



Chairman Davidson stated in reviewing the new application, the garage location is now twenty feet off South Shore Road. Mr. Murphy stated the County setback is 20 feet and he has added three feet on one side and eight feet on the other.

**Motion** by Hank Lang, seconded by Board Member Traeger to accept Application No. 08-01ZBA, Peter and Jean Murphy as complete and a Public Hearing is scheduled for June 16, 2008 at 7 p.m. Ayes: Dave Davidson, Judy Traeger, Hank Lang. Carried: 3-0.

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

Chairman Davidson stated the Board had received Mr. McLain's petition requesting the Board rehear his previous application to subdivide his parcel on Snow Road and that subdivision required two area variances for road frontage and lot size. He further stated in reviewing the previous application, this Board failed to complete a procedural step of submitting the application to the Adirondack Park Agency for their review. Chairman Davidson directed the Secretary to make the submission. He further stated in January 2008 this Board received a letter from APA regarding illegal subdivisions which had occurred within the Adirondack Park and ramifications of same. Chairman Davidson stated he cannot predict what their view of this application will be but this Board will request their reply be expedited.

Chairman Davidson stated the process for a rehearing requires a unanimous vote and that the decision for the same would also require a unanimous vote. Town Attorney Avigdor stated Section 11.16 requires a unanimous vote for the rehearing however, he did not see where the decision on the rehearing would also have to be unanimous. Chairman Davidson stated he did see that unanimous requirement on training materials under a section labeled "Rehearing" and he would provide the information to Attorney Avigdor. Town Attorney Avigdor stated that atypically this decision to rehear must be unanimously accepted by the members present and typically it would be a majority decision by the Board. He stated that while there are two absent members, those Board Members present can grant a rehearing if all are in agreement. Chairman Davidson stated all Board Members are in receipt of all correspondence and application materials and would be willing to listen to any proposals of either Mr. McLain or his attorney, Mr. Seiffert.

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Mr. Seiffert thanked the Board for entertaining their concerns and he has also reviewed the Town of Day Zoning regulations. He wished to review the concerns of the Board contained within their resolution. He confirmed the parcel was located in Low Density Rural district. He further stated Mr. McLain did not know if the Board considered the issue of hardship and the difficulty Mr. McLain is having trying to maintain this property along with his pending divorce. Mr. Seiffert stated Mr. McLain has raised four children within the community as a single parent and has issues with indebtedness involving the mortgage on the property. He further stated he would like to place the mobile home which was occupied by his parents on a separate deed in order to sell to one of his children to decrease his indebtedness. Mr. Seiffert stated he reviewed the decision by the Board and there did not seem to be a tremendous issues to overcome with the major issue being the 300 foot road frontage or property width. The mobile home road frontage would be 169 feet and Mr. McLain's residence road frontage would be 269 feet where 300 feet are required. Mr. Seiffert stated the Board needed to conclude whether it was a substantial variance and he was trying to understand why it would be substantial and receive some guidelines from the Board.

Chairman Davidson stated statutory requirements are that the Board must consider five criteria. He further stated he considered it to be substantial because it reduced a conforming property and created two non-conforming properties and one of those would be seriously out of line in terms of frontage. Chairman Davidson stated the Board must consider the zoning law in keeping the uplake properties to scale. Mr. Seiffert stated he understood that, however, when the Board considers density of population, this area would not change from what currently exists. He further stated all emergency vehicles would still be able to access the mobile home part of the parcel as they did in the past when Mr. McLain's father needed to be transported via ambulance. Chairman Davidson stated he did not believe those things were part of the criteria.

Mr. Seiffert stated in this area there currently exists mobile homes with less than 300 feet road frontage, Mr. McLain's mobile home exists on the property and would not change the character of the area. Board Member Lang stated those properties exist because, like Mr. McLain's mobile home, they existed prior to zoning. Mr. Seiffert stated Mr. McLain would be agreeable to restrictions

placed on the structures which would limit the square footage to 3,000 square feet and alleviate the biggest concern of the Board. Chairman Davidson stated the Board's jurisdiction would include placing conditions on the Decision and he agreed that Mr. Seiffert's argument was rational. However, there are two Board Members absent this evening and he is not certain there would be a unanimous vote and one of the Board Members who voted in favor of the area variances is not present. He further stated the APA needs to review the application. He suggested the deliberations be made at the next meeting.

Town Attorney Avigdor stated if a Board Member makes a motion to reconsider and the motion is seconded, that would need to be unanimous by those members present and the document from the State requires that the application be approved by a unanimous vote by those present at the meeting. He further stated he would need to do some research and find a legal opinion on these proceedings. It is not correct that APA needs to independently grant a variance but does have a right to attend the Public Hearing. Town Attorney Avigdor stated this Board would need to notify APA of a new Public Hearing. He further stated this Board can grant a variance which APA can rescind within a certain time period (30 or 45 days) which has been done in the past. He stated APA does not have a road frontage requirement and has minimum lot sizes which are the same as Town of Day zoning. The Town of Day road frontage requirement is stricter.

Town Attorney Avigdor stated based on history with the APA, this Board may not hear from them. However, he believes it is prudent to wait to see if this Board does hear from them. If at the next meeting, the Board is prepared to continue but has not heard from APA, he would recommend a Board Member make a motion to rehear. If the Board decides to rehear at the June meeting, the same statutory guidelines would come into play, i.e.: holding the Public Hearing and making a decision within 62 days. He would prefer the decision be made prior to the expiration of the 62 day period.

Chairman Davidson stated this Board would move expeditiously, he inquired if Mr. McLain spoke to neighbors to solve this issue in different ways which may not require a variance. Mr. Seiffert stated Mr. McLain has spoken to a grandchild of a property owner without any result. Chairman Davidson stated a new application would need only a simple majority. Mr. Seiffert stated it is their

position that this is grandfathered meaning if it had been transferred to Mr. McLain's father, it would have been approved. Chairman Davidson stated he is currently on the committee reviewing the current Comprehensive Plan and at that time there was a moratorium on subdivisions until the Town adopted a new zoning law.

Mr. Seiffert read a portion of the minutes of December 17, 2007 "Board Member Davidson stated that while the homes exist, would not present any immediate change and the circumstances which would have allowed two structures to be located on the substandard parcel predate the ordinance, there would be no benefit." Mr. Seiffert stated the separate deed would allow for more affordable housing to be provided. Chairman Davidson stated this Board's role is limited by a body of law called zoning regulation and what Mr. Seiffert is proposing is not permitted by those laws. Mr. Seiffert stated he and Mr. McLain are open to any suggestions. Board Member Lang stated if a variance were granted, Mr. McLain would then be required to appear before the Planning Board for a subdivision.

Chairman Davidson suggested this matter be tabled until the next meeting. Board Member Lang agreed stating the Board would like to grant Mr. McLain the fairest hearing they can. Mr. Seiffert inquired if any Board Members had visited the property. Chairman Davidson stated they had. Mr. McLain stated the Board realizes that the only changes would be on paper. Mr. McLain stated he does not want to change the character of the neighborhood due to the fact he lives next door. Chairman Davidson stated any changes this Board makes will outlive all present.

Board Member Traeger stated the mobile home could be removed and a new structure built in its place. Town Attorney Avigdor stated if this Board grants the variance and Planning Board grants the subdivision, the Planning Board may have issues with the wells and septics and require separate systems for each parcel. Mr. McLain stated each structure currently has its own well and septic system. The Board will table the issue to the next meeting on June 15<sup>th</sup>.

**Correspondence:** None.

**Secretary's Report:** None.

**Public Participation:**None.

Chairman Davidson stated he had mapping of the Finch Pryn tracks and easement requests for Board Members information.

**Adjourn**

At 7:50 p.m. a motion was made by Hank Lang, seconded by Board Member Traeger to adjourn the meeting. Ayes: Davidson, Traeger, Lang. Carried: 3-0.

Respectfully submitted,

Diane R. Byrne  
Secretary