

**TOWN OF DAY ZONING BOARD OF APPEALS  
PUBLIC HEARINGS & REGULAR MEETING  
OCTOBER 21, 2013  
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**Members Present:**

Chairman Dave Davidson  
Lorraine Newton  
Judy Traeger  
June Dixon

**Also Present:**

Attorney David Avigdor

**Members Absent:**

None

Before opening the public hearing for Michael and Laura Farrell, Chairman Dave Davidson explained to those present that the minutes were not yet ready for approval due to technical difficulties in listening to the recording of the September 16, 2013 meeting. The technical difficulties have been corrected and the September 16, 2013 minutes will be offered for approval at the November 18, 2013 meeting. Attorney David Avigdor pointed out that technically the minutes do not need to be approved.

**PUBLIC HEARING**

Chairman Dave Davidson opened the Public Hearing for Michael & Laura Farrell at 7:08pm.

With proof of notice available that the legal notice for the Public Hearing for Michael & Laura Farrell was published according to law the Public Hearing commenced as follows:

**Farrell, Michael & Laura  
Tax Map #43.12-2-4  
Garage Variance**

and stated what the purpose of the Public Hearing was for those in attendance. Chairman Dave Davidson then asked the Farrell's to explain to those present what they were hoping achieve with a variance. Mr. Farrell explained that the garage currently on the property is 10' of the

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property line and he believes the garage was built in the 1930's. Mr. Farrell stated that the current garage is in bad shape and he would like to tear it down. Mr. Farrell stated that the new garage would be bigger than the old garage and that they own the adjoining property.

Chairman Dave Davidson pointed out that this could be made a non-variance . Four people own the property. Could do a boundary line adjustment . Mr. Farrell says there are issues with wells, septic etc. in placing a new garage in a different location.

Chairman Dave Davidson pointed out that there are a number of considerations which could go to lessening the amount of variance needed.

Mr. Farrell has concerns about bedrock located at other areas of the property being a problem in building the new garage in a different location from where the old garage is located.

Mr. Farrell stated that they would like to have room to store boats. That is the reason for the length of the new garage.

Chairman Dave Davidson asked Member June Dixon if she had any problem with the request. Member June Dixon replied that she did not really see a problem as they owned both pieces. Member Judy Traeger pointed out that the variance goes with the land and if one sells it could be an issue. Member Donald Poe pointed out that there are bedrock issues to move it back. Member Lorrain Newton stated that the owners have it laid out pretty well and she also agrees with Member Donald Poe and doesn't have a problem with it. Member Judy Traeger stated that she had no more comments.

**Motion**, made by Member Lorrain Newton, seconded by Member Judy Traeger, to close this Public Hearing for Michael & Laura Farrell was made at 7:13pm.

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Ayes: Chairman Dave Davidson, Member Lorrain Newton, Member Judy Traeger, Member Donald Poe and Member June Dixon

**Carried 5 - 0**

Chairman Dave Davidson asked the members of the Zoning Board of Appeals if they would like to take action on this matter tonight. The Members agreed that they would.

**Motion**, made by Member Judy Dixon, seconded by Member Judy Traeger, to grant garage variance based on that it couldn't be done any other way due to bedrock and other issues.

Ayes: Chairman Dave Davidson, Member Lorrain Newton, Member Judy Traeger, Member Donald Poe and Member June Dixon

**Carried 5 – 0**

Chairman Dave Davidson asked that the motion be temporarily withdrawn to make motion regarding SEQR.

**Motion**, made by Chairman Dave Davidson, seconded by Member Lorraine Newton, to designate the Zoning Board of Appeals as Lead Agency under SEQR.

Ayes: Chairman Dave Davidson, Member Lorrain Newton, Member Judy Traeger, Member Donald Poe and Member June Dixon

**Carried 5 – 0**

Chairman Dave Davidson asked the members present if there was any reason to see it as environmental impact issue which would warrant SEQR review which they did not.

Chairman Dave Davidson called for a review of the five items considered by the Zoning Board of Appeals in each case brought before them.

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**Whether benefit can be achieved by other means feasible to the applicant:**

Member Lorriane Newton – No it can't because of the bedrock issue.  
Member Judy Traeger – Agrees with Member Lorriane Newton.

Chairman Dave Davidson – Has looked it at from various angles, doesn't see why property line adjustment isn't feasible.

Member Donald Poe – Basic footprint is already there, feels it can't be achieved any other way.

Member June Dixon – Feasible to do it the way it is, agrees with Member Donald Poe.

**Undesirable change in neighborhood character or to nearby properties:**

Member June Dixon – No undesirable change to the neighborhood.

Member Donald Poe – Agrees

Chairman Dave Davidson – Agrees

Member Judy Traeger – Agrees

Member Lorraine Newton – Agrees

**Whether request is substantial:**

Member Lorraine Newton - No not substantial.

Member Judy Traeger – It is substantial, but no objection.

Member Donald Poe – Within our means to go with it.

Member June Dixon – It is substantial but doesn't feel its an issue with the property they have.

Chairman Dave Davidson – It is substantial.

**Whether request will have adverse physical or environmental effects:**

Member Donald Poe – Won't have any more effect than present garage.

Member Judy Traeger - Agrees

Member Lorraine Newton - Agrees

Member June Dixon - Agrees

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Chairman Dave Davidson - Agrees

**Whether alleged difficulty is self-created:**

Member Judy Traeger – Yes it is self-created, but doesn't have problem with it.

Member Lorraine Newton - Garage already there, couldn't actually call it self-created, old garage already on spot.

Chairman Dave Davidson – Have accepted that old garage has already been there for a long time.

Member Judy Traeger – Feels same way, just making it larger.

Member Donald Poe – Agrees.

**Motion**, made by Member Judy Dixon, seconded by Member Judy Traeger, to grant garage variance based on that it couldn't be done any other way due to bedrock and other issues.

**Roll Call:** Chairman Dave Davidson – Yes

Member Judy Traeger – Yes

Member Lorraine Newton – Yes

Member Donald Poe – Yes

Member June Dixon

**Carried 5 – 0**

Code Enforcement Officer will be informed of the passing of the garage variance so a permit may be obtained by the Farrell's.

With all those desiring to be heard having been given the opportunity to be heard, the Public Hearing for Michael and Laura Farrell regarding a garage variance was closed as follows:

Chairman Dave Davidson closed the Farrell's Public Hearing at 7:21pm.

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**PUBLIC HEARING**

Chairman Dave Davidson called the next Public Hearing to order at 7:23pm.

With proof of notice available that the legal notice for the Public Hearing for Nancie Cronk and Mark Ottman was published according to law the Public Hearing commenced as follows:

**Cronk, Nancy & Ottman, Mark**

**Tax Map #'s: 33.7-1-39.2**

**33.7-1-47**

**33.7-1-49**

**Sub-Division**

Chairman Dave Davidson asked the Zoning Board of Appeals members if they had each had the chance to visit the property, to which they all replied that they had visited the parcel.

Chairman Dave Davidson pointed out that there are a quite a large number of non-conforming lots in the Town of Day as they were established before the current rules were put into effect. This particular parcel has two principal residences on one lot which is not allowed under current zoning.

Nancy Cronk explained what she and her brother would like to do with the parcel. That is to split the property so that each of them has their own lot with one house on each parcel. At present there is one sub-standard lot with two houses on it. One of the neighbors who had no objection to the sub-division stated that the houses have been there for many years. She also stated that many of the houses in that area are built on lots that are very tiny, and the property owned by Cronk and Ottman has been upgraded.

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Another neighbor asked about a survey map which Chairman Dave Davidson informed her was available if she would like to look at it.

Chairman Dave Davidson pointed out to those present that there would be stipulations if granted on what can and cannot be done in the future. Chairman Dave Davidson stated that there are a number of non-conforming parcels in the area and that he has strong feelings about not creating any more non-conforming lots. Chairman Dave Davidson pointed out that as the lot exists now it is a non-conforming lot. There are two residences on the lot and no public road.

Member Donald Poe pointed out it will actually be more conforming as it would be one house on each lot instead of two on one lot which is not allowed. Attorney David Avigdor stated that Member Donald Poe's point is valid and houses are already there. Can't see that there is a big consideration in just drawing line as it has no land use impact. Can deal with changes to houses in future with the application of conditions.

Mr. Mark Ottman stated that he was told years ago they wouldn't be able to change the houses in the future and he indicated that in application.

Attorney David Avigdor pointed out that there are two different terms used. One is footprint – could stipulate no expansion of footprint. This means that if feasible the owners could go up if they wished to expand until they hit the 35' height limit, but could not make footprint of building larger. The other term is no expansion of the building envelope. You could remodel interior, change windows etc.

Mr. Mark Ottman wanted to know if rebuilding would be allowed if the building burned to which Attorney David Avigdor replied that if the Board put a restriction on old building envelope it could be rebuilt to the old building envelope. If the Board put a restriction on no expansion of the old building footprint it could be rebuilt to the old building footprint.

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Mr. Ottman has been doing a lot of work on one of the old places and has plans for decking to be put up which hasn't been done yet, would that be affected and how long would he have to do that? Attorney David Avigdor asked if the Code Enforcement Officer was aware of it and did he have a permit for the work. Mr. Ottman said that the CEO is aware of the proposed project and in reply to Attorney David Avigdor's question regarding violation of set-back Mr. Ottman replied that he would not be in violation any set-back restrictions.

Attorney David Avigdor ascertained that the deck is on the opposite side of the structure from where the new boundary line might be set.

Chairman Dave Davidson stated that it's not clear to me what variance we ought grant here due to the peculiar nature of the question.

Attorney David Avigdor explained that it would be an area variance for a sub-standard area lot that does not meet the minimum lot size requirements. That's the variance and now that you focus it that way in your questions I would say that maybe we don't need to address the decking. We are being asked to grant a variance to allow lots smaller than the zoning law would permit. If we grant that, then they still need to meet setback requirements for the decking. If you are putting in a restriction in your granting it on either footprint or building envelope you could either say the footprint is the footprint, nothing new or the footprint is the footprint, but understanding that you currently have a plan for an X' x Y' decking to put that in.

Chairman Dave Davidson pointed out that is the is granted it then needs to go to the Planning Board.

Attorney David Avigdor commented that the Zoning Board of Appeals can put restrictions in either building envelope or footprint. If you do put restrictions on it you have effectively barred new deck. Chairman Dave Davidson's personal preference is to not to deal with the issue of this deck

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in progress. Having said that, we are going to have to be fairly careful with the language of the motion and we may not be ready to do that tonight. Attorney David Avigdor asked Mr. Ottman if he actually had a building permit for the deck to which Mr. Ottman replied no.

Member Donald Poe stated that the building was built in 1941 and that any structure above it would have to go up and it could probably not be built to code. Mr. Ottman stated that the place is L shaped – wants to move one wall out 4', would like to make small bedrooms bigger. It would be within footprint not envelope.

Chairman Dave Davidson read from application regarding decking. Mr. Cronk thought permit had been obtained from Code Enforcement Officer Ken Metzler not just talked about. Attorney David Avigdor pointed out that one avenue would be to hold Public Hearing open – ask him to get permit and come back next month so there is more definition to what is being asked for.

Chairman Dave Davidson stated that if we grant application we will have to do some thinking about conditions.

Chairman Dave Davidson stated that 1) If we grant application they should think beforehand what if any conditions to put on it and how to phrase those. 2) Something I would prefer not to do on the fly – I would say sit down and draft it out based on discussion, then present the motion at the next meeting. Chairman Dave Davidson pointed out that they have heard about two extensions to existing application tonight.

Still has to go to Planning Board. One way to do it is to say don't put any constraints on it other than existing zoning law and thus to conform they will have to apply for an application down the line is one way to do it or say footprints or envelopes those kinds of things in which case anybody who owned that property who wanted to make a change to it would have to

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come before the Zoning Board and get an approval to do that to be in compliance. Chairman Dave Davidson stated that we need to think about what we want to achieve and make that as clean and thoughtful as we can make it and not try to deal with any future eventuality. These lots are still not going to be in compliance.

Member Lorraine Newton asked about what happens when it goes back to the Planning Board what happens then?

Attorney David Avigdor explained that the Zoning Board of Appeals approach in every application is the starting point of the analysis is, no, you can't do that it is contrary to the zoning law. Then you need reasons to support it. Comply with the law and now we want you to do it properly. Are there space for wells, septic etc.? We want to make sure details work. Planning Board doesn't think about footprints, etc. Lots will be right, setbacks will be in place. If there ought to be land use constraints they should come here because of the approach of the Board. Don't just finesse that and send it to the Planning Board because that is not really the end of the business.

Mr. Cronk stated that the most important thing is getting two lots. They would comply with whatever comes with that.

Chairman Dave Davidson pointed out that this is useful part of discussion.

Chairman Dave Davidson asked if there were any other comments for Public Hearing.

With all those desiring to be heard having been given the opportunity to be heard, the Public Hearing for Nancie Cronk and Mark Ottman regarding subdivision of property was closed as follows:

**Motion**, made by Member Judy Traeger, seconded by Member June Dixon to **close this Public Hearing** was made at 7:51pm.

Ayes: Chairman Dave Davidson, Member Lorraine Newton, Member Judy

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Traeger, Member Donald Poe and Member June Dixon  
**Carried 5 – 0**

**Motion**, made by Member Lorraine Newton, seconded by Member June Dixon, that we declare the Zoning Board of Appeals the lead agency under SEQR.

Ayes: Chairman Dave Davidson, Member Lorrain Newton, Member Judy Traeger, Member Donald Poe and Member June Dixon

**Carried 5 – 0**

Chairman Dave Davidson asked the Zoning Board of Appeals members whether will be any adverse environmental impact if approved.

Chairman Dave Davidson does not see any adverse environmental impact.

Member Judy Traeger – Agrees

Member Lorraine Newton – Agrees

Member Donald Poe – Agrees

Member June Dixon – Agrees

Member Lorraine Newton stated that it needs to be discussed more, she doesn't feel comfortable to make decision tonight. Chairman Dave Davidson asked if her hesitation is based on whether or not to allow the division of the lots or on what happens afterwards. Member Lorraine Newton stated that it is based on both. Member Judy Traeger is specifically concerned about the size of the second lot and how close the house is going to be to the property line. Member Lorraine Newton explained that she went to see it and that it looks larger on map to me than when she actually saw both houses and I was taken aback by that and that we certainly don't need to make smaller lots by giving a variance to do this, but I understand why they want to do this, I truly do, I looked at both houses, but it just bothers me. Especially now knowing that, I have a problem with the deck, that's not going to be a problem with the one house, the Ottman house, the side part maybe, that would be a variance, I would think if he had to deck the side, they are very close together. I don't know

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what the measurement are between both houses. I guess I am still up in the air.

Member Donald Poe reported that he had the opportunity to go to the Edinburg Zoning Board of Appeals meeting last month. If this issue was in Edinburg they would not be able to rebuild if they burn. In regards to the Cronk – Ottman issue, Member Donald Poe feels that the lots would be more conforming with one house on each lot.

Member June Dixon feels that we should allow property to be split. Should have some stipulation – either envelope or footprint.

Member Judy Traeger wanted to know what would happen if the property was left as is and one house burned, would they be able to rebuild? Attorney David Avigdor replied that it is grandfathered – they would be able to rebuild.

Chairman Dave Davidson sees no harm to Town to recognize a seventy year old truth. There is a question of constraints and he is sensitive to Member Donald Poe's and Member Judy Traeger's feelings. Let people spend next 30 days thinking about it and deal with it next month.

The owners of the property asked whether or not they had to be here for the next meeting to which Chairman Dave Davidson replied that they did not. Chairman Dave Davidson feels that this is complicated for the ZBA to figure out and feels that they have to have a strong case on what they want to do and why. Chairman Dave Davidson stated that he would like to deal with it next month.

The owners of the property asked if they have to be here next month for the meeting to which Chairman Dave Davidson replied that they do not.

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Member Donald Poe stated that it seems like a drawn out process but they want to be thorough.

Attorney David Avigdor pointed out that the law requires they make decision within two months. Attorney David Avigdor stated that he will urge them to make a decision next month. The variance will be good for one year. Need to apply to Planning Board but it can wait over the winter until spring.

Chairman Dave Davidson sent Attorney David Avigdor an e-mail regarding what the process looks like if the Town is sued.

Attorney David Avigdor explained that legal action has not been threatened. The FOIL request was general and generic. It was a wise way to get information to find out if ZBA did things the right or wrong.

Attorney David Avigdor was faxed the FOIL request for his input by the Town Clerk. One aspect of the request that was explained by Attorney David Avigdor is that when the Planning Board or Zoning Board of Appeals has something passed by them that concerns property within 500' of a County road is needs to go to Saratoga County Planning Board for a review. The Town Clerk will make sure that the Planning / ZBA clerk is aware of this. Attorney David Avigdor informed those present that if Saratoga County Planning does not approve it we can override County with a majority plus one vote. Four members of Board voting for it can override Saratoga County Planning. Attorney David Avigdor informed the Board that an Article 78 is civil practice rules and a way to challenge any Board.

Attorney David Avigdor said the time period in which the Town can be sued starts 75 days after Planning / ZBA clerk files a copy of the resolution with the Town Clerk and mails a copy of the resolution to the applicant. The individual members of all the Boards along with other employees of the Town are covered under the Town's liability insurance policy.

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Attorney David Avigdor stated that he does not want any Board members to worry about this.

Member Donald Poe asked how much it would cost to defend an Article 78.

Attorney David Avigdor said it would depend on how much time is spent on the case. Attorney David Avigdor explained about procedure and retainers which would be paid to the lawyer of the party suing the Town.

Attorney David Avigdor also cautioned the Zoning Board of Appeals that they can't judge applications before them on whether or not you can get sued.

**Motion**, seconded by Member June Dixon, seconded by Member Judy Traeger, **to adjourn this meeting** of the Day Zoning Board of Appeals was made at 8:26pm.

Ayes: Chairman Dave Davidson, Member Lorraine Newton, Member Judy Traeger, Member Donald Poe and Member June Dixon.

**Carried 5 – 0**

Carol Vaillancourt  
Town Clerk