.

**Correspondence:** APA Agency Review of Variance Referrals from Approved Local Land Use Programs 2008 Rule Making for Board Members reference.

**Secretary's Report:** None

**Public Participation:** None

**Motion** by Dave Davidson, seconded by Board Member Lang to adjourn the meeting at 7:20 p.m. Ayes: Johnsen, Traeger, Lang, Volpe, Davidson. Carried: 5-0.

Respectfully submitted,

Diane Byrne  
Secretary