

TOWN OF DAY ZONING BOARD OF APPEALS MINUTES – REGULAR MEETING SEPTEMBER 17, 2012

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

Members Absent: None

Motion by June Dixon, seconded by Board Member Newton to approve the minutes of August 20, 2012. Ayes: Davidson, Traeger, Dixon, Poe, Newton. Carried: 5-0.

New Business: None.

Old Business: **Coughlin, Cheryl 12-02ZBA**
Tax Map # 44.5-1-31
Area Variances

Chairman Davidson asked for any comments or discussion by Board Members.

Board Member Newton stated after visiting the site and reviewing the application, she believed this could be accomplished by constructing a smaller building. While she can understand why the applicant would wish to build the larger structure, many residents have confronted this type of issue finding that they have accumulated too many things. Because of that reasoning, it is hard for Board Member Newton to justify granting area variances.

Board Member Dixon stated if the lots were merged at the time the home was constructed, the area where the applicant wishes to construct the garage which is the size of home, could have been utilized for planning for all construction.

Board Member Traeger stated she is concerned with the length of the building which is quite long. While she can relate to issues of storage, in relation to the structures in that area, particularly in relation to the adjoining Davidson residence, it is very large.

Board Member Poe stated he is not concerned with the size of the building but would require that it be located 15 feet from the

property line. He considered several alternatives but did not consider the well and septic system locations. While the two buildings will match, he believes the garage needs to be closer to the house. This is the reasoning for the setback requirements in the Town of Day. He further stated this Board denied a variance for a 10 x 10 building and the same argument was used regarding well location. This structure could have been constructed without a building permit if it had met setback requirement of 15 feet from the property line.

Chairman Davidson stated he agreed with Board Member Poe that the impact is not the size but the width and its closeness to the property line. The garage can be located farther back on the lot or closer to the road and not require a variance. Chairman Davidson wished to state for the record that this Board has dealt with garages and wells several times in the past with varying results. A variety of factors will be considered in the decision making process.

Town Attorney Avigdor stated in the process of decision making, while the size may not be part of the equation, when an applicant requests relief from the law, the size does become an issue. The size is not an issue because it is 15 feet from the line but if it is closer, the size of the building is what would have a negative impact on the neighborhood or be more imposing.

Chairman Davidson reviewed the five criteria, balancing test-Board of Appeals shall balance benefit to applicant with detriment to health, safety and welfare of the community. He further stated health, safety and welfare of the community is fairly broadly drawn:

- Whether the benefit can be achieved by other means feasible to the applicant.
 - Board Member Newton stated she believed it could. It may be more or less costly if they change the size of the building. Or, moved the garage further back on the lot.
 - Board Members Traeger, Poe and Dixon and Chairman Davidson believed it could be achieved by other methods.
- Whether it would create an undesirable change in the neighborhood character or to nearby properties:
 - Board Member Dixon stated it would not.
 - Board Member Poe stated it would not be an undesirable change due to the styles of both being the same but would consider it to be a 50/50 change.

- Board Member Newton stated it would increase the amount of buildings on the property and may be, for lack of a better word, more cluttered.
- Board Member Traeger stated it would not.
- Chairman Davidson stated he has issues with the size of the structure and proximity to the property line and house next door.
- Whether the request is substantial:
 - Board Members Traeger, Newton, Dixon and Chairman Davidson stated it is substantial.
 - Board Member Poe stated it is substantial; it is a 15 foot setback; and, nearly two thirds relief is being requested.
- Whether the request will have adverse physical or environments effects:
 - Board Member Poe stated there is a 15 foot setback and the physical effect would be locating the garage closer to the neighboring property.
 - Board Members Dixon, Traeger and Newton stated there would be a physical effect (proximity) but not environmental.
- Whether the alleged difficulty is self-created:
 - Chairman Davidson stated while this normally does not come into play with area variances but in this case, it may.
 - Board Member Traeger, Dixon, Poe and Newton and Chairman Davidson agree it is self-created.

Chairman Davidson called for any final questions or comments. There were none.

Motion by Lorraine Newton, seconded by Board Member Dixon to declare the Town of Day Zoning Board of Appeals lead agency for Application 12-02ZBA, Cheryl Coughlin, Tax Map No. 44.5-1-31, Area Variances. Ayes: Davidson, Dixon, Traeger, Poe, Newton. Carried: 5-0.

Motion by Judy Traeger, seconded by Donald Poe to issue a negative declaration for environmental effects for Application 12-02ZBA, Tax Map No. 44.5-1-31, Area Variances. Ayes: Davidson, Dixon, Traeger, Poe, Newton. Carried: 5-0.

Motion by Chairman Davidson, seconded by Board Member Poe to deny the area variances for Application 12-02ZBA, Cheryl Coughlin, Tax Map No. 44.5-1-31. Ayes: Davidson, Dixon, Traeger, Poe, Newton. Carried: 5-0. The Chairman requested the Secretary poll the Board Members: Chairman Davidson-aye to deny the motion; Board Members Poe, Dixon, Traeger and Newton-aye to deny the motion.

Ms. Coughlin stated the following for clarification: As long as she locates the garage 15 feet from the property line, the Zoning Board would not be able to comment on what she builds. Chairman Davidson stated it would not be in violation of the law. Ms. Coughlin stated the neighbors who had the most impact did not object. Ms. Coughlin began to review the application once again. Town Attorney Avigdor stated these questions should be directed to the Code Enforcement Officer at the time a building permit is applied for.

Board Member Dixon inquired why the applicant does not move the garage closer to the road. Ms. DeMatteo stated she was willing to move the garage closer to the road but did not want to block the view of the neighbor from seeing the lake. Ms. DeMatteo further stated two and three stall garages are not out of the norm of real estate. At the same time, she can appreciate the opinions of the Board Members. Ms. Coughlin stated at this time she will construct the largest garage permissible on the parcel. Mrs. DeMatteo inquired what the appeal process would be. Town Attorney Avigdor stated is to the Supreme Court in Saratoga County.

**Mark Ottman/Nancie Cronk
Pre-Application Conference
Tax Map No. 42.11-2-12.1**

Mark Ottman and Nancie Cronk appeared to discuss a possible subdivision. Town Attorney Avigdor stated he was familiar with the details of this subdivision. While subdivisions are normally dealt with by the Planning Board, there are two existing houses on a half-acre lot. The zone in the Town of Day which permits the smallest acreage is Lakefront Residential and that requirement is 60,000 square feet which slightly less than 1.4 acres. The Ottman/Cronk parcel does not have enough acreage to create two lots. Town Attorney Avigdor stated they might be able to persuade the Board that there is no detriment to the neighbors or the community to the granting of this variance because the houses already exist. They are appearing to speak about the possibility of a variance. They would not be able to appear before the Planning Board for a subdivision because the lots are too small.

Town Attorney Avigdor stated Code Enforcement Officer Metzler consulted him on the possibility of each sibling gifting a lot to each other and making it exempt from subdivision law. Town Attorney Avigdor stated he did not believe it would be a bona fide gift because it is an exchange. Chairman Davidson stated normal procedure would be that an application be submitted and the

applicants appear before the Zoning Board for an open discussion. He would not have an issue to having a meeting prior to the formalities of the public hearing.

Chairman Davidson stated the issue will not rest on what the applicants intend to do with the property but what occurs in the future. Town Attorney Avigdor inquired if Ottman/Cronk applied for a variance and the Board proposed that they may be willing to grant a variance if both parties agreed to place restrictions on the parcel that the existing structures never be expanded. The houses could be renovated and/or modernized but not expanded forever. Could the applicants consider that as it may mitigate the concerns of Chairman Davidson? Ms. Cronk and Mr. Ottman stated they would.

Chairman Davidson stated that surveys and public hearings will be required, etc. with the possible inclusion of the subject Town Attorney Avigdor broached. This Board is in a position to grant variances with conditions which may restrict future economic interests in very significant ways. Board Member Poe gave an example of economic interests: the beach permit will remain with only one house. Town Attorney Avigdor stated the applicants must start first with an application to the Code Enforcement Officer who will deny their ability to split the lots. It will be referred to the Zoning Board which will consider the land use impact. He further stated that losing the beach permit would have an economic impact as would two houses on one parcel. This would be a personal business decision. The condition would not be imposed without first proposing it to the applicant at the time of public hearing.

Chairman Davidson stated one of the considerations in the process of drafting new zoning law was the fact that there does exist in the Town of Day, a number of substandard lots. There was a strong feeling that that committee did not wish to increase the number of substandard lots. Mr. Ottman stated he is in the process of increasing the size of one of the houses and the other house is not being expanded.

**Secretary's
Report:**

**Daniel and Sharon Lynch, Application No.11-01ZB
Tax Map No. 32.17-1-21**

Mr. Lynch contacted Code Enforcement Officer Metzler for a building permit for the above referenced application and was informed that the area variance had expired. Mr. Lynch stated he

may add a second floor to the existing structure which will not require any variance.

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

Mr. Borst contacted the Secretary regarding the variance and related that storage shed which prevented the garage from meeting the setback requirement required removal due being located too close to the garage. Mr. Borst did construct the garage utilizing the area variance.

If any Board Members wish to attend the CDRPC Planning and Zoning Workshops, they should contact the Secretary.

Motion by June Dixon, seconded by Board Member Poe to adjourn the meeting at 8:10 p.m. Ayes: Davidson, Traeger, Poe, Dixon, Newton. Carried: 5-0.

Respectfully submitted,

Diane Byrne
Secretary

TOWN OF DAY ZONING BOARD OF APPEALS MINUTES – PUBLIC HEARING SEPTEMBER 17, 2012

Members Present: Dave Davidson, Chairman

Judy Traeger
June Dixon
Donald Poe
Lorraine Newton
David Avigdor, Town Attorney

Members Absent: None

Others: Cheryl Coughlin
Jill DeMatteo
Patricia Drake
Wilhelmina Armstrong
Mark Ottman
Nancie Cronk

Proof of notice having been furnished, the Public Hearing for Cheryl Coughlin, Tax Map #44.5-1-31, 12-02ZBA was opened by Chairman Davidson at 7:01 p.m.

Chairman Davidson stated this discussion would be limited to land use. The applicant stated she was requesting area variances in order to locate the proposed garage closer to the property line in order to have access to the property in the rear of the existing home. Chairman Davidson stated that existing Town Law requires that all buildings be at least 15 feet from the property side lines. He further stated the applicant is requesting to place the proposed garage five feet from the property line requiring a variance on average of ten feet.

Chairman Davidson asked for any comment from audience members:

- Pat Drake, 3407 South Shore Road, inquired where the property line was and the reason for the area variance. The applicant explained how near the garage would be to an existing creek bed which currently is dry. She further stated she needs to be able to access the well which is located in the rear of the existing structure. She further stated the firewood is stored in the rear of the property which is necessitated to maintain access to the driveway and eliminate transferring a cord of wood by wheelbarrow. She also stated the garage has been staked. Mrs. Drake reviewed the survey map. The applicant stated the structure will have a loft for storage only.
- Mrs. Drake inquired if the stone wall would be removed. The applicant it would not. Mrs. Drake stated her concern was she is in a small camp and

structures are becoming much larger and the small residences feel overwhelmed.

- Mrs. Drake inquired how far the proposed garage was from the rear property line. The applicant stated it was 45 feet from the rear property line.

The Secretary read the following statement which was received via phone call:

"Received phone call from John Floeser who is part of family trust of property at 3380 South Shore Road. Other members of family trust are: Michael, Diane, Barbara, Shirley, Richard, Sheryl, Charles, Stephanie, Christopher, Serena, Amy, Emily and Kimberly Floeser (all over 21 years of age).

Mr. Floeser spoke for all members of trust who hold the same opinion: They are not in favor of the granting of the area variance because they believe it would make the area appear too overdeveloped and may result in a trend toward what now exists in Lake George."

Chairman Davidson asked if any Board Members had any questions:

- Board Member Newton stated she visited the site on two occasions and had voiced concern regarding the creek and the possible issues which might arise due to the close proximity. She inquired if the applicant had reviewed this possibility with the contractors and if it would be detrimental to the property line? The applicant stated the elimination of the overhang and the proposed angle would address any issues with the creek. The applicant further stated David Barrass, the excavator and cement contractor were all in agreement this would not change drainage patterns or be an environmental detriment.
- Chairman Davidson stated for the benefit of the audience members, what is requested is not allowed by existing law and the duty of this Board is to balance what the applicant is attempting to achieve against other harms. He further stated when the applicant first made application she stated the garage would be storage and the value would be whatever the value the storage would be. If this Board denied this variance, would harm would the applicant have? She stated it would be a hardship as far as expense, the lot does extend back 50 feet further and trees would have to be cleared which would not have to be done in the current proposed location. Chairman Davidson inquired what the consequence would be of not having a garage at all. The applicant stated it would conceal the items which are now stored outside and improve the appearance of the property. She further stated it is her intention to make this her permanent residence. Chairman Davidson stated it is a very large structure located very near the property line. The applicant stated it would house her boats, cars and the items which are currently stored at her current permanent residence once that is sold. Chairman Davidson inquired why the garage could not be

located closer to the house. The applicant stated she owned two parcels which were combined and in order for the well drilling company to gain access due to the location of the spring and to meet the requirements of distances between well and septic systems of neighbors, the well had to be located where it is. She further stated the two parcels were not level. The spring previously ran over the surface of the ground for approximately 20-25 feet and after that point, resumes to flow underground. The above ground portion needed to be excavated, stoned, encased in corrugated tubing with fabric and covered with soil to allow for the well drilling truck to travel to the site of the well. This is the area of the roadway which approaches the rear of the house for access. One of the reason why the garage cannot be located closer to the house is due to the applicant's fear that the spring will become exposed.

- Town Attorney Avigdor inquired why the well was not located nearer to the property line where the spring is located. The applicant stated at the time the well was drilled, the two parcels had not yet been merged. The area where the proposed garage would be located was a separate parcel which she did not merge because in the event of an emergency, she could resell that pre-existing, grandfathered building lot.
- Chairman Davidson inquired why the garage needed to be so massive. The applicant stated she had many storage needs.
- Chairman Davidson stated the applicant is seeking relief from the law which is designed to protect spacing between houses. The applicant stated she understood the statement but when she first appeared before the Board, she had spoken to her nearest and most impacted neighbor and they had no objection. This neighbor (Davidson) has not submitted any statement nor has they appeared.
- Chairman Davidson inquired when the house was built. The applicant stated two years ago.
- Board Member Dixon stated the size of the house and the size of the garage are compatible. She did not believe the size was the issue but rather the location on the property line. She further stated due to the creek, the applicant could not locate the garage closer to the house. She stated she did not have any issue with granting the area variance.
- Board Member Poe stated he did not have any questions at this time.
- Chairman Davidson stated he is confronted with a major building built two years ago which did not anticipate storage requirements. He believed the garage and home could have been incorporated in the same design. The size of the garage is larger than some homes and there are alternatives. While some may not be a palatable, if the building were narrower, there would not be a need for any variances. The applicant stated if the structure were narrower, she would build a longer building. It would also bring it closer to the road and become an eyesore. She will side the garage the same as the home. The reason it was not incorporated in the original building plans was financial. It was her desire to build the home to her specifications and now she has a need to conceal many possessions.

- Chairman Davidson stated the decision made remains with the parcel which is the reason for so much thoughtful consideration on the part of the Board Members.
- Town Attorney Avigdor stated there is the potential for the Board to consider this quandary to be self-created because the house was built and the well dug prior to the combining of the lots. Then in a very short time, the lots were combined. There could have been a plan that did the same elements, i.e. the well could have located nearer to the stream and a garage could have been built of the requested size without a need for a variance. Therefore, this is within the possible conclusions the Board could draw that this is a self-created hardship.
- Jill DeMatteo, co-owner of the parcel, stated boat trailers, cars, etc. were measured to determine how large the garage would need to be built. She further stated it is so expensive to construct this garage, she used her home in Schenectady as equity. In the near future, Ms. DeMatteo will sell her home in Schenectady and the applicant will sell her permanent residence and all of those possessions must be incorporated in the buildings in the Town of Day. Ms. DeMatteo further stated they tried to accomplish this as aesthetically as possible. At the time their home was constructed, it would not have been feasible to add a garage as the contractor resisted any changes to existing plans. She also stated there was the added expense and time consumption of the certified mailings required in the application process. While she respects the opinion of the Board that there should have been more careful planning, she is not able to change what occurred in the past.
- Town Attorney Avigdor stated he is not being critical in his comments regarding self-creation in respect to any of the circumstances surrounding the applicant's decision-making process. Nonetheless from a land use point of view, it is within a Board's purview to say we understand why the applicant made the decisions she made, but in light of the fact that she did make these decisions, she created the problems that now exist. He further stated he is not telling the Board that they must come to that conclusion but rather it is in the realm of their discretion that they could come to that conclusion.

Motion by Board Member Traeger, seconded by Board Member Newton to close the Public Hearing of Cheryl Coughlin, Tax Map #44.5-1-31, 12-02ZBA at 7:25 p.m. Ayes: Davidson, Poe, Traeger, Dixon, Newton. Carried: 5-0.