

**TOWN OF DAY – ZONING BOARD OF APPEALS
REGULAR MEETING/PUBLIC HEARING
DRAFT MINUTES
NOVEMBER 19, 2018
7 PM
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Pledge

Roll Call

Members Present:

Chairman Dave Davidson
Member Lorraine Newton
Member Al Graham
Member Donald Poe
Member June Dixon

Other Attendees:

Matt Fuller, Counsel
Diana Wahrlich
Richard Wahrlich
Theodora Leonaggeo
Paul Parker
Jim Mitchell
Kathy Mitchell

Members Absent:

Chair Dave Davidson opened the meeting at 7:00 pm.

Motion, made by Lorraine Newton, seconded by Al Graham to **approve** the minutes from the October 15, 2018 Regular Zoning Board of Appeals meeting was made.

Ayes: Chair Dave Davidson, Lorraine Newton, Al Graham, Don Poe and Member June Dixon.

Carried 5-0.

Old Business:

**Public Hearing
Opened at 7:02 PM
Area Variance
Tax Map#32.16-1-13
Richard and Diana Wahrlich**

Chairman Davidson invited Richard and Diana Wahrlich before the board. He verified with the board that all had made a site visit.

The Wahrlichs explained that they wanted to build a garage and would need a variance to place it where they felt it had to go. They did receive a previous variance but were unable to build the garage due to lack of money. They updated and paid the fee yearly until the Code

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Enforcement Officer advised them to stop. They want to live here full time and would like storage to put their boat, tools, etc. If not granted a variance, they will probably sell their home.

The problem is the land where they want to build is very steep. It is very difficult to get up there except for the fall. In other seasons it is too wet.

Member Poe stated that it would make the property year round instead of seasonal. Member Graham stated that the garage would be further back than the garage next door. Chair Davidson reminded us that at the last meeting Code Enforcement Officer Metzler stated the garage next door is built closer to the road. It was built before setbacks were in place and in 35 years it has not been a problem.

Member Newton questioned if anyone had been brought in to examine excavation.

Jim Mitchell stated that it was solid rock. He helped with site planning and stated that dynamite would be needed to remove it.

Mr. Wahrlich said that the back would be right up to the ledge. It was tried with an excavator next door and they said they couldn't do it. All the trees would have to come down also.

Kathy Mitchell also spoke. She said that the Wahrlichs are friends and she would like them to be able to live here year around. She spoke that the lights would be on and she could see them from across the lake. It would be encouraging to them and positive for the town.

Chair Davidson stated that he spoke with Michael Valentine of Saratoga County Planning and they had no issues. A written statement will be sent by him. His only comment was that there is a drain between the two houses. The Wahrlichs are aware of this.

Motion, made by Lorraine Newton, seconded by Don Poe to **close the public hearing** was made at 7:16 PM.

Ayes: Chair Dave Davidson, Lorraine Newton, Al Graham, Don Poe and Member June Dixon.

Carried 5-0.

Chair Davidson reviewed that the front side setback is 38 feet 2 inches. 50 feet is required. The variance would need to be about 12 feet.

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The members discussed the benefits to the Wahrlichs. Chair Davidson felt a garage is not a necessity. Member Dixon disagrees. Member Poe does not have one. Member Dixon did say that they have a plan worked out with no interference to others.

The area variance questions were considered as follows:

Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Member Al Graham – No. It will be back farther than the neighbor’s garage.

Member Don Poe – No

Member June Dixon - No

Chair Dave Davidson – No. He did express concerns that precedent matters. There is an issue if more want garages close to the road.

Member Lorraine Newton – No. She felt that that would not be an issue on the North Shore side of the lake.

Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Chair Dave Davidson – No, but it will not make it better.

Member Al Graham – No. It is beneficial.

Member Lorraine Newton – No

Member June Dixon – No

Member Don Poe – No, one couple came in who was for it. No one was against it.

Whether the requested area variance is substantial.

Member Lorraine Newton – Yes

Member Al Graham – No

Member Don Poe – No

Member June Dixon – No

Chair Dave Davidson – Yes

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Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Member Lorraine Newton – No
Member June Dixon – No
Member Don Poe- No
Member Al Graham- No
Chair Dave Davidson – No

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Chair Dave Davidson – No
Member Lorraine Newton – No
Member Don Poe – No
Member June Dixon – No
Member Al Graham – No

Motion to grant a variance in the amount of 38 feet 2 inches, was made by Don Poe and seconded by Lorraine Newton.

Ayes: Chair Dave Davidson, Lorraine Newton, Al Graham, Don Poe and Member June Dixon.

Carried 5-0.

**Public Hearing
Open at 7:25 PM
Area Variance
Tax Map#33.7-1-33
Paul Parker**

Mr. Parker seeks a variance for a rear yard setback of 3 foot 6 inches in a 50 foot set back area. Counsel Fuller said that the drawing is misleading and confusing. The setback is not 15 feet for zoning purposes. It is 50 feet. The 15 feet stated comes from the deed.

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Chair Davidson asked Mr. Parker how this happened. He stated that it was “tweaked” because of rock. It became a \$10,000 mistake. The bank required a survey and the problem was found.

Mr. Parker was reminded that a variance will not fix his problem with the deed. The Zoning Board of Appeals does not have the authority to interfere with a private deed covenant. The deed issue is the bigger problem.

There was no comments or questions from the board.

Motion to close the public hearing at 7:33 PM was made by Lorraine Newton and seconded by June Dixon.

Chair Davidson asked for general thoughts. Member Dixon felt it was not their fault and we do not have the right to deny the variance.

The area variance questions were considered as follows:

Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Member Lorraine Newton – No. She believed that it cannot.

Member Al Graham – No

Member Don Poe – No

Member June Dixon - No

Chair Dave Davidson – No

Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Chair Dave Davidson – No, there is no nearby property.

Member Al Graham – No

Member Lorraine Newton – No

Member June Dixon – No

Member Don Poe – No

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Whether the requested area variance is substantial.

Member Lorraine Newton – No
Member Al Graham – No
Member Don Poe – No
Member June Dixon – No
Chair Dave Davidson – No

Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Member Lorraine Newton – No
Member June Dixon – No
Member Don Poe- No
Member Al Graham- No
Chair Dave Davidson – No

Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Chair Dave Davidson – Yes
Member Lorraine Newton – Yes
Member Don Poe – Yes
Member June Dixon – Yes
Member Al Graham – Yes

Motion, made by Al Graham and seconded by Don Poe, was made to **grant the 3 foot 6 inch** variance with the understanding that this is only in regards the Town of Day Zoning Law. It does not have any effect on the deed convenance attached to the land.

Ayes: Chair Dave Davidson, Lorraine Newton, Al Graham, Don Poe and Member June Dixon.
Carried 5-0.

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New Business: None

Correspondence: HRBRRD has no issue with either application at this time.
Both applications were sent to the APA on October 25, 2018.
Verbal correspondence between Michael Valentine, Saratoga County
Planning Department and Chair David Davidson. Written is to follow.
Both parties returned their certified mail receipts.

Secretary's Report: Legal notices were published in the Post Star on November 8, 2018.

Motion , made by Lorraine Newton, seconded by June Dixon to **adjourn** this Regular Meeting of the Town of Day Zoning Board of Appeals was made at 7:45 PM.

Ayes: Chair Dave Davidson, Lorraine Newton, Al Graham, Don Poe and Member June Dixon.

Carried 5-0.

Dawn Graham, Clerk