

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

April 15, 2019

Page 1 of 5

Members Present:

Al Graham
Dave Davidson
Donald Poe
June Dixon

Others Present:

Karen Morgan
Philip Allen
Donna McGraw
Jerry McGraw
Lynda Buckley

Chairman Dave Davidson **opened the meeting at 7:00PM**

Pledge

Motion, made by Chair Davidson to accept the meeting minutes from the March 18, 2019 regular meeting of the Zoning Board of Appeals as amended. **Accepted** by member Al Graham.

Ayes: Board member's June Dixon, Donald Poe, Al Graham, Chair Davidson

Carried 4-0

Old Business: None.

New Business: Dave Davidson addressed the attendees to let them know that we have three applicants on the agenda for tonight's ZBA meeting that are applying for variances. He stated that there is a Public Hearing tonight and that case will go before the others as that is standard procedure in consideration of those that are attending from the public.

Chair Davidson also addressed attendees that the Zoning Board of Appeals about the proceedings. The ZBA's role is to review applications for relief from Town Zoning law, and to provide relief when it is appropriate – to grant a variance. The new applicants present will go through the same process as the McGraw's are going through. The ZBA has to abide by a formal process and the applications submitted to the board have to have surveys from a certified land surveyor as well as the other required documentation. This is required for a reason as in most cases someone wants to build something and the space on the lot is wrong, we need to know from a survey exactly what it is we're being asked to grant.

Public Hearing

Area Variance for a Property Line Adjustment

Tax Map #33.7-1-28 & 33.7-1-29

Donna McGraw (Allyson McGraw)

Chair Davidson called the Public Hearing to order. First on agenda is an area variance request by the Donna McGraw for a property line adjustment to increase the size of their lot and decrease an adjoining property owner's (Lynda Buckley's) lot. He noted (as he did in last month's meeting) that he is a neighbor of the McGraw's and Linda Buckley, and a friend of the McGraw's, but that he will not be recusing himself from the decision as he has no stake or interest in the outcome. June Dixon also noted that she knows the applicants. He noted that a variance is required because Town zoning law has a provision in it where property line adjustments between two non-conforming lots are forbidden. Eight acres is required, so the change is not in conformance with zoning law. Before they can go before the Planning Board they need to go before ZBA.

Chair Davidson asked if members of the public would like to speak on the McGraw request. The following concerns and comments were made. John Fiore, a neighbor had a concern and addressed the board. His property is next to the McGraw's property and he noted that there are strict laws as noted in Town of Day Subdivision Control Law Article 10 Boundary Line Adjustments, and article 13 Penalties. He felt it's an illegal subdivision that they are trying to add the lot to their property, the reason is there is not 8 acres. There isn't enough places for septic or wells. He says it's a subdivision and they are totally against the subdivision. He stated that he has spoken to an attorney and that it's an illegal subdivision. Chair Davidson said that he is correct that the documents he brought up are existing zoning law. Zoning law does say this can't happen. Zoning law also provides a mechanism for property owners to apply for relief from the existing law by appealing to the Zoning Board of Appeals – which is us. Should we provide the relief, the Planning Board would still have to provide the adjustments. The Town of

Day has many substandard lots and we aren't looking to increase that, it is our job to provide relief where we see it as appropriate.

Linda Buckley said it's her property that she is selling to McGraw's to ease her tax burden. She doesn't want to sell it as a buildable property. She noted that it is an unbuildable lot, nothing will be done it will stay exactly as it is. Another neighbor wasn't sure what affect this boundary line, if any, would have on her property. Chair Davidson showed her on the tax map what the changes would be so she was assured that it did not affect her property. She was notified because she was within the 500' and needed to be notified as per variance application requirements.

Chair Davidson asked if there were any other comments from public, if not public hearing is closed. **At 7:11pm public hearing was closed.**

Chair Davidson then asked other ZBA members their opinions on this variance application. Donald Poe said it is a boundary adjustment – the distinction is that a subdivision creates a new lot or lots, in this case the line adjustment just changes the size of the lots and who owns what area. You can build on lots yet there are restrictions, but all lots are legally buildable. This request does not create a new lot. Al Graham said that there is no difference to the neighborhood. They are only changing the lot size between the two parties. June Dixon feels nothing will change as it is going from one party to the other.

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:*
Benefit one side is decrease in tax bill (agreed by all ZBA members)
2. *undesirable change in neighborhood character or detriment to nearby properties;*
no change (agreed by all ZBA members)
3. *whether request is substantial* - no (agreed by all ZBA members)
4. *whether request will have adverse physical or environmental effects;* (no -changing lot size won't allow them to do anything they couldn't do now, agreed by all ZBA members)
5. *whether alleged difficulty is self-created (which is relevant, but not determinative)*
no (agreed by all ZBA members)

Chair Davidson asked for board members to make proposal. June Dixon motioned to grant the variance request, seconded by Al Graham.

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

Carried 4-0

Variance for the property line adjustment as proposed on drawing is approved. Zoning Board will submit the application to the APA and if approved by APA, the McGraw's will need to submit a Boundary Line Adjustment Application and go before the Planning Board for their review.

Chair Davidson noted the next order of business is Karen Morgan's application to put a deck on her home. Our role is to review the application to see if it's complete, if complete accept it and then set up a public hearing.

Tax Map #32.19-1-30
Area Variance for a 2nd Floor Deck
Karen Morgan

Chair Davidson asked if Ms. Morgan would like to make some comments regarding her 2nd floor level deck as she submitted a letter of hardship. In summary, they have been permanent residents in the Town of Day for over 45 years (at another property) and purchased this home in 2016 and would like to add a deck. The deck is needed to assist her elderly mother who uses a walker and can't use stairs, and a disabled family member to enter the second floor level which is the main living level (she proposes a walk-way ramp would be built onto the side of the deck for access). She understands the regulation for a set-back, and she see's other properties on her road that have structures very close to the roadway that are not set-back 50'.

Chair Davidson said that the site survey she provided does not have the deck drawing with relevant dimensions on it, including how far the setback is from the road and this will need to be done before the ZBA can accept her application as completed. This survey is a requirement on the application for an Area Variance. Ms. Morgan said she will have the surveyor update the site plan with the deck drawing with dimensions and setback noted. Chair Davidson said we can schedule a public hearing for the next ZBA meeting on Monday, May 20, 2019, contingent on Ms. Morgan getting the survey.

Next on Agenda:

Tax Map #25.19-2-12
Phillip Allen/Community Church of Conklingville
Application for an Area Variance – Digital Signage

Chair Davidson called upon Phillip Allen to describe the signage he would like to install. He noted that we require a deed in order to show that the applicant has standing to make the

request, but Church's may not have the usual paper work. He asked Mr. Allen to introduce himself. He introduced himself as "Pastor Allen of the Church." Chair Davidson noted that this was for the record to show Mr. Allen's standing to make the variance request. Mr. Allen gave all ZBA members a drawing of the proposed sign. The size of the sign is 36"wx16"h and it is a digital ticker sign. It would be directly above the existing wooden sign for the church and would be programmable so it would show activities for the community. For the sake of traffic, because it's a bad hill, the sign is only one sided facing Walter Maxfield Road. The church is hoping to get permission to use the digital portion of the sign. Chairman Davidson asked if any on ZBA were members of the Conklingville Church and all on the Board stated that they are not members of the church. Chair Davidson questioned if the sign is designed to scroll. Mr. Allen confirmed that yes it will scroll to whatever is programmed.

Chair Davidson noted that there is no survey locating the sign, it's about setbacks. The existing sign is awfully close to the road, and we don't know if it's on county property. We would have to know if it is on county property or town property. Mr. Allen would need a survey of the lot that shows where the sign is located, mainly for setback from the road. June Dixon said we can't grant a variance on county right of away. Chair Davidson said the proposed sign itself is illegal, and that the Adirondack Park Association does not allow digital signs and they are not permitted by zoning (*Town of Day Zoning Law Article 8 Supplementary Regulations, 8.9 Signs, B. Design & Location of Signs*). Other than the survey requirement, Chair Davidson didn't see anything else in the application that makes it incomplete. Mr. Allen said he will meet with the church committee and decide if they will pursue getting the survey and moving forward with the application.

Continuing Business: None

Correspondence: None

Secretary's Report: None

Motion, made by June Dixon, seconded by Donald Poe to **adjourn** this regular meeting of the Town of Day Zoning Board of Appeals was made at 7:50 PM.

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

Carried 4-0

Respectfully Submitted,

Diana Edwards
Clerk