

# TOWN OF DAY PLANNING BOARD REGULAR MEETING, FEBRUARY 6, 2012

**Members Present:** David Cox  
Ted Mirczak  
Jack Vaillancourt  
Dick Traeger  
David Avigdor, Town Attorney

**Members Absent:** Eileen Brennan

**Motion** by Dick Traeger, seconded by Board Member Mirczak to approve the minutes of December 5, 2011 with the following changes: Page 1, Old Business, third paragraph, line eleven "All other developable..." remove "other", Page 5, last paragraph, line 12 "...parcel which he 678..." change to "parcel which the 678..." page 6, second full paragraph, line 5 "There are two different area of road..." change to "There are two different lengths of road". Ayes: Cox, Mirczak, Traeger, Vaillancourt. Carried: 4-0.

**New Business:**      **CASHIN, Michael G. PB12-01SPR**  
                                 **Tax Map #33.17-1-3, Site Plan Review**

Site Plan Review for 50 feet of shoreline work with replacement of rip rap proposed to be completed manually without any mechanical equipment on proposed area. Chairman Cox visited the site and observed the extensive damage which included exposure of tree roots. The applicant also submitted photographs which are included in the application file denoting the extensive damage. He also submitted permits from the Army Corps of Engineers, Department of Environmental Conservation along with APA Jurisdictional Determination and all other pertinent completed forms.

**Motion** by Jack Vaillancourt, seconded by Board Member Traeger to approve the site plan for shoreline work for beach restoration for Michael G. Cashin, PB012-01SPR, Tax Map #33.17-1-3. Ayes: Cox, Mirczak, Traeger, Vaillancourt. Carried: 4-0.

**DALLAIRD, Donald and Rebecca**  
**PB12-02SPR, Tax Map # 42.12-1-73**  
**Site Plan Review**

Applicants currently have a dog breeding facility located within their home which also utilizes the rear yard. The application describes the proposal as a "kennel and out door

sign 2' x 2' on 4" poles 6' in height". Only dogs owned by the applicants will be housed at the 77 Horse Hill Road address.

The parcel is located in Rural Moderate Density Zone which permits dog kennels with site plan review. The sign is within the regulated size restriction. Mr. DAllaird reviewed the submitted photographs with the Board Members. Mrs. DAllaird stated the operation is housed mainly indoors with limited outdoor activities within a fenced area which is 20' x 20' x 10' x 10' x 10' x 10' (L-shaped enclosure accessible by a "doggie door" on the rear of their residence. She stated all dogs are properly licensed and she holds a current dog breeding license from New York State Department of Agriculture and Markets which also does periodic inspections. She further stated it on the advice of the Town Clerk that she obtain approval of the Planning Board. She has been breeding Chihuahuas for 4 ½ years.

Town Attorney Avigdor reviewed the definition of dog kennel: "Any premises on which dogs or cats are maintained, boarded, bred or cared for in return for remuneration or are kept for the purpose of sale." Sign regulations stated signs cannot be greater than 40 square feet and the proposed sign is one tenth of the requirement and will be unlit and constructed of wood.

Mr. and Mrs. DAllaird stated Chihuahuas are generally six pounds and under. A review of the photographs illustrated the general size of the dogs which include one larger mixed bred dog and one Chihuahua which is 14 pounds and not used for breeding.

Town Attorney Avigdor stated this is an application for a site plan review which would include an overview of proposed parking, lighting, signage, noise affecting neighbors, etc. In light that there are no changes planned, drainage would not be affected and noise would not increase. All neighbors within 500 feet will be notified of the public hearing. While submission of licenses, inspections, etc. do speak to the business, this Board will be considering site plan review of the use of the land.

Mrs. DAllaird stated the driveway would remain the same and currently can accommodate eight vehicles. Chairman Cox inquired if any complaints were made to the DAllairds from any neighbors. Mrs. DAllaird stated there were none and the only neighbors who would be impacted by any noise created by the dogs would be family members who live on

adjoining lots across the road and next door. The remaining adjacent lot consists of a right-of-way and vacant land. The only remaining neighbor who may be impacted is a seasonal residence which is occupied once a year over a weekend.

Town Attorney Avigdor stated if this Board would be inclined to approve the site plan review, it may be in part due to the fact that Chihuahuas are very small and their bark is not as loud as other breeds. With that in mind, he inquired if the DAllairs would be comfortable with the restriction of limiting the kennel to Chihuahuas. This restriction would be based on future owners who could breed larger, noisier dogs which could have different impacts. Town Attorney Avigdor stated this would not limit the DAllairs choice of pets but just for the commercial use. Mrs. DAllaird stated she would not object to the restriction and it was her intention to limit her operation to only Chihuahuas.

Chairman Cox inquired if this Board could waive the Public Hearing as would be the case in a shoreline permit. Town Attorney Avigdor stated that resolution which permitted the waiving of the Public Hearing requirement was specific to shoreline work. Board Member Mirczak stated he believed the very nature of a kennel should require going through all steps of the application process.

The Board would also require a sketch of the site which would include all locations utilized on the grounds around the house for the commercial use in the event there are any future changes.

Board Member Mirczak inquired on the number of cars which would occupy parking space. Mrs. DAllaird stated she routinely has only one customer at the site at a time. Mr. DAllaird stated there is adequate parking for up to eight cars in their driveway. Parking will be included in the sketch plan.

Town Attorney Avigdor stated this sketch should be submitted no later than ten days prior to the public hearing in order for all application materials to be in the file for public review prior to the public hearing.

Discussion ensued regarding expansions of 25 percent of an existing use which would be allowed in this application if in the future, this use expanded.

**Motion** by Ted Mirczak, seconded by Board Member Vaillancourt to deem Application No. PB12-02SPR, Donald and Rebecca DAllaird, Tax Map # 42.12-1-

73 for a Site Plan Review for a dog kennel complete with the stipulation that a sketch is provided no less than ten days prior to the Public Hearing outlining the commercial use on the grounds of the parcel including parking and set the Public Hearing for Monday, March 5, 2012. Ayes: Cox, Mirczak, Vaillancourt, Traeger. Carried: 4-0.

**DITTMAR, John A and Grace**  
**Tax Map # 31.7-2-8 (previously 31.7-2-2)**  
**WHITE, Patrick and Paula**  
**Tax Map # 31.11-1-3.1 (previously 31.11-1-3)**  
**Possible Illegal Subdivision**

Chairman Cox stated correspondence was received from Saratoga County Real Property indicating a possible illegal subdivision of the above referenced parcels. Town Attorney Avigdor stated over ten years ago, Mr. and Mrs. Dittmar and Patrick White came before this Board for approval of a boundary line adjustment which the Board approved. He further stated as part of his private practice, he composed the boundary line agreement which was signed by all parties.

Recently, Mr. and Mrs. Dittmar contacted Town Attorney Avigdor because they wished to turn their property over to their children. Town Attorney Avigdor prepared the deed which reflected the boundary line agreement of ten years prior. The problem and the reason it looks to County Real Property that it may be an illegal subdivision is Mr. White never recorded the original boundary line agreement.

When Town Attorney Avigdor reviewed the current County maps, it did not indicate the boundary line adjustment and he notified Mr. Dittmar that he must contact Mr. White to record the change. Both the recorded change and the new deeds of Dittmar were received by County Real Property but the order in which they were recorded was reversed which resulted in this correspondence. This transferred area is vacant land and taxes were paid by the Dittmars which they do not have an issue with. In summation, this Board did approve the boundary line adjustment but the County did not recognize it due to the approval occurring over ten years ago with the documentation only being received now.

Town Attorney Avigdor stated he drafted those instruments and it contains what this Board approved which the landlocked parcel on the map. No action is required by this Board.

**Old Business: Othmer, Karl E. and Othmer Anderson,**  
**Janet S./Tobin, Christine A.**

**PB11-05BLA**

The Secretary has not received any additional information from Mr. Othmer nor has Town Attorney Avigdor received the deed language for review.

**Local Law Review Committee:**

Board Member Mirczak stated the LLRC will be meeting on Tuesday, February 21<sup>st</sup> and will be taking up any comments from the Planning and Zoning Boards along with informal comments from Adirondack Park Agency and Saratoga County Planning. Any changes whether substantive or not will be referred back to the Planning Board. A new package with all changes will be reviewed with the Town Board with anticipation of formal public review at Public Hearing this summer.

Board Member Mirczak stated there is some misunderstanding on the part of the populace regarding the viewshed. The regulations state if your property is located within the viewshed, it would be subject to certain regulations if a property is located in the viewshed and is visible. He stated these regulations would also be subject to review.

Viewshed requirements utilize of balloons to determine visibility and their reliability is questioned because there are no specifications for the type, color, reflectivity, etc. Subsequently, Board Member Mirczak has had limited preliminary discussion with CLA Site, a company located in Saratoga Springs who may be accomplishing this visibility through computer simulation and model of visibility of any site with provided latitude and longitude and height of the structure. Whether this would preclude the need for balloons is to be determined and will also be on the LLRC agenda. Cost has not been determined. Whether this will be cost prohibitive to the Town will be considered along with how the cost could be shared with the applicant.

**Correspondence:** CDTC Brochure "Choosing our Future: New Visions for a Quality Region" received and available for Board Member review.

Training opportunities available are: APA Local Government Day to be held in Lake Placid, March 20 and 21. No Board Members will be

attending. And, NY Planning Conference, April 15-17, Saratoga Springs which Chairman Cox will attend.

**Secretary's  
Report:**

**Shoreline Work Being Performed without Site Plan  
Review Remedy**

In light of a recent application which this Board became aware of through correspondence rather through the application process, would there be a remedy to make the residents of the Town of Day aware that it would be necessary to obtain approval from the Planning Board as well as other involved agencies. Board Member Mirczak stated this Board would encourage any reclamation of the shoreline. Also, property owners must obtain permission from Hudson River Black River Regulating District and the agency in turn notifies the Town of Day of any impending shoreline work. However, this is not the only shoreline located within the Town.

Chairman Cox suggested contacting Day Property Owners for inclusion in their newsletter. Town Attorney Avigdor also suggested contacting Code Enforcement Officer Metzler regarding how much experience he has with any issues with landowners undertaking such projects without proper permits. Board Member Vaillancourt acknowledged this Board does not receive many of these types of permits and the only way this Board would be aware of shoreline work being done is if there are neighbor complaints. Complaints would most likely be related to the extent of such work.

**Motion** by Ted Mirczak, seconded by Board Member Vaillancourt to adjourn the meeting at 7:40 p.m. Ayes: Cox, Mirczak, Traeger, Vaillancourt. Carried: 4-0.

Respectfully submitted,

Diane Byrne  
Secretary

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