

TOWN OF DAY ZONING BOARD OF APPEALS MINUTES – REGULAR MEETING APRIL 16, 2012

Members Present: Dave Davidson, Chairman
Judy Traeger
Donald Poe
Lorraine Newton
David Avigdor, Town Attorney

Members Absent: June Dixon

Motion by Judy Traeger, seconded by Board Member Newton to approve the minutes of March 19, 2012 with the following correction: Page 2, first full paragraph, third line change from “Building code differs from zoning but a permit is required” to “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.” Ayes: Davidson, Traeger, Newton, Poe. Carried: 4-0.

Old Business: Draft Policy On Variance Extension:

Chairman Davidson stated all Board Members were provided with his proposed policy which state:

1. Under current Town of Day Law, variances expire six (6) months after they are granted.
2. It may be difficult for a property owner to complete all the needed steps to begin a project in that time, particularly as bank financing requirements have gotten more complicated. The proposed zoning law extends the period to one year.
3. When a variance is approved, applicants will be notified immediately after the approval, and will be informed that the variance expires 6 months from the Variance Filing Date unless they have been granted a building permit.
4. Applicants appealing for an extension must do so before the ZBA meeting scheduled before the expiration date.
5. If the ZBA grants an extension, it will be for a period ending one year from the original Variance Filing Date. If the building permit is not granted by that date, the variance expires, and the applicant must re-apply.
6. This policy will be in force until the approval of the new proposed Town of Day Zoning Law.

Board Member Traeger inquired if this Board did not discuss changing this policy would be to a year. Chairman Davidson stated he was reluctant to make that change because zoning law specifies six months. Town Attorney Avigdor stated this Board could not make that policy change because the law states six months. This would be a change only the Town of Day Town Board would be authorized to make. This Board can make policies that fine tune the law such as the variance extension policy because this Board is allowed to extend. This proposed policy of Chairman Davidson would give some specifics as to how and when this Board would go about extending. This Board cannot overrule the law and change it. The Local Law Review Committee is in the process of recommending that change which will not become policy until after APA review and Town adoption.

Town Attorney Avigdor stated the building permit must be obtained from CEO Metzler within six months of the signing of the Resolution. Chairman Davidson stated his proposal would put the burden on the applicant to request an extension. He further stated this Board must clearly inform applicants when the variance expires. Board Member Newton asked for a clarification of originators of the law. Town Attorney Avigdor stated it is Town of Day Zoning Law which was adopted in the early 1990's and likely to be amended in the near future.

Board Member Poe stated the issue for the Lynch application and the reason it expired with no action was due to the Lynch's not understanding the expiration dates. He further stated a clearly articulated expiration date in the transmittal letter forwarding the Resolution to the applicant would clarify this part of policy. A copy of the transmittal letter in the Town file would clarify that the applicant was made aware of the expiration date. Board Member Traeger stated this was never an issue in the past and is the first time an applicant ever requested an extension of the variance or let a variance expire. Town Attorney Avigdor stated he would agree with Chairman Davidson's proposal.

Motion by Board Member Traeger, seconded Board Member Newton to accept the aforementioned proposed policy numbered 1 through 6 of Chairman Davidson. Ayes: Davidson, Traeger, Newton, Poe. Carried: 4-0.

**Discussion With Town Attorney Regarding SEQR
Considerations:**

Town Attorney Avigdor stated SEQR (State Environmental Quality Review Act) is a State law with the following very brief overview:

- ∞ Any agency which includes the Town of Day which has discretionary approval (which would not include the Code Enforcement Officer) over a land use project is required to comply with SEQR on every project that this Board considers.
- ∞ What SEQR does is divides projects into different categories based on their environmental intrusiveness.
- ∞ If this Board can state that the project will have no adverse environmental impact, the review would end and not require an environmental impact statement.
- ∞ If this Board cannot state it has no adverse environmental impact, this Board would be required to proceed further. At this time, Town Attorney Avigdor will not delve further into the specific projects and the ensuing environmental studies which would be required to complete an impact statement.
- ∞ Most of the projects which this Board must review are straightforward, i.e. dimensional variances which would not have an impact and accordingly, this Board could make a negative declaration motion (Neg Dec) which state the project does not have a negative declaration environmental effect.

Town Attorney Avigdor stated this Board should follow the following procedure on every application which comes before it:

- ∞ Declare itself the lead agency for SEQR purposes.
 - Some projects require permits from more than one agency and the law does not require that the applicant obtain a SEQR approval from each agency. For example, if an application requires a variance from the ZBA and a permit from Department Of Health and both agencies declared themselves as lead agency, Department of Environmental Conservation would make the determination which agency would become the lead agency. If the Zoning Board finds that it cannot declare itself the lead agency, Town Attorney Avigdor stated at that time he will review what would be required.
- ∞ If declared the lead agency, make the negative declaration motion.

Chairman Davidson stated every building project would have some environmental impact; and, in all cases to the Zoning Board, this

Board considers whether there is an environmental impact. Therefore, the SEQR review could be an environmental impact which is substantial. He further stated there were two cases of environmental impact which resulted in one approval and one denial predominantly regarding the issue of runoff. In one application, the variance was granted which included conditions that the applicant address the runoff issue prior to construction which would plan and implement the system. In the case of the Murphy application, there should have been a SEQR review process. Town Attorney Avigdor stated all applicants should receive a SEQR review process but the question would be if a negative declaration cannot be made, it would be a more intensive review process where environmental impact statements would be required. There is a short form environmental statement which does not require an engineer which the applicant could complete. This short form SEQR would be utilized as part of the Zoning Board review process.

Chairman Davidson stated all training he received on SEQR did not require Type II applications to be reviewed. He further stated his concern was that this Board not become involved in something substantive and overwhelming which on the face of it would not be required. Town Attorney Avigdor stated Type II is a SEQR category and this Board cannot state that in general that the applications before them will be Type II and not subject to SEQR. The requirement would be that application by application, this Board determine that and make the SEQR "Neg Dec" motion and this may occur in the majority of applications. This Board cannot state that in a category that dimensional variances are always Type II and can always be covered by a "Neg Dec" motion. While many can, if a variance were received from a large corporation for a ski resort requesting a variance for height and setback requirements, this will not be a Type II action. In completing the short form SEQR, the applicant is informing the Board that they believe there is no negative environmental impact.

The Secretary stated the short form SEQR is included in all application packets and in most cases, the applicant will at least complete the first page of the form and it is part of submitted application.

Town Attorney Avigdor stated all applications should include two resolutions:

1. Zoning Board declare lead agency status (if another agency has already declared itself lead agency, this Board can make the

determination they would respect that designation or contest it);
and,
2) If this Board is the lead agency, make the negative declaration if appropriate. If it is not appropriate, it would be a more intensive review.

Rather than explain the cumbersomeness of such a review, Town Attorney Avigdor stated he will take up that discussion at the time of such an application. The amount of SEQR litigation taking place has increased which require more diligence in this review. It was agreed by all Board Members to follow the procedure recommended by Town Attorney Avigdor.

Board Member Poe stated in the example of a large corporation and ski resort, wouldn't the APA request lead agency status? Town Attorney Avigdor stated in all probability, they would. While there will many applications which fall considerably short of the example, there will be projects which will fall under the classification of Class B Regional Project and be handled by the Planning Board because the Town of Day has an approved land use program.

New York Planning Conference:

Board Member Newton stated she attended this conference this morning with focus on SEQR which she found to be very overwhelming at the introductory level. She did not attend the advanced class. Board Member Poe stated he also attended SEQR training at the January conference and agreed that it is a complicated class. Town Attorney Avigdor stated there is information online for further SEQR discussion and the intensity of the regulation is the reason he does not wish to discuss it in depth at this meeting.

New Business: None.

Correspondence: Two letters received from APA regarding the Szyfman and Lynch area variance applications which stated denied variances do not require APA notification. Town Attorney Avigdor stated APA has the right to overrule approved variances within 30 days. While this Board would also consider interpretations, the Planning Board would review subdivision and site plan reviews. If APA opposes the project, they have the right to attend the public hearing as an interested party but do have the right to overrule the Planning Board's decision. In the case of variances, APA does have the right to overrule. APA has overruled a variance once.

**Secretary's
Report:** None.

**Public
Participation:** None.

Motion by Judy Traeger, seconded by Board Member Newton to adjourn the meeting at 7:30 p.m. Ayes: Davidson, Traeger, Dixon, Newton. Carried: 4-0.

Respectfully submitted,

Diane Byrne
Secretary