

**TOWN OF DAY-ZONING BOARD OF APPEALS  
REGULAR MEETING-APPROVED MINUTES  
MARCH 19, 2018  
7PM  
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**Pledge**

**Roll Call**

**Members Present:**

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

**Members Absent:**

None

**Also Attending:**

Matt Fuller, Attorney  
Garry Robinson, Engineer  
Ted Mirczak, Chair Planning Board  
Kenneth Metzler, Code Enforcement Officer  
Ronald Waite  
Linda Rineman  
Leland Chap Aldrich  
Dave LaFountain

Chair Dave Davidson opened the meeting at 7PM.

**Motion**, made by Don Poe, seconded by June Dixon to **approve** the minutes from the February 22, 2018 Regular Zoning Board of Appeals meeting with a change on page 6 to state “adjourn” instead of “table”.

Ayes: Chair David Davidson, Member Lorraine Newton, Member Al Graham, Member Donald Poe, and Member June Dixon.

**Carried 5–0.**

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Chair Davidson unadjourned the public hearing at 7:01 pm.

**OLD BUSINESS:**

Chairman Davidson asked if any of the members had walked the site. Member Poe had. Chair Davidson said that the aerial photos were helpful along with clarification from Ken Metzler. He reviewed that the variances asked for are as follows:

1. A relief from the 50 foot buffer.
2. A change in lot size.

The public was asked if they had any questions or comments.

Mr. LaFountain asked what the board thought of the change from 50 foot to 30 foot.

Chair Davidson explained that that discussion will happen between the board members when the public hearing is closed.

Mr. LaFountain stated that for the record he does not have any problem with the density change but does have a problem with the 30 foot set back.

The board was asked for any comment.

Al Graham made a **motion to close the public hearing** which was seconded by June Dixon at 7:04 pm.

Ayes: Chair David Davidson, Member Lorraine Newton, Member Al Graham, Member Donald Poe, and Member June Dixon.

**Carried 5-0.**

Chair Davidson opened the discussion with the board members by asking that they discuss the variance for the size of the lots first. The request is for 1800 feet. He asked the board if they had a general sense of what their thoughts were.

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Member Al Graham reiterated that the original number for the lot size was for a mobile home as explained by Ken Metzler. Chair Davidson stated that the health department requirement is 1250 feet.

The area variance questions were asked as follows:

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.

Member Lorraine Newton – Sees no problem

Member June Dixon – Also sees no problem

Member Don Poe – No issue

Member Al Graham – Also no issue

Chair Dave Davidson – Sees no problem

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

Member Lorraine Newton – No

Member Don Poe – Agrees

Member June Dixon - No

Chair Dave Davidson – No. The Comprehensive Plan is clear that we are supportive of travel and tourism in this area.

Whether the requested area variance is substantial.

Member Don Poe – Yes or wouldn't be here before board.

Member June Dixon – Agrees

Member Al Graham – Agrees

Chair Dave Davidson – Agrees

Member Lorraine Newton – 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. The existing park would be more enhanced.

Member June Dixon – No. It would benefit town.

Member Don Poe- No. They hired an engineer to look at problems.

Member Al Graham- Agree.

Chair Dave Davidson – Strictly speaking the water etc. is not our overseen by Zoning. Agrees. It was a camp site and will be a camp site The thirty-three units will be invisible from the road. It is not an issue.

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

Chair Davidson asked the board if they were ready to make a motion on this variance.

Attorney Fuller asked if a SEQR had been dealt with. Chair Davidson said it had been deferred to the Planning Board. Attorney Fuller explained that as they had not yet reached a negative declaration, we can't complete this procedure until SEQR is done. It would be an uncoordinated review and the Zoning Board does not have to declare itself a lead agency.

Attorney Fuller went through the SEQR form with the board. He also clarified that it is an approved plan and that the APA is involved as it is a density exception. Chair Davidson stated that information has already been sent to Robyn Burgess.

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Attorney Fuller stated that he has seen the APA overturn an exemption for not answering the two questions that come out of the approved plan. They deal with practical difficulties and if the spirit is observed.

Attorney Fuller asked if there are practical difficulties in the way of carrying out the strict letter of the code provision. Chair Davidson said that we have walked through that. The town is supportive in general of this project and expansion. Pushing it up the hill would create more problems. The other question was if the spirit of the zoning restrictions will be observed in public safety and welfare secured and substantial justice done. Chairman Davidson said this is in compliance with the Town of Day Comprehensive Plan. Again, pushing it up the hill would create more problems. Attorney Fuller said that as long as these 2 extra questions are answered, it should satisfy the APA.

It is an uncoordinated review. The questions on SEQR should reflect that. Attorney Fuller stated that the board should answer "yes" or "no" and then if it is a small or large impact.

- Material conflict: No
- Change in the intensity of use of land: Yes. Small.
- Impair the character or quality of existing community: No
- Impact on environment: No
- Adverse change in traffic etc: No
- Increased use of energy: Yes. Small.
- Impact private/public water supplies: Yes. Small.
- Impact public/private wastewater: Yes. Small.
- Impair Historic, archaeological etc.: No
- Adverse change to natural resources: No
- Increase for erosion etc.: Yes. Small.
- Hazard to environment/human: No.

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A **motion** to declare a negative declaration was made by Al Graham and seconded by Don Poe. Ayes: Chair David Davidson, Member Lorraine Newton, Member Al Graham, Member Donald Poe, and Member June Dixon.

**Carried 5–0.**

A **motion to grant the variance** to change the lot size from 2500 square feet to 1800 square feet was made by Don Poe and seconded by Al Graham.

Member Lorraine Newton: Yes.

Member Al Graham: Yes.

Chair Dave Davidson: Yes.

Member Don Poe: Yes.

Member June Dixon: Yes.

The second request for a variance is the reduction in the setback from 50 feet to 30 feet.

The Chair asked for general thoughts from the board members.

Member Graham said that it sounded like the Aldrich side had no problem with the 30 feet set back but that the other side does. He questioned if it would be possible to approve a variance on one side and not the other.

Chair Davidson said it was possible. There was concern with boundary line issues.

Member Poe said that on Mr. Aldrich's side it appeared that 3 out of the 4 lots are almost 50 feet from the boundary. On Mr. LaFountain's side each lot faces directly on the boundary line. On Mr. Aldrich's side only a corner faces it.

Chair Davidson reminded the board that the plan is simply a sketch and it can be changed.

The Planning Board has review of the site plan.

Attorney Fuller said the Zoning Board shall grant the minimum variance to preserve and protect the neighborhood. It can go less, not more.

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Engineer Robinson was asked his thoughts. He said that the request for the variance was to keep down off the mountain. He said the plan will probably change as stormwater facilities etc. are not yet on the plan. The owner thought of stakes and signs and a letter to the campers to remind them to stay off Mr. LaFountain's property.

Chair Davidson did state that a variance stays with the property and not the owner of the camp ground.

The criteria was reviewed for the request to change the set back from 50 feet to 30 feet on both sides.

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 – The public hearing said at the public hearing it did seem it would affect one neighbor. In general, No, it was a camp site and still will be a camp site.

Member Lorraine Newton – No

Member June Dixon – No

Member Don Poe -No

Member Al Graham – No

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

Member Lorraine Newton – No

Member Don Poe – No

Member June Dixon - No

Chair Dave Davidson – No

Whether the requested area variance is substantial.

Member Don Poe – Yes

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

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, seconded by Don Poe to grant a 30 foot variance on the Aldrich side of the property and deny a variance on the LaFountain side.

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

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**NEW BUSINESS:** Insurance for site review is covered by the Town of Day. However the owner of the property cannot be held harmless if they create a dangerous condition. The owner may request to be at the site visit but they cannot dictate the schedule.

**CORRESPONDENCE:** None

**SECRETARY'S REPORT:** The legal notice to the Post Star was published on 3/8/2018.

Chair Davidson thanked Engineer Robinson for all the work he did in presenting his application.

**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 7:55 PM.

Ayes: Chair David Davidson, Member Lorraine Newton, Member Al Graham, Member Donald Poe, and Member June Dixon.

**Carried 5-0.**

Dawn Graham  
Clerk