

**TOWN OF DAY ZONING BOARD OF APPEALS  
MINUTES – REGULAR MEETING  
MAY 18, 2009**

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

**Motion** by Dave Davidson, seconded by Board Member Lang to approve the minutes of the April 20, 2009 meeting: Ayes: Johnsen, Traeger, Lang, Davidson, Volpe. Carried: 5-0.

**Old Business:**            **BOLT, Stephan & Geri**  
                                 **09-02ZBA, Tax Map #43.16-1-2.2**  
                                 **Area Variance**

Chairman Johnsen reviewed the Bolt application stating it was referred to this Board for a variance from a navigable body of water. All Board Members visited the site. The Secretary researched New York Statutory law definition which states: “Navigable waters of the state as all lakes, rivers, streams and waters within the boundaries of the state and not privately owned, which are navigable-in-fact or upon which vessels are operated, except all tidewaters bordering on or lying with the boundaries of Nassau and Suffolk counties. Navigable in fact is defined as navigable in its natural or unimproved condition, affording a channel for useful commerce of a substantial and permanent character conducted in the customary mode of trade and travel on water. A theoretical or potential navigability or one that is temporary, precarious or unprofitable is not sufficient, but to be navigable-in-fact a lake or stream must have practical usefulness to the public as a highway for transportation.”

Chairman Johnsen also recited “that a stream or river only to be negotiated during the natural flood stage is not navigable by Agency definitions.” DEC regulations, Part 608.1, (Definitions) Use and Protection of Waters, Section (1) which states “Navigable waters of the state means all lakes, rivers, streams and other bodies of water in the state that are navigable in fact or upon which vessels with a capacity or one of more persons can be operated notwithstanding interruptions to navigation by

artificial structures, shallows, rapids or other obstructions, or by seasonal variations in capacity to support navigation. It does not include waters that are surrounded by land held in single private ownership at every point in their total area.”

Chairman Johnsen stated a stream navigable at times of flood would not determine it to be a navigable body of water. He stated in his opinion Daley Creek is not navigable. He further stated Code Enforcement Officer Metzler indicated the only variance required would be from Daley Creek with the Zoning Board needing to determine if it were navigable. All Members agree it is not navigable.

Town Attorney Avigdor stated there is still an application on the table. Board Member Davidson stated it was not deemed complete due to the absence of Code Enforcement Officer Metzler’s denial letter. Town Attorney Avigdor stated an application still exists but due to it being deemed incomplete, there are no time constraints. He would suggest the applicants withdraw the application and notify the Code Enforcement Officer of the Board’s decision of non-navigability and a building permit would be able to be issued. Board Member Lang inquired if a motion from this Board would be appropriate stating the stream is not navigable and in its opinion, a variance is not required. Town Attorney Avigdor stated it would be less cumbersome for the applicant to withdraw the application.

Stephen and Geri Bolt agreed to withdraw the application at this time. The Secretary will notify the Code Enforcement Officer of the Board’s decision and if he has any questions, he can speak to Town Attorney Avigdor. Mrs. Bolt inquired if a variance would be required for the septic system and well. Chairman Johnsen stated a permit would be required from the Code Enforcement Officer. Mrs. Bolt was concerned it would not meet the 100 foot distance requirement. Board Member Traeger stated when a lot is pre-existing and non-conforming, the distance requirements are reduced. Town Attorney Avigdor stated Board Member Traeger is correct but this Board has not mathematically determined what the setback requirements would be and well and septic system would be under the jurisdiction of the Department of Health and not this Board. He further stated if a variance is required, it can be obtained from the Department of Health whose process is not as imposing. He stated the 100 foot separation is for the average septic system and their concern that the water supply not be contaminated but there are designs of septic systems which can be placed closer. The Department of Health can give that variance

once they have their septic building plans which may need to be designed by an engineer. Board Member Volpe stated the old septic system may be able to be rehabbed. Chairman Johnsen stated if the well is encased in well casing and into bedrock for more than 50 feet to protect the well from any contaminants from the septic system, it would be able to be closer than the 100 foot requirement. Town Attorney Avigdor stated this Board reviews matters dealing with zoning law and any departures from it.

**New Business:** None.

**Correspondence:** CDRPC Local Government Planning & Zoning Workshop to be held on June 4, 2009 in Troy was reviewed and there was no interest in attending.

**Secretary's Report:** None.

**Public Participation:** Bill Berg requested a letter from the Secretary that he was in attendance at the meeting upon the request of his teacher and it was provided.

**Motion** by Judy Traeger, seconded by Board Member Volpe to adjourn the meeting at 7:15 p.m. Ayes: Johnsen, Volpe, Traeger, Davidson, Lang. Carried: 5-0.

Respectfully submitted,

Diane Byrne  
Secretary