

**TOWN OF DAY ZONING BOARD OF APPEALS  
MINUTES – REGULAR MEETING  
JANUARY 24, 2008**

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

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

**Minutes**        Motion by Judy Traeger, seconded by Board Member Volpe to approve the minutes of December 17, 2007 meeting. Ayes: Dave Davidson, Judy Traeger, Hank Lang, Pat Volpe, Ken Johnsen. Carried: 5-0.

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

Mr. Olinsky sent a letter to the Board withdrawing his application.

**New Business**        None

**Other Business**        **Application Submission: Survey Map Requirement**

Chairman Davidson stated at last month's meeting, the matter of requiring survey maps be made part of the ZBA application process. He further stated that Board Member Traeger's comments regarding building permits being issued when additional structures will require area variances and what might be done to make this process better prompted this discussion.

Chairman Davidson also stated while reviewing the criteria the Board has to consider in order to grant an area variance, the question of "can the benefit be achieved by other means" is not adequately addressed. For example, in the Pritchard application, the applicants could have addressed an alternative site for the garage and what makes this particular place the only compelling location. Board Member Lang stated the benefit is what the applicant is seeking to do. Board Member Volpe stated that in 90 percent of the applications are submitted without survey maps,

many of these people moved into town from homes where they never needed an area variance and have no knowledge of the process.

Board Member Traeger stated in the Olinsky application the height of the garage was not submitted. Town Attorney Avigdor stated the Town of Luzerne has made submitting survey maps part of their process. Town Attorney Avigdor stated the cost to the applicant has been a concern when considering adding this requirement to the application and if you are going to be asking for a survey map to be submitted with all ZBA applications. He further stated that making the applicant know at the time he picks up the application materials that a survey map is required would put him on notice that he now has to make arrangements for that. Town Attorney Avigdor stated most surveyors would take 30 to 90 days to complete a survey. Board Member Volpe stated Code Enforcement Officer Metzler should advise the applicant of that when he denies their building permit. Town Attorney Avigdor stated he agreed it should be part of our policy and Code Enforcement Officer Metzler could inform them at the time of denial when he refers them to the ZBA.

Chairman Davidson stated the survey map would show the location of existing structures on the parcel while the location of a proposed structure would cause a problem and require a variance. He further stated that discussion should occur as to why that particular location is crucial. Board Member Johnsen stated in the Murphy application, the location was determined by the location of the septic system.

Board Member Traeger stated the problems are occurring when there is new construction. She stated in the cases of both Pritchard and Olinsky, their large homes were constructed first and the subsequent garage construction would require area variances. She stated all of the building plans of the applicants should be on the table so the buildings could be arranged so an area variance would not be needed. Board Member Johnsen stated variances are exceptions to the law. Board Member Traeger stated everyone wants an exception. Chairman Davidson stated the applicants should understand all the rules of the application process beforehand whether it is made known at the time of the building permit process or at the time they need the variance.

Board Member Traeger stated in many cases, applicants purchase property with existing small camps on small lots which are torn down and replaced with very large homes. She further stated these property owners are moving permanently and next want a garage because of weather conditions. Board Member Lang stated the Szyfman application's for a garage required a variance due to ledge rock and blasting would upset wells and septic systems of nearby neighbors. Board Member Traeger stated the Szyfmans purchased the parcel with an existing home on the parcel. Chairman Davidson stated the applicants should suggest alternatives themselves.

Board Member Lang stated an applicant could use a tax map and provide accurate drawings of proposed building locations on it. Town Attorney Avigdor stated that tax maps and survey maps are not the same. Tax maps are based on deeds and pieced together within a County office and contain a disclaimer which states it is not accurate and it is for tax purposes only. Individuals who determine their parcel is listed larger than it really is can contact the County to have their taxes reduced. Town Attorney Avigdor stated when a map for a six lot subdivision is filed, an individual purchases one lot and then needs a variance to build a garage; we know what the parameters of each lot are on the map but we don't know where any structures, wells or septic systems would be on that map. This would not imply that the applicant is not being honest but would help in the determination of considering if the the difficulty is self created. He further stated property owners purchase a parcel, assume that the hedgerow would be the property line, have a survey done and realize that the parameters of the parcel are different.

Board Member Johnsen inquired if the County requires a survey for their roads. Town Attorney Avigdor stated they do not. Board Member Volpe stated there is a geodetic survey that does contain road surveys. Town Attorney Avigdor stated there is but road locations can move over the years. Board Member Volpe stated he worked many jobs which required a starting point and the rest of the job worked off that starting point. Board Member Lang stated Town Attorney Avigdor made a point several meetings ago that just because you know where the asphalt is, does not mean that is the road location because it can wander over the years.

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Board Member Traeger inquired if a property owner submits plans for construction to Code Enforcement Officer Metzler, are plans from an architect also required? Board Member Johnsen stated only when the structure is 1,500 feet or larger. Town Attorney Avigdor stated if Code Enforcement Officer Metzler has concerns and feels a survey should be required, he could advise the applicant. Board Member Volpe stated he felt that was where the process should start. Town Attorney Avigdor stated this Board does not have the authority to tell the code enforcement officer what his duties are. He further stated that this Board would create a policy and would inquire what would it take the code enforcement officer to implement it. Board Member Lang inquired if this needed to be approved by the Town Board. Town Attorney Avigdor stated it did not but that the Town Board could override it. Board Member Traeger stated this requirement would be a help to this Board. Chairman Davidson stated the applicant could pencil in the location of the proposed structure on the survey map.

Chairman Davidson stated he would draft a motion for next month's meeting and no action needed to be taken tonight. Board Member Lang stated Chairman Davidson would need to specify what he means by "survey map".

**Correspondence** None

**Secretary's Report** None

**Public Participation** None

**Adjourn** At 7:30 p.m. a motion was made by Board Member Lang and seconded by Board Member Volpe to adjourn the meeting. Ayes: Davidson, Lang, Traeger, Volpe, Johnsen. Carried 5-0.

Respectfully submitted,

Diane R. Byrne  
Secretary