

TOWN OF DAY ZONING BOARD OF APPEALS

PUBLIC HEARING, AUGUST 17, 2009

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

Members Absent: None.

Public Present: Donald Martin

Proof of notice having been furnished, the Public Hearing regarding Donald Martin, Tax Map #30.-2-9 was opened by Chairman Johnsen.

There were no public comments and no written comments were received regarding this area variance.

Board Member Traeger stated Mr. Martin had reduced the depth of the pole barn from 30 feet to 24 feet. She inquired if he reduced the front or the rear of the pole barn. She further stated if the depth was reduced, there area variance should also be reduced by six feet. Mr. Martin stated in an effort to obtain the smallest variance needed, he reduced the size of the building and revised the application at the last Board meeting. Board Members Traeger and Lang reviewed the submitted survey map along with the revised application.

Board Member Davidson inquired what type of construction Mr. Martin was anticipating for the barn. Mr. Martin stated it would be pole barn with a green tin roof on a gravel foundation.

Chairman Johnsen inquired if the poles would be inserted in the ground and be anchored. Mr. Martin stated they would be inserted into the ground with concrete.

Board Member Lang inquired if the six feet was taken off the rear of the pole barn. Mr. Martin stated it was reduced on the side. Board Member Volpe stated if the side dimension was reduced, it would not affect the application. Mr. Martin stated by reducing the pole barn, it would bring it closer to compliance. Mr. Martin reviewed the survey map with Board Members Lang and Traeger. Board Member Lang stated if that were the case, the area variance would be for only 15 feet. Chairman Johnsen stated the actual setbacks would be 61 feet and 71 feet. Mr. Martin stated it would be 59 feet and 69 feet. Board Member Davidson stated he reviewed the survey map and the pole barn would be set back 55 and 65 feet from the property line of Martin.

Board Member Traeger stated the Board is aware that Mr. Martin is building a barn which is 24 x 50 feet which was reduced at the time the application was deemed complete from 30 x 50 feet and it should result in a reduced area variance by six feet. Board Member Davidson stated the original sketch and application did not include a surveyor's map. He further stated the Board now has a surveyor's drawing which indicates a pole barn which is 24 x 50 feet with 55 and 65 feet as the setbacks and the variance being requested would be for 20 feet. Board Member Lang stated Mr. Martin changed the size of the building and did not change the size of variance according to the submitted application materials.

Board Member Davidson stated the stakes which are in the ground at the building site must have been placed there by the surveyor. Mr. Martin stated the surveyor did not place any stakes, that he had been placed there to determine the location of the barn. When the surveyor came to the site, he did add pins on the property line to determine the size of the variance.

Chairman Johnsen stated the Board should turn their focus on one of the criteria of "whether the benefit can be achieved by other means feasible to the applicant". He further stated he believed the pole barn could be moved farther back on the site and would not require a variance. Board Member Lang stated that prior to reviewing the criteria; he and Board Member Traeger would need to determine how large of a variance Mr. Martin is seeking. Chairman Johnsen stated Mr. Martin may not require a variance if the pole barn is moved back by ten or 15 feet.

Mr. Martin stated he paid \$8,000 for excavation costs over five years ago believing the setback required was 50 feet. He further stated marshland was filled in and it would create a hardship to undertake additional site work. Board Member Davidson stated he agreed additional site work could be undertaken but upon a visit to the site, he believed additional excavation would be extensive. He further stated the area where the stakes are laid out is graded and level. Board Member Davidson stated he has had ambivalent feelings regarding this application and while the cost to further excavate is unknown, he did not believe the granting of this area variance would do any harm.

Board Member Volpe stated he also visited the site and believed the pole barn could be located further back and not require a variance. Board Member Traeger stated she also visited the site and believed the pole barn could be located further back from the property line and not require a variance.

Chairman Johnsen stated this Board must determine if it would require Mr. Martin to move the pole barn and not require a variance or given the information which has been submitted, would it be reasonable to grant a variance.

Town Attorney Avigdor stated the five criteria which is part of the State Statute has three subsections (a), (b) and (c). Subsection (a) states this Board has the authority to grant variances; (b) states the five criteria; and, (c) states that the Board in the granting of variances shall grant the minimum that it shall deem necessary and adequate. Town

Attorney Avigdor stated that would be a different legal factor than the five criteria. Subsection (b) determines if the Board would grant a variance and Subsection (c) speaks to how extensive a variance should be if the Board decides to grant it.

Chairman Johnsen stated he finds the regulations to be onerous but the Board cannot change them. There were no further comments. The Public Hearing was closed at 7:20 p.m.