

**TOWN OF GREENFIELD**  
**ZONING BOARD OF APPEALS**

**October 5, 2010**

**REGULAR MEETING**

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Taylor Conard at 7:30 p.m. On roll call the following members are present: Taylor Conard, Michelle Granger, Paul Lunde, Kevin Veitch, and Joseph Szpak, Alternate. Stanley Weeks is absent.

**September 7, 2010 MINUTES**

MOTION: P. Lunde

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of September 7, 2010, as submitted.

VOTE: Ayes: Conard, Granger, Lunde, Veitch, Szpak

Noes: None

Absent: Weeks

**NEW BUSINESS**

There are no new applications on tonight's agenda.

**OLD BUSINESS**

**GERALD & RHONDA MAHAY – Area Variance, Case#858**

Lake Desolation Road

T. Conard reviews that the applicants are seeking a variance for road frontage. The original variance was granted 4/1/08 and has expired. A public hearing is opened. T. Conard states that there is a letter from David Jacques, opposed to the variance as they would need to remove 12' of driveway surface to lower the grade to 3 % for the 100' from the road to where the grade can increase. This would create high banks on each side and they state that they could lessen the impact by using a different curb cut. A letter from Jeanne Jacques, September 20<sup>th</sup>, opposed due to the Mahay's not following proper setback boundaries. She is opposed to their continuing, as a culvert has been put in too close to the side yard. Another letter from David Jacques, September 16<sup>th</sup>, opposed to the variance, stating that they granted the applicants an easement with the understanding that this easement would be used consistent with their land use. Granting of the area variance would impose residential driveway codes. A letter from Lorell Wallace, opposed to the variance stating that this is forest land, there are no buildings, and there is a driveway established in accordance with the agreement; the applicants do not own this property, they were granted an easement; and that the ZBA and Planning Board should not make any decision regarding this parcel without hearing from all property owners concerned. There being no further public comment, this public hearing is closed.

Gerald and Rhonda Mahay are present. T. Conard states that if the applicants are going to build, they will need to bring the driveway into compliance with the 3% grade and refers to the easement agreement that is filed with the County Clerk's Office. The agreement states that "the driveway shall be passable by average car and useable by vehicles necessary to construct and maintain a home on the Grantee's property." October 5, 2010

T. Conard states that is part of the record and the agreement does include the possibility of building a residence there, which this area is zoned for. P. Lunde states that this variance was granted in April of 2008 and asks the applicant if there is any particular reason they have not built there yet. R. Mahay states that they did not have the funds to do it and did not realize that the variance ran out. P. Lunde states that every variance runs out 365 days after it is granted. He asks if the variance is granted, will the applicant at least start building within the year. R. Mahay states yes. P. Lunde states that there is no guarantee to say that if it is granted and the applicant does nothing, that it will be granted again. R. Mahay states they understand that. T. Conard states that the ZBA's only decision on this is whether or not to grant the 250' of frontage. M. Granger states that while she understands that in order to get the building permit the driveway must comply, she feels that any approval should be contingent upon compliance with the grading of the driveway. K. Veitch states that the easement gives them the right to access that property whether they build a house there or not. The wording of the easement gives them the right to make the necessary corrections in the grade of the road also to get to their house. He states that a lot of these arguments were brought up the last time this application was before the Board and a lot of these arguments have nothing to do with the area variance itself that the applicant is requesting. The road itself is not something to be concerned about, it is not part of this decision making process. It is going to be a problem that is going to fall on the property owners or those using the easement. He states that the ZBA can grant that frontage and all the problems are still going to come down on their shoulders. M. Granger states that she would prefer to see it right as part of the approval, if we elect to do so, that it is contingent upon compliance with Section 105-43, Driveway Standards. She reiterates what P. Lunde stated that there is no guarantee that this will be approved again. She states that she feels that the ZBA should put that forth, even though she knows that G. McKenna will enforce it.

**RESOLUTION – G. & R. Mahay, Area Variance**

MOTION: M. Granger

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals grants the application of Gerald and Rhonda Mahay for an area variance for frontage for property located at 300 Lake Desolation Road, TM#149.-1-1, as follows:

- **250' frontage variance**

This approval is based on the following criteria:

- **The parties have agreed to this and the easement language specifically states that they have the right to build a house and have a driveway for ingress and egress**
- **This variance was previously granted**
- **Under the circumstances, it is not a self-created hardship**
- **It is not substantial because they need access to a land locked property**

This variance is contingent upon:

- **Compliance with Section 105-43, Driveway Standards**

VOTE: Ayes: Conard, Granger, Lunde, Veitch, Szpak

Noes: None

Absent: Weeks

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**ANITA HARDING – Area Variance, Case#859**

Roberts Drive

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Anita Harding is present. T. Conard reviews that the applicant is seeking an area variance for a front yard setback of 20'. A public hearing is opened. There being no public comments, this public hearing is closed.

Map is reviewed for the information requested at the last meeting regarding distance to septic and the house. P. Lunde states that there will be no change to the neighborhood. M. Granger states that the minimum required separations have been met.

**RESOLUTION – A. Harding, Area Variance**

MOTION: K. Veitch

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals grants the application of Anita Harding for an area variance for property located at 12 Roberts Drive, TM#164.8-1-20, as follows:

- **20' front setback variance**

This variance is based on the following criteria:

- **No negative impact to the neighborhood**
- **No environmental impact**
- **Due to the size of the lot being pre-existing, non-conforming, the applicant has no other options to place the garage**

VOTE: Ayes: Conard, Granger, Lunde, Veitch, Szpak

Noes: None

Absent: Weeks

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**SAMUEL CHANDLER – Area Variance, Case#860**

Chandler Lane

Samuel and Kevin Chandler are present. T. Conard reviews that the applicant is seeking an area variance for frontage of 250' and a 1.97-acre area variance. A public hearing is opened on this case. There being no public comments, this public hearing is closed.

T. Conard states that this is a pre-existing, non-conforming lot on a private road so there is no frontage. There would be no issues with side yard setbacks. The applicant is trying to be as compliant as possible based on the size of the lot and the location. K. Veitch states that Chandler Lane is already a developed roadway with no issues.

**RESOLUTION – S. Chandler, Area Variance**

MOTION: K. Veitch

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals grants the application of Samuel Chandler for property located at 67 Chandler Lane, TM#111.-2-21.15, as follows:

- **250' road frontage variance**
- **1.97 acre lot size variance**

This is based on the following criteria:

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- **This is a somewhat land locked parcel**
- **It is not a self-created hardship**
- **No negative impact to the environment**
- **No negative impact to the surrounding properties**
- **Most of the surrounding properties are residential and do not fall within the 6 acre required minimum**

VOTE: Ayes: Conard, Granger, Lunde, Veitch, Szpak  
 Noes: None  
 Absent: Weeks

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**ANTHONY VACCARIELLI – Area Variance, Case#861**  
 Route 9N (Triple J Way)

Anthony Vaccarielli is present along with Loren Brown. T. Conard reviews that these variances have been previously granted and expired. M. Granger asks that the variances being requested have in no way changed from what was previously granted. A. Vaccarielli concurs. The applicant is seeking area variances as follows: Lot 1, 2.809 acres; lot 2 of 2.923 acres; lot 3 of 2.675 acres; lot 4 of 2.968 acres. A public hearing is opened. Andrew Fisher, Route 9N (Triple J Way), states that he has no issue with the variance but has a concern with how this was approved without the road being finished. He states that he is in full support of granting the variances on the new lots. T. Conard states that the zoning regulations have changed a number of times since this was started. K. Veitch explains that the previous owner was approved differently and this will have to be finished properly. It is going to have to meet the current specifications. T. Conard states that when this was approved, they could have smaller size lots. A. Fisher asks if this has been grandfathered. T. Conard states that once a lot is there, it is pretty much grandfathered because the lots have already been subdivided. A. Fisher asks if when something is grandfathered, is it taken into consideration how unsafe the road conditions are. K. Veitch states that the ZBA is looking at this variance as seeing some movement finally. We are easing up on the applicant and we are finally going to get this thing finished and done the right way. The Board wants to see it happen. By not allowing it, by refusing it, we are going to create a hardship on the property owner and then it is going to continue to stay the way it is. It has a better chance of changing because he is here. Tony Kosowski, Route 9N (Triple J Way) asks if a specific date can be written into the variance that the paving will be done by a certain date. The applicant has promised repeatedly that the road will be done. It is unsafe, emergency vehicles will not be able to get up there in the winter. K. Veitch states that the variances being granted here are things that the ZBA can control. The ZBA cannot tell an applicant that they must have something by a deadline date. What the Board can say is that this variance is only good as long as the applicant complies with the regulation that says they have to finish the road. T. Kosowski states that part of his property has a stormwater runoff for the stream and runoff that comes from the road. He had to sign off a chunk of his property for the easement. He figured he would take care of this for the applicant and did it after he moved into his house. In the meantime they still do not have any progress on the road. If there is a heavy rainstorm, the road washes out. It is unsafe. He states that he has gotten stuck a number of times as have the neighbors and they help each other out. K. Veitch states that he understands what T. Kosowski is saying. T. Kosowski states that they all paid like \$300,000 for their houses, they are paying property taxes, they have wells, septic and no paved road. Why should they have to pay all these taxes if he does not have any services? K. Veitch states that unfortunately this is not the Board that can help and answer these questions. He states that he would go before the Town Board as these concerns sound pretty serious. The Town Board is the board that regulates the zoning laws, creates the zoning laws and puts into place what we can govern. The ZBA is not a governing body; they are a body that allows flexibility in the law within reason. The laws that the public are talking about and what they want to see get done is really the Town Board. He reiterates that he would talk to the Town Board and the Highway Superintendent and let them know the issues that are going on because October 5, 2010

those kinds of problems in the community need to be brought to them. He states that he would not want to be in that situation. Whether this variance is granted or not, obviously the applicant is going to have to comply to do any developing. The ZBA not approving this is going to stall it even longer. What the applicant is asking for is not out of the ordinary. This has been granted before. K. Veitch states that he would like to see it granted again so that we can hopefully see some movement. T. Yasenchak asks if the Planning Board has reviewed this portion or phase of it. M. Granger states her understanding is that the applicant does not have final approval for the subdivision. T. Yasenchak states that this is now a private road and comments on that part of the Planning Board review which will be for developing the road to be taken over by the Town at some point. T. Conard states that he is aware that there have been discussions with the Town Engineer about the turn around size and a few other things that have been discussed over the years. He is not sure that those have been resolved. T. Yasenchak explains that even though the ZBA approves the variance, it still needs to go through the planning process and at that point the Town does have a reviewing agency that puts more restrictions on how the road is going to be developed. There being no further public comment, this public hearing is closed.

Loren Brown, representing the applicant, states that this variance was granted in November 2008, because other issues are ongoing with the Town over this particular development and through inadvertence, for which A. Vaccarielli apologizes, no application was made to extend the variance. He states that they apologize for that and respectfully ask that this be restored so that they can go ahead with this development. The economy being what it has been and the ongoing matters with the other aspects of the Town government, have all caused delay. K. Veitch states that it is pretty much straightforward as it was before. Nothing has changed as far as what their request is. M. Granger asks about the road bond. That is one of the pieces of information that G. McKenna put forth to this Board. The people who live there have an issue and the last time the applicant was here with M. Toohey, it seemed that something imminent was going to happen and the applicant is still without any kind of road in place. She states that she recognizes that this still has to go through the Planning Board process and he hasn't been there. She states that she understands that the variance request is straightforward, but she thinks it needs to be contingent on these other steps actually being taken care of. She states that last time there was discussion about the bond and she asks if that has been put in place. A. Vaccarielli states that they are going in circles with C. Baker, the Town Supervisor and the Town Attorneys. M. Granger asks where he is in the process in terms of being before the Planning Board to get the approval for the subdivision. A. Vaccarielli states that he is not sure. C. Baker is telling him that he needs a letter of credit and the legal teams have to coordinate. He states that they have been trying to do that and his attorney, Mike Bouchard, this evening stated to A. Vaccarielli that it is sitting with the Supervisor. He states that he spoke to the Town Supervisor three weeks ago who said that it is with C. Baker. He states that he spoke to C. Baker a week ago who said that no, it is not with him. He states that he suggested to M. Bouchard that he get certified letters out and find out exactly what is going on. M. Granger states that she is concerned because we have the same situation, these gentlemen came before, they supported the applicant, they still have no road, and they have issues with safety. She states that the applicant's representation before was that it was imminent in order for the applicant to be able to get the things going he needed the approval, etc. She thinks that because of the concerns, if there is anything that the ZBA can do in terms of contingencies for this, and she recognizes that the applicant is in the process, but she thinks that these are valid concerns that have been voiced before the Board. K. Veitch states that if they make it a contingency that he has to put a road bond in place, he has to do that anyway through Planning. So what we are saying is that this will only be good as long as the applicant gets that bond in place. If he does not get the bond through the Planning process and if he doesn't go through the Planning process, he won't have the variance anyway. M. Granger states that she understands. K. Veitch reiterates that for the benefit of the neighbors he does not have a problem doing that. T. Conard reiterates that there is no way that the ZBA can force a road improvement. K. Veitch states that it shows that we are representing the neighbors. T. Conard states that it shows that the Board is concerned. P. Lunde states that it is up to the Planning Board. M. Granger states that she thinks it is an important issue, a commitment was made to the people who live there, a representation was made to this Board the last time it came before us, and she knows that it is within the

Planning Board's purview to address that, but she would like to have it acknowledged on the record that we have heard, listened.

**RESOLUTION – A. Vaccarielli, Area Variance**

MOTION: M. Granger

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals grants the application of Anthony Vaccarielli for property located at 4440 NYS Route 9N, TM#99.-1-2.11, as follows:

- **Lot #1 - 2.809 acres**
- **Lot #2 - 2.923 acres**
- **Lot #3 - 2.675 acres**
- **Lot #4 - 2.968 acres**

These variances are based on the following criteria:

- **No undesirable change to the neighborhood based on the lots already existing in that subdivision**
- **Does not change the characteristics of the nearby properties**
- **By granting this variance and allowing a road to be built to the standards of the municipality, it reduces the need for the frontage variances which reduces the substantiality of the request**
- **No adverse impact on the environment**
- **Project has been underway since 2004 or earlier**
- **There are already three existing structures in the development on similar size lots.**

The variances are contingent upon:

- **Road bond/letter of credit being put in place, recognizing that that is part of the Planning Board process**

VOTE: Ayes: Conard, Granger, Lunde, Veitch, Szpak

Noes: None

Absent: Weeks

T. Conard reiterates that the ZBA has no authority over the road bond and that the ZBA is voicing their concerns that the road is not safe. A bond has to be put in place through the Planning Board. He states that the Town Board can take action if it is an unsafe condition. T. Yasenchak explains that the applicant now needs to come to the Planning Board for final approval of the subdivision. Part of the Planning Board review is that the road has to be safe and to Town standards. She explains that a road bond/letter of credit legally binds the applicant to do that work within a certain amount of time. If he does not do that, the road bond is something that is actually put aside and then used by the Town to finish that road. T. Conard states that if there is a safety issue now, before the applicant goes to the Planning Board then the recourse is to go to the Town Board to have them address the safety issues. If there is a definite safety issue, they can do some things that could help. It may not be putting in a road right away, but at least they can be aware of it and start perhaps doing some other perhaps legal maneuvering to get some things safer up there. Question is asked if that means the Town would come in and do something to the road. T. Conard states that it is technically private property. K. Veitch states that the Town might be able to convince him to allow the Town to go in and do some stabilization. T. Conard states he knows that the road is fairly steep and it gets all rutted. He states that the last time the applicant was here for a variance he drove up there and was bouncing all over the place. K. Veitch asks T. Yasenchak if it has ever happened that the Planning Board, when they approve a

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project, have they ever made restrictions that certain things have to be done first? Like we want to see this road be stabilized before anything else happens. T. Yasenachak states that yes, restrictions have been put on that no further lots can be sold, no additional houses could be built, etc. The Planning Board can put restrictions on an approval. M. Granger states that the residents may want to go to the Planning Board so that they can voice their concerns. T. Conard explains that the variances will expire in one year unless a building permit is issued. M. Granger asks if the residents have anything in their original agreements that gives them recourse in terms of conflicts. R. Duval states that he is at 4438, states that there were verbal promises made; he was the first one in there. There were only verbal promises made the following year after he bought the home, that the road would be taken care of. Now it is 5 years later. M. Granger states that it is 22 months since the applicant was here previously and nothing has happened. Resident states that every time there is a heavy rain, the road washes out. He states that they talk to the applicant and ask them to at least smooth it out, the applicant states that he cannot afford to come up here and smooth it out every time. He states that A. Vaccarielli owns the property and should take care of the road. He states that he went out there and raked the road himself. K. Veitch states that the next time something like that happens, the residents should call the Building Inspector because under State law the property owner has responsibilities to maintain it and make it safe for passage, whether it is pedestrian or vehicle. G. McKenna can tighten the screws on him a little bit and make him go up there and make it safe. If the residents are getting flack from the applicant and he is not cooperating, then call G. McKenna. K. Veitch states that there are some things under the property maintenance code that could help the residents.

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**CHARLES DAKE – Area Variance, Case#862**

Cohen Road

Tonya Yasenachak is present for the applicant. The applicant is seeking variances for front yard setback of 45' and right side of 20'. A public hearing is opened in this case. A letter is read from John and Christine Wells, and Raymond and Rebecca Brown, stating that they are opposed to the variances being requested. There are issues here with wetlands and basement water issues caused by flooding of the wetland areas. There is a major concern that a leach field on this lot could cause further sanitary issues. There being no further public comments, this public hearing is closed.

T. Conard states that this is a pre-existing lot. T. Yasenachak states that she has a subdivision map dated 1994 showing this as an approved building lot. T. Conard states that if it is possible to build on it the applicant has a right to build on it as long as we can give the least amount of variance necessary. T. Yasenachak shows that the location where the applicant is planning to build is actually further from the road so there will be less of an impact on any of the neighbors. It will actually be closer to the State land. T. Yasenachak reviews the map and states that C. Dake's property is down grade of the neighboring properties so there should not be any issues as far as water safety or water quality. She states that the whole reason they need this variance is because where they are locating the septic would be out of the buffer. DEC asks that they be 100' away from wetlands and they are not asking for a DEC variance. The Town of Greenfield also has more stringent requirements on the location of septs in regard to where the bottom of the trench can be. M. Granger states that given the lot configuration, this seems to be the best option considering all factors.

**RESOLVED – C. Dake, Area Variance**

MOTION: P. Lunde

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals grants the application of Charles Dake as complete for property located at 37 Cohen Road, TM#100.-2-5, as follows:

- **45' front yard setback variance**
- **20' right side yard setback variance**

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This is based on the following criteria:

- **No undesirable change to the neighborhood**
- **Due to the wetlands and in order to keep everything within DEC regulations, this is the only place the house could be for the septic system**
- **It is an odd shaped lot and being that NYS lands will neighbor the house, it really does not impact any of the surrounding lots**
- **This lot is similar in size to other lots on the street**

VOTE: Ayes: Conard, Granger, Lunde, Veitch, Szpak

Noes: None

Absent: Weeks

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Meeting adjourned 8:25 p.m., all members in favor.

Respectfully submitted,

Lorraine Fiorino