

**TOWN OF DAY ZONING BOARD OF APPEALS**  
**Public Hearing – November 17, 2008**  
**OLINSKY, Lawrence & Michelle**

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

**Members Absent:** None

**Public Present:** Larry Olinsky  
Mr. and Mrs. Herbert Hilicus  
Carl Thurnau  
Mr. and Mrs. Chip Johnson  
Donna Peek  
Steven Dweck

Proof of notice having been furnished, the Public Hearing regarding Lawrence and Michelle Olinsky, Tax Map #33-11-2-16 was opened at 7:10 p.m. by Chairman Davidson.

Larry Olinsky presented each Board Member and Town Attorney Avigdor with an information folder. He stated the first packet represents the State law regarding variances. He stated if the Board has any preconceived ideas of what was rumored Mr. Olinsky was intending to do with his property; he wished to correct any misinformation. It is not his intention to build and sell the property. He reviewed the five criteria which the Board must consider regarding a variance. Mr. Olinsky stated the height of the roof pitch is 18 feet from ground level to the peak which is the minimum roof pitch recommended by his architect based on snow loads.

In regard to the “character of the neighborhood” or “detriment to nearby properties”, Mr. Olinsky stated there were ten two-car garages on Kathan Road. In August 1997, David Cox was granted a variance and at that time the Zoning Board of Appeals of the Town of Day stated there was no substantial change to the neighborhood because there were already so many garages on the roadway. Mr. Olinsky stated he felt the Board had already addressed that issue.

Mr. Olinsky stated based on the structures on his parcel, he calculated the lot coverage to be 22.12% which is less than the 25% which is the maximum. In his opinion, the property value of his parcel as well as his neighbors would be increased with the inclusion of the garage.

Mr. Olinsky stated regarding the criteria “whether the benefit could be sought by another means”, he sent letters to each of his neighbors requesting their input on his

garage and he received some oral and written replies, and believes he has addressed their issues. Originally, Mr. Olinsky stated it was not his intention to demolish the existing house but there were crumbling foundation issues. He consulted with his architect and builder regarding construction of the garage at foundation level similar to the Davidson house on Kathan Road. The garage could not be placed there due to the slope being too steep. The left side of the property is blocked by a utility pole and there is an existing well in the center of the lot.

Mr. Olinsky stated the criteria of an area variance being substantial should be determined by the effect the variance may have and not simply by the numerical percentage or size of the variance. Mr. Olinsky stated the following example: "The Court of Appeals used the following examples for a better understanding of this criteria: a 20% variance that no longer allows safe passage for emergency may be substantial. Conversely, a 90% variance on a large lot that still leaves plenty of room and does not compromise safety concerns may not be substantial." Mr. Olinsky stated the 90% variance scenario would mimic his circumstances and justify the issuance of an area variance.

Mr. Olinsky stated he considered the criteria of "adverse physical or environmental effect" very seriously and would not wish to cause any safety issues with his surrounding neighbors. He stated he understood the Board had concerns regarding a safety issue with a previous application for a garage on Kathan Road (Pritchard). He stated he made some inquiries of the Department of Environmental Conservation and they reported that there has never been a reported complaint which affected public health or safety. The New York State Police reported there have not been any vehicles accidents on Kathan Road in the last ten years since they began computerized record keeping. They considered vehicular traffic "light (less than 50 cars per day from September to June and "moderate" (less than 100 cars per day) during July and August and they did not consider Kathan Road a main thoroughfare. Mr. Olinsky provided photographs which he stated indicated a clear unobstructed view of oncoming vehicles for approximately 300 feet northbound and 1100 feet southbound on a straight roadway. He stated the speed limit is 35 miles per hour. He stated he realized there may be some disagreements on the figure on the number of cars traveling during different times of the year because there is no one physically keeping a tally but he felt the lack of any reported accidents testifies to the safety issues.

Mr. Olinsky stated the location of the garage on the parcel was determined as two feet from the Town taking line and 14 feet from the road edge where there is a safety issue. He stated vehicles would not be driving on that 14 foot area because it is off the pavement and there are trees on this portion of the property. Mr. Olinsky stated he suffered an accident while employed by the police department and has a disability which may worsen over time and render him so disabled; he may need a walker or wheelchair. He is proposing a handicapped access ramp for this purpose. The location of the house and garage are determined by the requirements of the handicapped access ramp which for every one inch vertical incline, the ramp must be at least twelve inches in length. Mr. Olinsky submitted a letter from his architect (Robert Bernstein, AB Designs dated

October 28, 2008 to the ZBA – copy attached) which reviews the requirements and need for a handicapped ramp. This ramp would be built in two 30 foot sections.

Chairman Davidson stated the reason Mr. Olinsky is requesting the variance is not an issue this Board can consider. They must consider only the land use. Chairman Davidson stated he wished to clarify for the public that the variance is a 38 foot variance and not a two foot variance. Mr. Olinsky stated he took into consideration the ten other garages located on Kathan Road to determine if what he is requesting is in line with what exists. He stated using a laser measurer, it was determined that the majority of the garages are 14 feet from the road edge. Chairman Davidson inquired if the majority of houses on Kathan Road had garages on the road? Mr. Olinsky stated the majority did with the exception of Chairman Davidson. He further stated 18 feet roof height is also the average on Kathan Road.

In conclusion, Mr. Olinsky stated the variance standard is a balancing test considering the scale with whatever detriment may be created by the approval of the variance against the benefit. He understood that 90% of the time it is a matter of convenience, however, in his case he would be better able to cope with winter conditions in the event of a more extensive disability and the benefit would be a great deal more. Mr. Olinsky also provided three medical statements explaining his disability. He requested the Board give them the weight they deserve.

Chairman Davidson asked for any comment from the public.

Carl Thurnau, 1178 Kathan Road, stated his parcel is located two parcels north of Mr. Olinsky on the lakeside of Kathan Road. He stated he had no issue with the road setbacks because there are a number of garages on Kathan Road which are constructed in a similar fashion. However, he is concerned about the sideyard variance and does not feel it would be appropriate to impact on neighbors. He stated Mr. Olinsky's construction resulted from a complete teardown and the proposed garage could have been planned in conjunction with his home. Mr. Thurnau stated he can sympathize with Mr. Olinsky's physical condition but a handicapped access ramp could be constructed with switchbacks and still accomplish the maximum requirements. He stated the garage could be moved to the middle of the property and he agreed the Board should consider the land use and not the physical hardship.

Steven Dweck, 1184 Kathan Road, read a statement into the record (copy attached) and provided photographs to the Board which are done to scale showing the proposed garage and how it would impact the Dwecks when they try to enter Kathan Road from their driveway.

The Secretary read into the record a statement from Peter and Jean Fiordimondo, 1183 and 1185 Kathan Road (attached).

Mr. Olinsky stated he understood Mr. Dweck's concerns particularly with drainage and runoff and he had a swale installed between the properties (photograph of

swale provided to the Board). Mr. Olinsky also stated he sought out feedback from both the Dwecks and Fiodimondos through letters. Mr. Olinsky disagreed with Mr. Dweck's statement regarding the property being located on a curve. He stated there is in excess of 300 feet of sight distance on one side and 1,000 feet on the opposite as Mr. Olinsky's photographs indicate. In regard to the sideyard setback of seven feet, Mr. Olinsky stated the acceptable stairway which must be constructed determined the location of the garage. In regard to the width of the garage being 26 feet rather than 24 feet, this was determined by the possible need for a walker or wheelchair being able to navigate within the garage between the car and the wall. Mr. Olinsky stated there is a shed which was existed on his property at the time of purchase which is two feet over Mr. Dweck's property line and has never been an issue with traffic flow onto Kathan Road by Mr. Dweck or any previous owners of that property. Mr. Olinsky stated his proposed garage would be located further back from this shed which would give Mr. Dweck additional sight clearance onto Kathan Road. Mr. Olinsky stated at the time of the Pritchard area variance application, there was an issue of a shed being located within town property and issues of sight distance and Mr. Olinsky stated he believed the final outcome was it did not impact the application.

Mr. Olinsky stated this is not an application for convenience but for quality of life and how much a garage would enable him to have more access in the town when he retires full time to the Town of Day. He stated he hoped the Board would give this aspect of his application the weight it deserves. Chairman Davidson stated he did not believe this Board is allowed to consider that as part of the criteria. Mr. Olinsky stated he believed it would be considered as part of the benefit to be achieved. Chairman Davidson disagreed stating the Board must consider the land use.

Mr. Dweck stated he paid for the swale which was installed by his excavator and is located on his side of the property line marker. He stated he realizes that Mr. Olinsky has potential future physical limitations but felt that the garage could be moved toward the center of the parcel negating the need for a sideyard variance and not change the ramp configuration.

Board Member Lang inquired other than the utility pole, what is preventing Mr. Olinsky from constructing the garage in the center of the parcel. Mr. Olinsky stated the distance from the town taking line would move the garage 24 feet further back eliminating the distance he would need for a ramp and there is an existing well in that area. Board Member Lang stated if Mr. Olinsky constructed the garage over the existing parking area, it would locate the garage one to two feet further away from the house and still be able to accommodate the handicap ramp. He further stated if it were located over the existing parking, it would not interfere with the well any more than the existing parking does. Mr. Olinsky stated the issue would be the well and the proposed garage could not stop where the existing parking area stops and would have to be located 3-4 feet further back. Board Member Lang stated the submitted drawing does not show that. Mr. Olinsky stated he would need to measure at the site but he believed the garage would have to start directly on the town taking line.

Board Member Johnsen stated 24 feet is a deep garage which could easily accommodate even the largest car. He stated to move the garage to the center and move it back two feet would not interfere with the well. Chairman Davidson referring to the issue of the size of the proposed garage, the garage could be a one car garage rather than two. Board Member Volpe agreed. Mr. Olinsky stated other garages on Kathan Road are two car garages and he has two vehicles. Chairman Davidson stated a one car garage would eliminate the need for a sideyard variance and change the height of the peak of the garage. Chairman Davidson stated there may be some alternatives which may warrant further consideration.

**Motion** by Board Member Johnsen, seconded by Judy Traeger to close the Public Hearing at 7:55 p.m. Ayes: Dave Davidson, Judy Traeger, Pat Volpe, Ken Johnsen, Hank Lang. Carried: 5-0.