

# TOWN OF DAY ZONING BOARD OF APPEALS

## MINUTES – REGULAR MEETING

### JULY 16, 2012

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

**Members Absent:** None

**Old Business:** **BORST, John, Application No. 12-01ZBA**  
**Tax Map #42.9-1-17, Area Variance**

Chairman Davidson reviewed the area variance criteria:

- ∞ Whether the benefit can be achieved by other means feasible to the applicant:
  - Board Member Dixon stated to relocate the garage in a different area would be difficult and the garage would not cause an obstruction.
  - Board Member Poe stated he did not believe it would be achieved by other means because the existing shed and trees would require removal and the garage would have to be turned at an angle which would not be aesthetically pleasing.
  - Board Members Newton stated she agreed with statements made by the preceding Board Members and further stated what Mr. Borst is doing is proper.
  - Board Member Traeger stated she was in agreement with statements made by the preceding Board Members.
  - Chairman Davidson stated it is clearly feasible to do something other than what Mr. Borst has proposed. However, the charge of the Board is to balance and make tradeoffs as is stated in Board Member Poe's statement that it would be aesthetically pleasing. Also, a review of the site reveals this is the most appropriate site for a garage.
- ∞ Undesirable change in neighborhood character or to nearby properties:

- Board Member Newton stated it would not. John O'Brien, adjoining property owner had concerns that the proposed garage would obstruct the view from his parcel in the rear. It was determined that Mr. O'Brien's parcel is not in the rear of Mr. Borst's and the concern moot.
- Board Members Traeger and Poe stated it would not.
- Board Member Dixon stated while Mr. Borst's proposal would not, she did observe an accumulation of a neighbor's possessions near the Borst property line which would be more objectionable.
- Chairman Davidson stated it would not. The garage would be nearly invisible from North Shore Road.
- ∞ Whether the request is substantial.
  - Board Member Dixon stated it is not substantial.
  - Board Members Traeger, Newton, Poe and Chairman Davidson agreed that it was not substantial.

Chairman Davidson inquired of Town Attorney Avigdor when the negative declaration in the SEQRA process is required to be made. Town Attorney Avigdor stated at any time prior to approval. Chairman Davidson stated he would suggest to the Board Members when this criteria is considered, the Board Members consider they would be providing a negative declaration, i.e. it will not cause any adverse environmental effect. However, if the Board Members believe it will, a detailed survey of the negative effects would be required. Town Attorney Avigdor stated this Board should routinely take a vote on a negative declaration.

- ∞ Whether the request will have an adverse physical or environmental effect.
  - Board Members Dixon, Traeger, Newton, Poe and Chairman Davidson agreed it would not have any adverse physical or environmental effect.

**Motion** by Lorraine Newton, seconded by Board Member Dixon to declare a negative declaration of environmental impact for Application No. PB12-01ZBA, John Borst, Tax Map #42.9-1-17, area variance. Ayes: Davidson, Traeger, Newton, Dixon, Poe. Carried: 5-0.

- ∞ Whether the alleged difficulty is self-created.
  - Board Member Newton stated it was not because there was no other area to site the proposed garage.
  - Chairman Davidson, Board Members Traeger, Dixon and Poe concur with Board Member Newton.

**Motion** by Judy Traeger, seconded by Board Member Dixon to approve a 12 foot area variance from the side yard setback where 15 feet are required for the construction of a one-story garage for Application No. PB12-01ZBA, John Borst. Tax Map #42.9-1-17. Ayes: Davidson, Traeger, Dixon, Newton, Poe. Carried: 5-0.

Chairman Davidson stated currently area variances are issued for a six month time period which means the Applicant must obtain a building permit issued by Code Enforcement Officer Metzler prior to the expiration of the area variance. This Board will entertain an extension of an additional six months due to fact that the new Zoning Law which has not been passed as of this date will allow for one year area variances.

**Motion** by Lorraine Newton, seconded by Board Member Dixon to approve the minutes of June 18, 2012. Ayes: Davidson, Traeger, Dixon, Poe, Newton. Carried: 5-0.

**New Business**

**Coughlin, Cheryl  
Tax Map #44.5-1-31  
Area Variance**

Applicant Coughlin designated Jill DeMatteo (co-owner) to present the application. Ms. DeMatteo reviewed the application:

- ∞ Submission for approval of area variance of nine feet where 15 feet are required for construction of a garage. The building plans indicate the overhang of the garage require an area variance. The actual building (walls) will not encroach on the setback requirement. The purpose of the overhang is for outdoor storage to save space in the garage.
- ∞ The survey maps indicate two separate tax parcels (Tax Map #44.5-1-12 and #44.5-1-30) which have been combined into Tax Map #44.5-1-31. The garage is proposed for previously designated Tax Map #44.5-1-30 and was referred to as “the Honeymoon Lodge” which was destroyed by fire in 1995. A small A-Frame style shed remains on site. The Secretary confirmed with the Saratoga Real Property Office that the two lots were combined under one deed and tax map number.
- ∞ It was clarified the area variance sought would be for the setback along what is indicated as “stream” on the survey map. The line between the two original tax map parcels no longer exists.
- ∞ In 2010, a mobile home with attached storage area was removed from Tax #44.5-1-12 and replaced with a log home. Due to a lack of storage, Ms. Coughlin and Ms. DeMatteo wish to construct a 26 x 40 foot garage.

- ∞ There are limitations due to well and leach field locations as to where the garage can be sited.
- ∞ The proposed site would not require additional excavation or tree removal. Skip Sanders and Bob Springer, area contractors, were able to troubleshoot wet areas of the parcel with acceptable drainage to minimize any effect on the environment and not impede the natural flow of water which comes off the mountain.
- ∞ The Applicant does not wish to obstruct their neighbor's view of the lake at 3404 South Shore Road. Utilizing a "shorter and fatter" dimension of 26 x 40 with a larger overhang would provide needed shortage space. Ms. DeMatteo stated they contacted the most affected neighbor (Davidson), reviewed their building plans and the family did not have any objections.
- ∞ Ms. Coughlin stated the garage cannot be located closer to the existing house because at the time of well drilling, Hawk Drilling required access to the well on a road which was constructed for the purpose of drilling and future maintenance between the house and proposed garage. Further, both Ms. Coughlin and Ms. DeMatteo have elder relatives who must be driven to the rear entrance of the home to gain access. If the garage is located more forward, it would block the roadway. The proposed location also gives the neighbor privacy on their deck.

Board Member questions and comments:

- ∞ Chairman Davidson stated if the overhang was located on the opposite side, no area variance would be required. Ms. DeMatteo stated there is an embankment on the side farther from the line so an overhang with anticipated storage underneath would not be possible. She further stated when Board Members did a site visit, that issue would be clear.
- ∞ Board Member Traeger stated in the application materials which were submitted, there is a reference to a "loft" and what will it be utilized for. Ms. DeMatteo stated it would be non-residential and designed with storage trusses as opposed to attic trusses. One will support weight and one will not. She stated her building plans included the attic trusses which will not support weight such as a residence.
- ∞ Town Attorney Avigdor inquired if the applicant intended to have any plumbing or water supply in the garage. Ms. DeMatteo stated there would not be any plumbing or water supply but there would be electrical service. Town Attorney Avigdor stated while this Board is not questioning what the applicants are stating but future owners may regard the "loft"

as an apartment. So this Board needs to guard against future owners and changes. Installation of plumbing would require a building permit and that would be the protection against change.

- ∞ Board Member Newton stated she visited the site and did have some issues. Chairman Davidson stated that discussion should be within the context of the Public Hearing. Town Attorney Avigdor stated it would be Board Member Newton's decision if she felt that her observations would be for the benefit for other Board Members who may visit so that they can be aware of something which she would believe they should notice and it would be fair to do so. Board Member Newton stated her concern was the neighbors are in very close proximity and the stream which is also in close proximity and how much water would travel through it at peak times and would that create an issue.
- ∞ Town Attorney Avigdor stated one thing a Land Use Board typically considers when there is a stream in close proximity, may also be construction impact; and, if any necessary excavation, vegetative clearing, etc. would cause runoff into the stream. He is not implying that there is. The impact on the stream both during construction and after construction can typically be mitigated (fabric fencing for silt retention). While this impact on the stream, it may not be fatal to a project, and the Board may wish to impose conditions if the variance is granted. Ms. Coughlin stated they have replanted maple trees to hold the bank line along the stream.
- ∞ Board Member Dixon inquired if the overhang could be located on the rear of the garage. Ms. DeMatteo stated that is the area where water does pool from runoff from the mountain in the rear of the property. Board Member Dixon further inquired what purpose the stairs indicated on the survey map served. Ms. DeMatteo stated they access a shed and the remains of a concrete wall which has been undermined and eroded. If the garage is placed any closer to an area which has historically shown issues with construction problems, there may be issues in the future with the proposed garage. Ms. DeMatteo stated it is their intention to backfill the area and install drainage. Ms. Coughlin stated new retaining walls will be built. The overhang will be from front to back on the side of the garage requiring an area variance. Ms. DeMatteo stated the dimensions of the overhang could be smaller. Ms. Coughlin stated they would still utilize the storage if the dimensions were reduced but they would be utilizing blue or orange tarps which would be unsightly. She further stated they

appreciate the impact of their two year construction has had on the neighborhood and it is their intention to clean up the area.

- ∞ Chairman Davidson inquired if the overhang was measured perpendicular to the garage wall. Ms. DeMatteo stated that it would be the very end of the drip edge or nine feet off the property line resulting in a six foot area variance. Chairman Davidson inquired how far off the ground the outside eave be? Ms. DeMatteo stated at the beginning six feet and at the end approximately four feet depending on the pitch. Chairman Davidson stated it would translate to a tall garage building. Ms. DeMatteo disagreed stating it was 1.5 stories or 20 feet high. Chairman Davidson stated this would make the first floor eight feet. He stated upon a site visit, he would have a better understanding of the garage.

Chairman Davidson stated while the applicant is appearing before the Board because she is not allowed to build where she wished to build. This Board must decide whether to provide relief from land use law. With that in mind, this Board is not allowed to consider infirmities, etc. Conversely, the impact on neighbors is a very real consideration this Board must consider. It was pointed out that whatever this Board decides, that decision remains with the land. Town Attorney Avigdor stated Chairman Davidson is correct in what this Board cannot consider. However, from a land use point of view, one of the criteria is the benefit sought by the applicant from a land use point of view rather than an age or infirmity point of view. From a land use point of view, the applicant desires to drive to the rear of her property.

Chairman Davidson stated the garage could be constructed without this Board's approval but the dilemma is the overhang. Ms. DeMatteo stated they utilized local contractors because of their knowledge and familiarity with terrain conditions and how to cause little or no impact on the environment. The stream does fluctuate from running water to no water running and the Applicant stated they are cognizant of their responsibility regarding the stream and their desire to maintain the environment of the lake. She further stated they do not wish to encumber their well nor do they wish to flood the Davidson property. When the local contractors did their estimates, the garage, footings and poured concrete on the site designated on the survey map were taken into consideration in order that it not impact either the stream or their neighbors. If the contractors and

the Applicant did not believe it was feasible to build the overhang, the Applicant would not have applied for an area variance.

Town Attorney Avigdor stated prior to deeming the application complete, the Board must determine if they have all the information required to make a decision such as whether or not there is an impact on the stream. At this point, only one Board Member has visited the site and there should be some knowledge of the terrain. By declaring it complete, in regard to engineering information, runoff information, etc., the Board is stating it has all the information required. He does not mean to imply this Board doesn't have all the information but to be cognizant that it is also part of the decision they are making. Chairman Davidson stated the environmental impact has yet to be determined and the engineering information which may be required, would need to be submitted in the absence of a negative environmental declaration.

Town Attorney Avigdor stated at this time, the Board is not under any time constraints. As soon as this Board declares it complete, a Public Hearing must be held within 62 days. After the Public Hearing is closed, this Board must make a final decision within 62 days. There is no time constraint between opening and closing a Public Hearing (general reasonableness requirement but not a firm time limit). A final decision must be made even in the absence of a negative declaration because it is part of the process in making a final decision. If the Board deferred a request for any additional information and declared the application complete, and upon site visit, gained additional information and also received comments at a Public Hearing, the Public Hearing could be held open for any additional comments and/or information.

Chairman Davidson inquired if the Applicant was under any time constraints. While the Applicant has not signed a formal contract with the contractors, they would like to have the garage weather tight by winter. Chairman Davidson stated this Board wishes to proceed as efficiently as possible. Chairman Davidson stated the application will not be deemed complete until all members are able to visit the site. At the August 20th meeting, the Board will make a determination if further information in the form of an engineer's report is required or deem the application complete and move to Public Hearing in September.

The survey map will need to include siting of the garage by a licensed surveyor to be included in the application file and would be non-returnable to the applicant. This survey submission would be necessary to deem the application complete at the August meeting. The remainder of the application contains all pertinent information.

Ms. Coughlin stated she is typically at the residence from Friday morning to Monday night but she would grant permission for Board Members to visit the site at times when she is not there.

Chairman Davidson stated for the record that he is not related to the neighbor "Davidson". Board Member Dixon inquired if one of her neighbors requested a variance, should she recuse herself? Town Attorney Avigdor stated it would be at the Board Member's discretion with two factors in mind: Would she be influenced by the fact that the applicant is a neighbor and/or might it appear to a member of the public that your decision might be influenced by the fact that the applicant is a neighbor. He further stated he would urge the Board Member to recuse themselves but it is their decision. The unfortunate aspect of a recusal is there are no alternative members to step in to provide the three votes necessary to prevail. If there an additional member is absent, the policy has been to defer the vote to the following meeting when at least four members could be present.

**Discussion Item:**

**Review of Zoning Board of Appeals Application and Badges for Members:**

Prior to the meeting, the Secretary photographed each individual Board Member for badges.

Chairman Davidson stated review of application forms will be deferred to a meeting with no agenda items. Board Member Poe inquired if the Town Board would be part of the discussion of this review. Town Attorney Avigdor stated it is the decision of the Zoning Board to make changes to its applications.

**Correspondence:**

Bond, Schoeneck and King Quarterly Land Use Case Law Update and New York Planning Federation News were provided to all Board Members.

**Secretary's Report:** None.

**Public Participation:** None.

**Motion** by Donald Poe, seconded by Board Member Dixon to adjourn the meeting at 8 p.m. Ayes: Davidson, Traeger, Dixon, Newton, Poe. Carried: 5-0.

Respectfully submitted,

Diane Byrne  
Secretary