

**TOWN OF DAY ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
SEPTEMBER 16, 2013**

Members Present:

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

Members Absent:

Motion to accept the minutes from the August 19th meeting first by Judy Traeger and seconded by June Dixon.
Ayes: Davidson, Poe, Dixon, Traeger, and Newton.
Carried: 5-0.

Old Business:

**HAKALA, Philip & Karen
Tax Map #42.8-1-54
Garage Variance**

Chairman Dave Davidson stated that the first order of business is Philip and Karen Hakala variance application. The Public Hearing was held last month in David Avigdor's absence. We asked questions of the Hakala's regarding their application following that concerning the drainage condition. There was some sense from the board members that we hold off our decision for 30 days that would give Judy a chance to do a site review and join us in our deliberations. Subsequent, we had a letter that was submitted from the neighbors, we expect that everybody has had a chance to read.

David D. to David A., do you have any comment on the letter? First of all, Mr. Kolodziej is here this evening. I have reviewed the letter. This mentioned that you have drainage concerns. Now, the Public Hearing is apparently closed and with time constraints to act on this, yet we have concerns being raised about other things too, but the drainage first, I wonder with the applications where we are with that the board has an obligation to act within 62 days of when the Public Hearing was closed. So in other words you have a right to have them take a vote on this application either tonight or a month from now. However, concerns have been raised on the drainage and I don't know what the board thinks about these concerns. There might be a reason to deny this request. This 62 day deadline is something you could waive, we can't waive it, the neighbors who may be objecting can't waive it, you as the applicant can waive it. I'm not asking you to waive it, but am very respectful of the fact that you have the right to waive this. The reason to waive the dead= line, is you may want to get some kind of engineering report.

Dave Davidson stated that concerns in Mr. Kolodziej's letter are concerns that were reflected by the Ruzbasan's letter that we read at the last meeting. We asked the Hakala's to provide us with a little bit more detail on the planned culverts that were mentioned in the application. The garage site is situated around an existing culvert channel. It runs more or less between the two properties, predominantly on the Hakala's side but down over the ridge and curving back.

Dave Avigdor, just wanted to finish the thought that the Hakala's may want to take the time to get the engineering report rather than what the result might be of being denied.

Dave Davidson had a question regarding the applicant does not Meet section 10.5A2? Dave Avigdor looked up the section. It is that set of five factors that the board has to weigh. So when Mr. Kolodziej says specifically that the applicants do not meet the provisions of section 10.5A2, if I may paraphrase it, as you weigh those five factors, he believes you have to weigh them against granting the variance.

With procedure, I'm not sure where were at (Dave Davidson), The Public Hearing is closed on this, so I'm not sure what procedure to follow. Dave Avigdor stated you will have to make a decision and counsel is here to represent that decision so due process says we should hear what he has to say.

Mr. Kolodziej understands that the Public Hearing was held last month and he wasn't retained until this month. He feels that the question is not whether the applicant wants the variance but whether they are entitled to it, whether there is a necessity for granting the variance. What they are asking for is, they are asking to put up a 2-car garage. There is no indication that there is no other place that they could site it. They could move it closer to the house or they could put up a 1-car garage or a carport. Your granting a variance for a side line set back which is set up in the zoning ordinance for a reason. The drainage problem is important, obviously and you haven't got the engineering report.

Dave Davidson stated that we didn't ask for an engineering report we asked for a more detail about what the plan would be for culverts. But as I listen, you are arguing that the variance

should not be granted because your weighing on the factors reaching to that conclusion.

Mr. Kolodziej stated it's not so much as him weighing of the factors as it is the board weighing the factors. That the only reason that site is requested for the variance is that it will allow light in their house and that's a matter of convenience, not a matter of necessity.

Dave Davidsons response to that is the understanding of what our charge is as a board is to weigh factors. That no one factor is necessarily more important than another. We understand that the law does not permit the Hakala's to do what it is that they want to do. But to weigh the cost and consequences to the Hakala's, the proposed alternatives to the neighbors and to the town; a variety of factors.

Mr. Kolodziej stated he was correct but what you have to decide on this proposition is that the sideline setbacks are there for a reason and if someone wants it they have to make a strong case as to why it is necessary; why does he need a garage, why does he need a 2-car garage. Need to look at the inconvenience to the neighbors and whether they have demonstrated the case that it is necessary.

Dave Davidson stated that that is not his understanding of the law is that we are to weigh factors and not necessity.

Dave Avigdor gave a little historical context; there was once upon a time the law said necessity and then thereafter it said practical difficulty and there was a lot of confusion about what it meant and the legislature but in these five factors to make it more clear

what you would weigh and your right Dave you are to weigh the factors.

Dave stated that he is hearing that the applicant is saying they would prefer the garage to be further from their house, they prefer the light and that is a benefit, as well as the size of the garage they are seeking. And I am hearing from the neighbor their concern of the garage being jammed too tight between two houses, there may be drainage concerns and that the Hakala's desire to preserve their sidelines to make ease on the neighbor's sidelines. That's what I think I am hearing and that's what you will have to weigh. And the question comes down to in addition the several other factors, the benefits sought by the applicant and the detriments to the neighbors, those are two of the five factors. How you weigh those facts is up to you and the applicant or Mr. Kolodziej may have something more to say.

Mr. Kolodziej stated that the board should grant the minimum variance because there is no indication that this variance is even necessary. Again, it's desired but it doesn't mean they should have the variance for the sideline to the detriment of the neighbor and also there is still the drainage issue. When they purchased the property, it was a good opportunity for them to say, is this property going to be useful for what we want to do. That's the element of whether this was self-created.

Dave Davidson said that all the factors you stated are not any different than other variance applications we have reviewed.

Mr. Kolodziej insists that they could build their garage closer to their house instead of building closer to the neighbor's house.

There is opposition with the variance and it should be considered before the application is granted.

According to Mr. Hakala, the drainage issue cannot be changed, as it has always been there and it actually comes from Mr. Ruzbasans' property first. They did submit paperwork to show how they will try to alleviate this problem.

Dave Davidson asked Mr. Ruzbasan if he or Mr. Kolodziej had anything further to add before they considered the 5 factors.

Judy Traeger stated that she was able to visit the site and she felt it could be moved closer to their house, but the neighbors said the garage would impede their view and she's not seeing how this could be.

June Dixon said you do find that when you buy a piece of property sometimes things change and she feels that moving the garage closer to the house it would cause more drainage problems, so they need the variance to make this work.

Donald Poe said that he knows Mr. Wells and he is the best excavator around but it really doesn't give him a sense of what will be done with the drainage. He stated that this is a recent purchase and they should have known what they wanted to use the property for.

Lorraine knows both sides and said she saw another spot that they could build but after visiting the second time she did see the drainage spot and looked at the Ruzbasan property and observed the tree line which will not be affected. She also saw

that the drainage comes from Ruzbasan to Hakala. She feels that Hakala's are going to address this issue with the drainage and she feels that maybe the garage could be put where they are not asking for a big variance.

Dave Davidson said he made three trips to the property because he could not understand the objection from the neighbors. With the issue of the drainage, the channel is there and the garage should not increase the drainage problem. Even if they moved the garage, they would still need a variance because of the odd shape of the lot.

Dave Davidson, Chairman stated, we will now review each of the five considerations and then make a motion for the variance.

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

June Dixon feels she does not see it and no matter where they put the garage, they will have to apply for a variance.

Donald Poe agrees but feels it could be put in another area. It could be moved even though it is an odd-shaped lot and there would have to be a variance.

Judy Traeger said she could not see how it could be achieved any other way.

Lorraine said she feels that, yes it could be in another spot but if it is moved over further off that 5 foot coming toward the house then it would be over their culvert.

Dave Davidson said it's a 24' garage on a 40' line and it could be moved.

Undesirable change in neighborhood character or to nearby properties;

Lorraine Newton stated, no it is not a hindrance. Judy agreed it would not bother the other property. June Dixon, no. Donald Poe, yes, there is something going on, and yes, a change. Dave Davidson said, no, not in terms of visual.

Whether request is substantial;

All four board members, Donald Poe, Dave Davidson, Judy Traeger and Lorraine Newton, yes. June Dixon, no.

Whether request will have adverse physical or environmental effects;

Judy Traeger said questionable because of drainage, other than that, no.

David Poe believes that because the neighbors hired counsel, that they are creating some type of physical effect.

June Dixon, no.

Dave Davidson says his concern is more about the drainage and with what will appear when the water goes down the hill and doesn't see how the garage would cause a problem.

For next step; David Avigdor gave some examples of what

self-created means and how this should be determined.

Whether alleged difficulty is self-created;

June Dixon says it is self-created, but within reason.
Donald Poe said no because the shape of the property creates it.
Judy Traeger, Dave Davidson and Lorraine Newton also agree
with Donald.

David Avigdor advised that whoever makes the motion needs to
articulate on all five factors.

Motion made by Dave Davidson to grant the variance of
the garage and while the benefits could be achieved by other
means there is no room on the other side and he did not see
any undesirable change. The variance is a back line setback.
For environmental and other effects the water flow and difficulty
is not self-created. Lorraine Newton seconded the motion for the
variance.

Ayes: Dave Davidson, June Dixon, Judy Traeger, and
Lorraine Newton

Nays: Donald Poe

Carried 4-1

David Avigdor advised Mr. and Mrs. Hakala that they may want
to wait before they invest, because their neighbors did hire
counsel and they may challenge the variance resolution. This
is called an article 78 proceeding. A written resolution will be
mailed to you.

FARRELL, Michael & Laura
Tax Map #43-12.2-4
Garage Variance

This application was deemed to be incomplete at the last meeting. We now have all four signatures needed for the application and also the new survey. Mr. Craig Radliff, Laura Farrell's brother, is here to represent her, as we were going to conference call her if we had any questions.

Motion first by Donald Poe that the above application is complete and seconded by June Dixon.

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

Carried 5-0

The Public Hearing will be next month on October 21st at 7 p.m. Mr. Radliff was advised that the certified mail should go out 10 days before the public hearing and should have certified mail receipts. The abutters list may be different from the last application, ten years ago. Mr. Radliff was advised that a new list, if different, will be emailed to Laura. He was also advised that after the variance, then you may apply for the building permit.

New Business: **CRONK, Nancie**
 OTTMAN, Mark
 Tax Map #: 33.7-1-39.2
 #: 33.7-1-47
 #: 33.7-1-49
 Variance for Subdivision

Nancie and her husband were present for the application for a variance for a subdivision. The lots are deficient in road frontage and lot area. The property was owned by Nancie and Marks' father and they each have a house on the property. They don't want to change anything, and have stipulated in writing that the property will stay the same, but want to subdivide so each family has their own lot. David Avigdor advised that if the property stays in the family – what about the future?

The board was going to move this public hearing to November, but because the Cronks' will only be here until November 1st, they will put the Public Hearing on October 21st at 7 p.m.

Motion first made by Judy Traeger that application is complete and seconded by Lorraine Newton.

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

Carried 5-0

They were advised to mail out certified mail to neighbors on their list and should have return receipts to bring to the Public Hearing.

Motion that we declare lead agency for SEQR first by Donald Poe and seconded by June Dixon.

Ayes: Donald Poe, June Dixon, Dave Davidson, Lorraine Newton, and June Dixon.

Carried 5-0

Dave Davidson said the board needs to fill out the back of the SEQR form. We will have to go back for this years' grants and fill these out.

Motion made by Lorraine Newton that we ratify the resolution of earlier this evening for Hakala; that we are the lead agency for SEQR and seconded by June Dixon.

Ayes: Lorraine Newton, Dave Davidson, June Dixon and Judy Traeger.

Nay: Donald Poe

Carried 4-1

Correspondence:

A flyer from the Adirondack Explorer regarding the APA Conference which is on Thursday, September 26th was given to each board member.

Secretary's Report:

Request from Mary Ann Johnson for information on budget for Zoning Board for 2014. Do you feel the budget will be the same?

Reminder to all Board Members a meeting of Town Board, Planning Board, and the Zoning Board will take place on Monday, September 23rd at 5 p.m.

Motion by Judy Traeger to adjourn the meeting at 8:30 p.m. and seconded by Lorraine Newton.

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

Carried: 5-0

Respectfully submitted,

Brenda Ward
Secretary