

**TOWN OF DAY ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES – APPROVED**

May 20, 2019

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Members Present:

Al Graham
Dave Davidson
Donald Poe
June Dixon
Steve Edwards

Counsel: Jeff Meyer

Others Present:

Karen Morgan
Mr. Midera
Susan Millington
Isabel S. Charbonneae-Fortoul
Ronald Hertzell
Kenneth Metzler

Chairman Davidson opened the meeting at 7:00PM

Pledge

Chair Davidson introduced Stephen Edwards, recently appointed as a new member of the Zoning Board of Appeals.

Chair Davidson motioned to the board that we hold off on approving the meeting Minutes from our last ZBA meeting at our meeting tonight due to a malfunction of the recorder at the last meeting, and to our busy schedule this evening. He would like all board members to have a chance to review the minutes before finalizing. All board members were in agreement.

Old Business: Phillip Allen of Conklingville Church appeared at the April 15, 2019 ZBA meeting with an Application for an Area Variance. The application was to add digital signage to an

existing sign on the property on North Shore Road. The application was determined to be incomplete because there was no survey plan. Mr. Allen was going to see if the Church Committee will move forward with a survey. ZBA will keep this as an open item on the agenda.

New Business: PUBLIC HEARING

Tax Map #32.19-1-30

Area Variance for a 2nd Floor Deck

Karen Morgan

Chair Davidson addressed the attendees that the first order of business is a Public Hearing for an Application for Area Variance for Karen Morgan. Ms. Morgan appeared before the ZBA on April 15, 2019 with an application for a zoning variance to add a deck to the second floor of her home. The application at that time was not complete because it did not include an updated survey of the property with the proposed deck drawn up by a licensed Surveyor. Ms. Morgan has since had the survey plan updated to include the proposed deck and therefore the application is now complete. The deck is 12 ft. wide and set back from the road 18'ft 4" from an area where 50 feet is required, so Ms. Morgan is asking for a variance of roughly 32 feet.

Chair Davidson asked if Ms. Morgan has anything to add or to say to the board. Ms. Morgan said she that she has seen other camps on her road that have similar decks with the same road frontage as the deck she is proposing. She also said she is a year-round resident and has also submitted a letter to the board at the last meeting explaining in greater detail the need for this deck. She also introduced Mr. Midera, her neighbor, who came to the Public Hearing to support her as he does not oppose the deck she plans on building.

No other members of the public had any comment on the Morgan application.

Chair Davidson asked the board members if they had any thoughts or questions and there were no questions. Chair Davidson said that for the record, when they met last time application was not complete and now with proper survey presented to the Board we can accept the application as complete.

Motion made by Chair Davidson to close the public hearing. Motion accepted by June Dixon, 2nd by member Al Graham, agreed by Board Members Steve Edwards and Don Poe

Carried: 5-0

Public hearing officially closed at 7:14PM

Chair Davidson read from the **New York Planning Federation, Summary of Area Variance Criteria** and asked the Zoning Board of Appeals members to consider:

1. *Whether benefit can be achieved by other means feasible to applicant:*
All members agreed no.
2. *undesirable change in neighborhood character or detriment to nearby properties;*
All members agreed there would be no change to neighborhood, and felt that the change is consistent with the rest of the road.
3. *whether request is substantial:* All members agreed yes. Variance of approximately 32' is substantial. Dave has less reservation because deck is not built on ground level. Don said normally most requests are substantial.
4. *whether request will have adverse physical or environmental effects;*
All members agreed no.
5. *whether alleged difficulty is self-created (which is relevant, but not determinative)*
All members agreed no.

Chair Davidson asked for board members to make proposal.

Motion made by Board Member June Dixon, seconded by Al Graham, to grant the variance request.

Ayes: Chair Davidson, June Dixon, Donald Poe, Steve Edwards and Al Graham.

Carried 5-0

Polled:

Chair Davidson, yes

Member Al Graham, yes

Member Steve Edwards, yes

Member June Dixon, yes

Member Don Poe, yes

All granted. Variance is accepted.

Next on Agenda – New Business:

Susan E. Millington, Attorney
Tax Map #44-1-6.1
Application for Zoning Variance
Minor Subdivision

Susan Millington appeared before the board representing Isabel S. Charbonneae-Fortoul

and the six other owners of the parcel in question (who have each signed the application). Atty. Millington received a letter of denial from Town of Day Code Enforcement Officer, Kenneth Metzler regarding her request to subdivide the property. Isabel Fortoul claims to own a 6.5 acre parcel that has been subdivided off a portion of Tax Map# 44.-1-6.1. The 75 acre parcel

was originally subdivided and three parcels sold in 1985, however, the parcel that was sold to Ms. Fortoul does not appear on county tax map records because the deed was never recorded with Saratoga County. Ms. Fortoul bought the parcel in question via a 10-year land sale contract --they left the original owners (Ron Hertzal) name on deed, and paid it off to owner and then they would get the deed. In 1982 Ron Hertzal sold the original parcel. The Fortoul's were not represented by an attorney so it did not appear that their lot existed. Saratoga County does not show the lot as a separate parcel.

Attorney Millington showed the Board Members a subdivision map, by Dennis Dickenson and Associates called The Oakridge subdivisions. The original development plan showed that a road would have been developed, but it never happened. The subdivision never went forward. This original plan predates current zoning law in the Town of Day.

Chair Davidson is not clear if this is a legal subdivision. He saw on documentation that subdivision was never done. There is also question as to what would the Zoning Board grant a variance for? It seems that we are being asked to provide the owners of the 72 acres with a variance to provide a subdivision for:

1. variance for substandard lot (min. lot requirement is 8.5 acres)
2. variance absolving them for the need for a road (there is no road frontage on a public road).

Atty. Millington said the lots could have access by Shippee Road. Kenneth Metzler said that is only an access road, not maintained by the town and it is impassable. Chair Davidson noted that the road that was specified in the original subdivision was not built. Atty. Fuller said the APA approved the concept in 1979, but there were certain conditions that had to be done and it hasn't been. He said that it appears that APA issued a permit in 1979 and one of the conditions was that the road was built. Shippee Road does not exist -- it ends at a town highway 1,000 ft. short of this property.

Chair Davidson is not clear how Town of Day Zoning Board can resolve the issue. The only action we can take is to declare that we have a complete application, and proceed from there. Board member Don Poe noted that the survey plan presented is not current (nor filed). We would need a current stamped map by a licensed surveyor.

It was determined at this meeting that Atty. Millington will reach out to the APA with a formal request as to if they approved and have record of the land sale approval. We need to see where APA is in this, what happened in 1979 and 1981. She will also fax the deeds over to Atty. Meyer who will verify the legitimacy of the deeds, and review this information with the board.

Summary: The roots of this application are complicated, and almost 40 years old. A 73+ acre subdivision was authorized by the APA but never completed. Specifically, the road servicing the subdivision was never completed, and the owners association charged with maintaining the road was never established. ***Hertzel says that the APA gave him permission to sell lots, and build the road as he sold them.***

3 lots were sold, but only two of them were registered. The 3rd lot (Fortoul – the **lot** referenced in the application) was not registered at the time of sale. As a consequent, it was contained in the sale of the entire remaining parcel.

In order to even consider an application for variances, the ZBA required that the applicants(s) for the variances be the owners of the parcel which includes the “lot” to be subdivided, and not the Fortouls. Further, the survey map accompanying the application must be stamped, and it must be verified that the properties in question are appropriately outlined on that map. That is, deeds and map must be reconciled. The ZBA has asked that the Town’s attorney certify that reconciliation.

Town attorney Jeffrey Meyer recommended that Ms. Millington ask the APA for a jurisdictional ruling. She agreed, and asked if she should work directly with Meyer, the ZBA board members agreed.

Continuing Business: None

Correspondence: None

Secretary’s Report: None

Motion, made by June Dixon, seconded by Steve Edwards to **adjourn** this regular meeting of the Town of Day Zoning Board of Appeals was made at 8:20 PM.

Ayes: Chairman Dave Davidson, Al Graham, June Dixon, Steve Edwards and Donald Poe

Carried 5-0

Respectfully Submitted,

Diana Edwards
Clerk