

**TOWN OF DAY ZONING BOARD OF APPEALS**  
**REGULAR MEETING- DRAFT MINUTES**  
**JULY 15, 2024**  
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**A REGULAR MEETING** of the Zoning Board of Appeals of the Town of Day, County of Saratoga State of New York, was held in Day Town Hall, 1650 North Shore Rd Hadley NY 12835 on July 15, 2024.

The meeting was called to order by Chairman Dave Davidson at 7:00pm with the following answering roll call: Steve Edwards, April Schmick, Tina Seibert, Dave Davidson and Attorney Matt Fuller.

**Motion**, made by April Schmick, 2<sup>nd</sup> by Steve Edwards to approve May 20, 2024 regular meeting minutes and June 17, 2024 workshop meeting minutes.

**Ayes:** Steve Edwards, April Schmick, Tina Seibert and Dave Davidson

**Carried:** 4-0

Chairman Dave Davidson stated two applications were received for a height variance from Kathan Road. Each application will be reviewed for completeness and looked at individually.

Attorney Mr. Ianniello spoke on behalf of Frank and Melissa Giovinazzo. Owners of 1168 Kathan Road, **parcel #33.11-2-5**. Mr. Ianniello feels the variance deserves the height variance requested. Dave Davidson explained that at a public hearing things can be discussed on why they feel that way. Dave mentioned that some of the paperwork states the builder of the home is the owner. Dave didn't understand why it was filled out that way, but being the deed was given it does show Frank and Melissa Giovinazzo are the property owners.

Tina Seibert stated that she was concerned with the process associated with ZBA variances. Tina was wondering if both applications requesting height variances should be discussed with the Planning Board. Tina said if two height variances get approved over the current zoning code it needs to be consistent with the comprehensive plan and the new draft zoning law would have to be modified. Approving both of these applications would set a precedent which would cause the Board to have to approve new build requests that are similar or identical. Attorney Matt Fuller explained that the Planning Board doesn't approve height variances, only the Zoning Board of Appeals can. Tina clarified that she is not referring to the Planning Board approving the applications but rather that future site plans would have to be aware of these precedent setting approvals over and above the zoning law. Attorney Matt Fuller agreed that this is a valid point. April Schmick explained that each application is different and is individually reviewed. So just because you approve one doesn't mean another gets approved and granted. Tina asked about having any considerations for the Adirondack Park Agency, if they have any restrictions that the board would need to be mindful of. Attorney Matt

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Fuller said any variance granted gets sent to the Adirondack Park Agency in which they have a certain number of days to deny the variance. Dave Davidson said that at the public hearing, if the height variance is granted, we submit the paperwork to the APA and they have 30 days to approve or deny. Tina asked about the application having an "average" height, but the codes say "maximum" height. Chairman Dave said the town code says 30' high from the average grade. Tina Seibert and Steve Edwards said the town code states "maximum". Steve said which means the height would be taken from the lowest point. Tina asked if a set back variance was needed for this applicant, Dave said that's something they can look at and discuss it at the public hearing. Dave feels that a front yard set back wouldn't be needed. Tina suggested that the code/building inspector have something that was standard on what would have to be considered like side set back, front set backs, height, lot size that would be used etc. Tina feels that it would make it easier to review an application in regard to what fits inside the code and what doesn't. Dave Davidson said he agrees and that would be something the town board can take into consideration reviewing the draft zoning law.

**Motion**, made by Steve Edwards, 2<sup>nd</sup> by April Schmick to accept the application as complete.

Ayes: Steve Edwards, April Schmick, Tina Seibert and Dave Davidson

**Carried:** 4-0

Steve Edwards mentioned he would like an engineer or a licensed architect to give an exact measurement for the height on the home at 1168 Kathan Road. Steve said it would help out a lot in this application. Attorney Mr. Ianniello said the measurements were on the plans that have been submitted. Steve asked if the home was built per the original plan submitted. Mr. Ianniello said the architect is the engineer so it would be easy to give those measurements to the board. Steve said if an "as built" could be given it would be helpful. Dave Davidson asked for the original drawings that the code/building inspector approved. Mr. Ianniello said the plans never changed and as each step takes place the code/building inspector approves along the way. Dave also asked for documentation on what caused the code/building inspector to issue a stop work order. Mr. Ianniello feels that a 4' height variance is really what's being asked for because the piece of property is very unique with a steep slope at the rear of the property. Also there's a patio at the rear side of the property and if you exclude the necessary patio at the walk out the variance request would really be 4'. Without the patio you can't get to the ground without a walkout section, which makes it seem like the height variance requested is much more than it really is.

Carl Thurnau owner of 1178 Kathan Road **parcel #33.11-2-7** submitted an application for a height variance. Carl apologized for misunderstanding the height requirement when he came before the board previously for two set back variances. Carl said he

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would've asked for all 3 variances at that time if he realized that. Carl said he knew the Adirondack Park Agency has a 40' height elevation. Once Carl found out his neighbor was having an issue with the height of there home, Carl contacted the code/building inspector and asked if he would have an issue with the height on his home if built. Carl was then informed that the town has a code of 30'. Carl said he has the zoning law printed out and missed it while filling out his application. Carl said his application has a height listed as the lowest point to the highest point of 36'7". Carl disagrees with what the board decided as to what their definition is. In the zoning law it says the maximum structure height is the highest point of the structure to the lowest average grade. Carl said he spoke to the code/building inspector, and he agreed that it was the average elevation around the perimeter of the structure. Carl said his property is also on a slope and cannot have a two-story structure because of it. Carl said there are many in the town prior to the zoning law of 2012 and after. Dave Davidson said he has a home on Kathan Road which is 28' in height and his property has a slope as well. Carl said his variance request would be 3' less if going off an average height. He suggested that the board look at some records on homes built from 2012 to present and they will find that many homes were built over 30'. Steve Edwards asked if the board needs a stamped copy of the plans, Carl explained that they should be in his file being they were given at a previous zoning board meeting. Attorney Matt Fuller asked if the interpretation of how a height is taken should be cleared up with the code/building inspector. Attorney Matt explained to the board that if a denial letter is given to the property owner, they have the option to make changes to be in compliance or come before the zoning board of appeals for a variance. Carl said he did his best on following procedures, he contacted the code/building inspector, came in to see him and reviewed the maximum height definition with him. Carl feels that his application is complete and would like to proceed.

**Motion**, made by Steve Edwards, 2<sup>nd</sup> by Tina Seibert to accept the application as complete with contingent on the code/building inspector's interpretation on calculating height measurements.

Ayes: Steve Edwards, April Schmick, Tina Seibert and Dave Davidson

**Carried:** 4-0

Dave Davidson mentioned that a public hearing will be set for Carl Thurnau once he has a discussion with the code/building inspector.

**Motion**, made Steve Edwards, 2<sup>nd</sup> by April Schmick to set the **public hearing** on August 19, 2024 at 7:00pm for Frank and Melissa Giovinazzo.

Ayes: Steve Edwards, April Schmick, Tina Seibert and Dave Davidson

**Carried:** 4-0

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**Motion**, made by April Schmick, 2<sup>nd</sup> by Steve Edwards to **adjourn** the regular zoning board of appeals meeting at 7:59pm.

Tracy Ladd  
Town Clerk