

# TOWN OF DAY ZONING BOARD OF APPEALS MINUTES – REGULAR MEETING MARCH 19, 2012

**Members Present:** Dave Davidson, Chairman  
June Dixon  
Judy Traeger  
Lorraine Newton

**Members Absent:** Donald Poe  
David Avigdor,  
Town Attorney

**Motion** by June Dixon, seconded by Board Member Traeger to approve the minutes of February 23, 2012. Ayes: Davidson, Dixon, Traeger, Newton. Carried: 4-0.

**Old Business:** Chairman Davidson stated the Resolutions for Szyfman and Lynch were signed prior to the meeting. Per discussion with Town Attorney Avigdor, the Lynch variance extension was six months from the date filed with Town Clerk Vaillancourt which was July 26, 2012.

**New Business:** None.

**Discussion Items: Extending Variance Time Period:**

Chairman Davidson stated new zoning law may extend this time period but will not become effective for a year or more at minimum in order to complete the process of public review. The Board determined the following:

- ∞ Under current zoning, the regulations do not stipulate when a project begins.
- ∞ In the case of Lynch, CEO Metzler views the formulation of building plan would be the point of origin. It would not be an approved plan but merely the submission.
- ∞ Chairman Davidson stated he would take CEO Metzler's recommendation and utilize it until the new regulations are formulated which will define the point of origin.
- ∞ There is an unknown period of time when the building permit would be issued.
- ∞ Once the permit is issued, the property owner has one year to complete the project. In the case of the variance, that one year period would commence once the Town Clerk accepts the Resolution and date stamps it.
- ∞ Board Member Dixon stated the time period should be stated at the time the Resolution is prepared and be a part of the Resolution. Board Members agreed there should be a clear communication to the applicant what the restrictions are.

- Example: This Resolution would run from date (date it is granted) to date (date it is filed with the Town Clerk).
- ∞ Chairman Davidson stated the applicant would also need to understand what it means to commence the project. This commence time would be whenever the law determines would be the start of the project. Board Members Dixon, Traeger and Newton believed it should commence when the building permit is obtained not just the plans.
  - ∞ It was agreed that it can take considerable time once the plans are drawn up to get the funding, etc. in order. Board Member Traeger stated it may require a two to three week time period for CEO Metzler to approve the submitted plans which is why receipt of the permit.
  - ∞ Chairman Davidson stated if CEO Metzler says that even the one year period is very tight to review plans for safety and compliance. There may be an instance for referral to the Town Engineer which would further extend the time from acceptance of plans to issuance of the permit.
  - ∞ Board Members agreed it may be advantageous to meet with CEO Metzler at the March 27<sup>th</sup> LLRC Meeting. Chairman Davidson and Board Member Dixon sit on that Committee. Chairman Davidson will provide a draft motion after meeting with CEO Metzler will be emailed to Board Members.

Discussion ensued regarding temporary buildings and the requirement currently in effect that they must conform to building code and setback requirements. Compliance with zoning is required for all buildings but building permits are only required for some buildings, i.e. any structure smaller than 100 square feet does not require a building permit but must meet the setback requirement. There was confusion if this was required because it was a temporary structure. Chairman Davidson stated zoning law did not make a distinction between temporary and permanent but does clearly defined structure. Under current law and in the revised zoning law, temporary does not appear. Many towns are eliminating "temporary" because of their ambiguity. Does temporary designate a time period? Some "temporary" buildings have been in place for years. Chairman Davidson stated a tree house is designated a structure. Board Members agreed that some temporary structures are covered by fabric which becomes unsightly when shredded. Chairman Davidson stated if it meets setback requirements in spite of being unsightly, it would be legitimate. There are aspects which cover unsafe structures and there is a section which states lawns must be mowed.

Board Member Traeger stated there were unlicensed vehicles stored on a property on Min Allen Road and the Town had the authority to have them removed.

**SEQR Requirements:**

Chairman Davidson stated he was provided with a PowerPoint slide from the Secretary which she received from Saratoga County Planning (Jaime O'Neill) which was consistent with what he had observed at a training session. The PowerPoint stated that Type II Actions (Interpretations and area variances from setbacks for 1, 2 and 3-family residences) are not subject to SEQR. Chairman Davidson stated this discussion would be deferred to the April 16<sup>th</sup> meeting when Town Attorney Avigdor can be present.

Chairman Davidson shared with Board Members some concerns he has with the SEQR process which he will also review with Town Attorney Avigdor. He stated this Board deals with environmental considerations when they grant a setback variance. This Board has had applications when variances were granted which had environmental conditions built into them. The Peter Murphy area variance for a garage, Application No. 08-01ZBA, Tax Map #43.14-1-16 was an example of this. Saratoga County Public Works raised possible issues of runoff and drainage. This Board required that Mr. Murphy engage a professional who would design flooding mitigation.

If this Board issues a "negative declaration", they would not be able to discuss environmental impacts. However, if this Board states environmental impact is present, it would require a SEQR and this would be a complicated process. Chairman Davidson stated he would discuss this issue at length with Town Attorney Avigdor. Merely rubber stamping may not be a situation this Board would wish to be involved with.

Chairman Davidson stated he will also email Board Members regarding discussions and proposals for SEQR law after speaking to Town Attorney Avigdor.

**Correspondence:** None.

**Secretary's Report:**

Board Member Newton will be attending the New York Planning Federation Conference in April in Saratoga. The Secretary will contact Board Member Poe to determine if he will also be attending. Board

Member Dixon stated she could be on medical leave at the time conference. She will notify the Secretary if she is able to attend.

**Public**

**Participation:** None.

**Motion** by June Dixon, seconded by Board Member Newton to adjourn the meeting at 7:20 p.m. Ayes: Davidson, Traeger, Dixon, Newton. Carried: 4-0.

Respectfully submitted,

Diane Byrne  
Secretary