

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
DECEMBER 17, 2007**

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

Members Absent: Ken Johnsen

Chairman Lang called the meeting to order at 7 p.m.

Minutes Motion by Dave Davidson, seconded by Board Member Volpe to approve the minutes of November 19, 2007 meeting. Ayes: Hank Lang, Pat Volpe, Judy Traeger, Dave Davidson. Carried 4-0.

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

Chairman Lang stated a Public Hearing had been held at the November meeting and a decision was deferred to this meeting. Chairman Lang inquired if the Board Members were ready to vote on the application at this time. All Board Members stated they were.

- **Undesirable change in the neighborhood character?**

Board Member Volpe stated it would not be a detriment because there are no immediate neighbors. However, it is impossible to predict what may happen in the future.

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.

Chairman Lang stated there would not be any other reason to separate other than to sell. It would create two substandard lots.

- **Can the benefit be achieved by other means?**

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Board Member Davidson stated while he can see no other avenue to accomplish the subdivision, it is a personal consideration on the part of the applicant and not a goal of the Zoning Board.

Board Member Traeger stated she also felt it was requested for personal reasons and it could not be achieved by any other means.

Board Member Volpe was in agreement with Board Member Traeger.

Chairman Lang stated the only way Mr. McLain can sell is to subdivide. He stated he could divide the parcels into one standard and one substandard lot which would not be a residential lot once it is subdivided.

- **Is the variance substantial?**

Board Member Volpe stated it is.

Chairman Lang stated the frontage on the lots would be 169 feet and 283 feet where 300 feet each is required.

Board Member Davidson stated it would be very substantial taking one standard lot and dividing them into two non-conforming lots.

Board Member Traeger stated she was in agreement that it was substantial.

- **Will this have an adverse physical or environmental effect?**

Board Member Davidson stated it would not have an adverse physical or environmental effect on the neighborhood.

Board Member Traeger stated there would be no adverse effect at this time but it may in the future.

Chairman Lang stated agreed that this Board would not have any idea of how the property would be used at a later time and if that use would be appropriate.

- **Is the alleged difficulty self-created?**

Board Members Traeger and Davidson stated it was self-created.

Town Attorney Avigdor stated “self-created” refers to something prior to submission of the application or done in the past.

Board Member Davidson stated it was not relevant because it was done prior to zoning.

Chairman Lang stated this application was received from the Planning Board asking for this Board’s advice. He inquired of how to frame the motion being it was a referral from the Planning Board. Town Attorney Avigdor stated this Board did receive a variance application. Chairman Lang stated a subdivision could not be granted. Town Attorney Avigdor stated a variance would be a pre-requisite to the subdivision. The variance, if granted, would allow the subdivided lots to exist. That does not mean that the Planning Board can state that if they feel it would be allowable, this Board could agree and allow it. The applicant would have to go back before the Planning Board for the subdivision approval. However, if this Board denies the variance, there is no action the Planning Board can take. Chairman Lang stated this would mean “no variance, no subdivision”.

Town Attorney Avigdor stated the appeal would result from a denial elsewhere. The Planning Board is aware it cannot grant a subdivision because there is not enough road frontage and acreage. This would result in a denial of the subdivision and their referral to this Board.

Board Member Volpe inquired if this second structure was legally allowed because all building permits were in order and it was done prior to zoning, would it not be considered favorably. Mr. McLain stated all necessary permits were acquired and the mobile home was sited in 1987. It was noted zoning was enacted in 1992.

Chairman Lang inquired of Town Attorney Avigdor if this Board would be granting two variances. Town Attorney Avigdor stated they would be but it could be handled in a single motion. He further stated there is no such action as granting one variance and denying the other which would accomplish nothing. Board

Member Davidson stated this was the application which is in front of the Board. Chairman Lang stated it could be granted with conditions. Board Member Davidson stated while he would agree to engage in seeking a solution, the applicant would have to resubmit with a substantial change in the application.

Motion by Chairman Lang, seconded by Board Member Volpe to grant two area variances in order to create one lot of 7.4 acres with 283 feet of road frontage and another lot of 8.5 acres with 169 feet of road frontage from a single lot. Ayes: Volpe. Nays: Lang, Traeger, Davidson. The motion did not carry: 1-3.

Chairman Lang stated if Mr. McLain wished to modify his application, it must be a substantial change. Mr. McLain stated the frontage could be considered a right of way. Chairman Lang stated 300 feet are required by the Ordinance. Mr. McLain stated it would not be possible then to subdivide his property. Chairman Lang stated it would be Mr. McLain's choice whether to resubmit another application. Town Attorney Avigdor stated that Chairman Lang was being courteous in stating Mr. McLain could return with a new application. It is clear that Mr. McLain cannot create more road frontage or more acreage. Mr. McLain stated that two houses would be illegal on one parcel. Town Attorney Avigdor stated he would be able to sell the property and it would not be an illegal parcel with two houses located on it because it would be grandfathered and that grandfathering would be retained by each owner. Board Member Volpe stated a different Board in the future may view the application differently.

Town Attorney Avigdor stated the application to grant the variance failed, it is in limbo as no action was taken. The density already exists and is there harm to the land to draw the line to separate it. Town Attorney Avigdor further stated that when this Board deals with an application, the motion should always be in the form of a denial. This should also be a motion that passes rather than a situation where no motion passed such as in the Pritchard matter where the vote was 2-2.

Motion by Board Member Davidson, seconded by Board Member Traeger to deny Application No. 07-04ZBA, Paul McLain, Tax Map #41.-1-11 for two area variances. Ayes: Lang, Traeger, Davidson. Nay: Volpe. Carried 3-1.

New Business

**OLINSKY, Lawrence & Michelle 07-05ZBA
Tax Map #33-11-2-16 Area Variance**

The Secretary had been contacted by Mr. Olinsky who requested his application be put on hold due to the fact that if it were deemed complete at this meeting and set for a Public Hearing in January, he would be unable to attend. Mr. Olinsky is also unavailable at the time of the February meeting and will contact the Board when he would like his application to be acted on.

Board Member Traeger stated property owners are purchasing parcels, tearing down existing camps and replacing them. The property owner will approach the Code Enforcement Officer for the required permits and they are told to remove the garage because it would require an area variance. When they are ready to construct the garage, he will deny them and send them to this Board. Board Member Traeger stated she does not know why Code Enforcement Officer Metzler does not work with the individuals in trying to locate all structures on a lot so they will not require variances and not burden the Board. Board Member Davidson stated while he does not have a problem working with the applicants for a creative solution, it was not the job of this Board or the Code Enforcement Officer's to do this. It was the responsibility of the applicant. Board Member Traeger stated the same scenario seems to be reoccurring: Tear down what is existing, partially build out the site and then come before this Board to obtain a variance to locate the garage. Board Member Davidson stated the applicant should be made aware of the possibility of a need for an area variance and the applicant should think about the design and how and where it will work.

Town Attorney Avigdor stated there are professionals who can design practical solutions such as architects, etc. Board Member Davidson stated there were some issues which arose during the Pritchard application which may also need to be addressed in the Olinsky application, one of which is the distance from the garage to the Town taking line of the road. Town Attorney Avigdor stated in his opinion without a survey, no one would know where the legal edge of the road would be. Board Member Volpe stated whenever there is a question, this Board should always require a survey map. Town Attorney Avigdor stated Lake Luzerne has adopted that requirement stating no application will be complete without a survey map. He further stated this Board may consider a requirement for survey maps for all dimensional variances. Board Member Davidson stated it could be waived under hardship. Board Member Davidson stated he would also like to know what percentage of the Olinsky parcel was covered by structures and the

height of the garage. Chairman Lang stated Mr. Olinsky with a house, garage and shed may be pushing or exceeding the limit especially in light of the poor quality of the submitted map.

Motion by Board Member Davidson, seconded by Board Member Traeger in regard to Application No. 07-05ZBA, Lawrence & Michelle Olinsky, that a survey map must be submitted indicating the proposed location of all structures on the lot and the location of the Town taking line; the percentage of lot area covered by the structures; and, the height of the proposed garage. Ayes: Lang, Davidson, Traeger, Volpe. Carried: 4-0.

Town Attorney Avigdor stated this application would not be complete until we receive this information.

Chairman Lang inquired if at the last meeting the Pritchard failed completely or will it be reconsidered? Town Attorney Avigdor stated the motion failed to pass and it would have failed due to the passage of time. Chairman Lang stated that it was his understanding that the 62nd day would have been the preceding Sunday and it would revert to the following day (Monday). Town Attorney Avigdor stated it was requested by the applicant to grant an extension of time which was denied by default. Chairman Lang stated he was under impression that if the 62 days expired, another Public Hearing would be required. Town Attorney Avigdor stated it would not be required.

Chairman Lang had further questions on the process and would address those questions to Town Attorney Avigdor by phone.

Correspondence

The Secretary stated all registrations for the January Saratoga Planning Conference are due. Board Members Davidson and Volpe and Chairman Lang will attend.

Board Member Volpe stated he would like to have more discussion regarding requiring survey maps. Chairman Lang directed the Secretary to include this on the January agenda under "Other Business".

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Adjourn

At 8 p.m. a motion was made by Board Member Traeger and seconded by Board Member Davidson to adjourn the meeting. Ayes: Lang, Traeger, Volpe, Davidson. Carried: 4-0.

Respectfully submitted,

Diane R. Byrne
Secretary