

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

February 1, 2011

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, Stanley Weeks and Joseph Szpak, Alternate. Kevin Veitch is absent.

January 4, 2011 MINUTES

MOTION: M. Granger

SECOND: J. Szpak

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of January 4, 2011, as submitted.

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

Noes: None

Absent: Veitch

NEW BUSINESS

ROBERT & KARAN RHOADES – Area Variance, Case # 867

North Creek Road

Robert & Karan Rhoades are present for this application. T. Conard reviews that the applicants are seeking an area variance to install an above ground swimming pool. They need a 72' rear yard variance. Map is reviewed and discussed. There are no structures behind this property.

RESOLUTION – R. & K. Rhoades, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals accepts the application of Robert and Karan Rhoades as complete for an area variance for property located at 528 North Creek Road, TM#137.-1-95 per the map submitted.

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

Noes: None

Absent: Veitch

OLD BUSINESS

ROBERT CLUKEY – Area Variance, Case#865

North Creek Road

Linda Clukey is present for the application. T. Conard reviews that this is an application for an area variance for the applicants to keep chickens. They need an acreage area variance of 3.48 acres. T. Conard asks for clarification that there are 2 chickens and they are hens. L. Clukey states that they are, they got rid February 1, 2011

of the roosters. A public hearing is opened at 7:36 p.m. Jim Thorn, North Creek Road, states that he is the one who complained and a violation was issued. He states that they had a rooster who made noise for 2 months and the rooster is no longer there. He has photos of the neighbors yelling at him when he was chasing the chickens off his property. L. Clukey asks if she can look at the photos. T. Conard states that she can after the public hearing. J. Szpak asks if the initial concern was the noise. J. Thorn states that the chickens were also on his property and his dog chases them. He states that the applicant is substantially short 3.5 acres. J. Szpak asks how the noise is since the roosters are gone. J. Thorn states that it is ok. J. Szpak asks if the chickens still come on his property. J. Thorn states that they do. L. Clukey states that the chickens are in their coop and they do not let them out. J. Thorn states that he pays taxes, he has 4.25 acres and the applicants are substantially short. He has had the police called on him. T. Conard asks that the applicant take a look at the pictures. J. Thorn states that she can look at them but he does not want her to touch them. There being no further public comments, this public hearing is closed at 7:40 p.m.

L. Clukey states that they do have issues with the neighbor, not only about the chickens. They did have roosters and did not know that they were roosters when they got them. T. Conard states that is very common. L. Clukey had been looking for a farm to take the roosters and she was able to get rid of them. She states that since they got rid of the roosters, there have been no chickens out of the coop, they do not allow the chickens to free range because they do not want them to be free range. She states that to her knowledge, the chickens were only on J. Thorn's property one time. She states that they did not yell at the neighbor over the chickens. T. Conard states that is not relevant to this case. L. Clukey states that she did not know that there was an acreage limit as the Town of Greenfield is a Right to Farm community, they did not know that they were doing something illegal. She states that they are trying to make sure that the chickens do not bother the neighbor. T. Conard states that from his perspective, it is a rather substantial variance. That being said, his concern is are we depriving someone of their pets and when is a pet a pet and when is it agricultural. He states that he thinks that we have all been going through those thoughts, not just because of the chickens, but suppose someone has a couple of rabbits, is that considered agricultural. One goat, how is that different from a dog. T. Conard states that there are things that do not make a lot of sense about the laws. The Planning Board is looking at the laws to see if they really are written properly and if we should make exceptions for certain things. That being said, the law right now does not allow for this. L. Clukey states that the chickens are pets, her kids have raised them from chicks. T. Conard states that he has a problem with the way the law is written because people do have rabbits and things like that and what is considered an agricultural use versus a personal use. L. Clukey states that they do use the eggs. M. Granger states that we recently had a case before us on Braim Road and asks what the acreage was on that. The Board consensus was that it was around an acre. T. Conard states that his understanding is that the Planning Board, right now, is dealing with this issue, looking into it. They have contacted people at Cornell Extension and are looking into regulations that other Town's have. He states that right now from the law, we couldn't pass this, but he has mixed emotions about it. J. Szpak states that he has mixed emotions also. It doesn't seem to make sense that there is a 6-acre restriction on chickens or pets because he could easily see responsibly having them on a much smaller lot. He thinks that we do want the Right to Farm and have animals in Greenfield. That being said, in this situation there is also being a responsible owner and certainly whether it was a chicken or a dog that was a nuisance to a neighbor, that is a whole separate issue. He thinks that this is a substantial request from the current law. He would absolutely be in favor of changing the law. He states that with a past history of having problems with neighbors, it is tough for him to consider this variance, as much as he wants the applicant to be able to have chickens, or anyone else, for eggs or pets or whatever. He states that he could see responsibly doing it on 1 acre. L. Clukey states that she feels that they have resolved the issue with the neighbor. M. Granger states that this case is very similar to the case that was before the Board previously. There were issues between the neighbors and the applicant came to the Board after the fact. They had also started out with roosters; there was an issue with the location of the coop. She feels at this point that this Board does not have the option to grant a variance and be consistent with what we have previously ruled on. She thinks that if something is passed by the Town Board that amends the current regulations and requirements, then all applicants have the ability to apply to this Board again, if need be, or just have the chickens. P. Lunde asks if the applicant would have to wait a year. T. Conard states no, if the February 1, 2011

law changes the applicant would be applying for something different. He reiterates that evidently the Planning Board is looking into this fairly actively so they may have some information as soon as next month as to what they might recommend to the Town Board. M. Granger states that it could be several months before a change takes place. Her concern is that within the last few months we had a very similar case and the applicant was denied. She thinks it is important that all applicants are treated consistently before this Board. If the Town Board makes a change and amends those laws then all applicants will be treated in a consistent manner. She states that is her overriding concern, even though, as J. Szpak said, we want people to have the opportunity to do those things. J. Szpak states that he thinks that the consistent part is that there was a significant variance and there was an issue with annoying the neighbors. Even if the law doesn't change, he would be open to hearing a case with a significant variance in the future if the other conditions were right. Such as if there are no homes around a parcel or they were contained and the neighbors were happy. P. Lunde states that it would never get to the Board if that were the case. J. Szpak states that the best-case scenario might be that either the law changes, which would allow you to have chickens, or the chickens were contained in such a way that was responsible to all neighbors. M. Granger states that she would hope that the Town Board would begin to address some of those measures as well. She knows that what the Planning Board is researching shows that different municipalities have different rules in terms of whether they can be free range, whether they need to be contained, whether roosters are allowed, etc. She states that she thinks that if the Zoning Law is amended, those issues need to be clearly addressed so that an applicant is not put in an uncomfortable position in terms of how things should be done. S. Weeks states that everyone should recognize that that is not a process that is going to happen in a month or two, it is a fairly lengthy process for the Town to make those kinds of changes because they may be considering several other changes at the same time. L. Clukey asks how long she would have to relocate the chickens if she is denied. T. Conard states that would be up to the Code Enforcement Officer. J. Szpak states that the applicant has said that they are not now free ranging or making too much noise. L. Clukey states that they have taken extreme measures to build the coop and make sure that they are no longer a nuisance. M. Granger states that although the Board supports peoples ability to do that they are constrained by the laws. J. Szpak reiterates that most of these cases don't even come to the Board when there are no problems between the neighbors.

RESOLUTION – R. Clukey, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals denies the application of Robert Clukey for an area variance for property located at 517 North Creek Road, Tax Map # 150.-1-20, based on the following:

- **The variance requested is substantial**
- **In this particular case, the Board did note there was an issue raised between the neighbors which would cause an undesirable change to the neighborhood**
- **The difficulty is self-created**

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

Noes: None

Absent: Veitch

The Board suggests that the applicant go to the Town Board as the Planning Board is looking into this issue. Depending on whether the Town Board has other things to be revised, there might be a delay or it could be done quickly.

DAREN & BONNIE MURTLOW – Area Variance, Case #866

Ormsbee Road, Rear

Daren and Bonnie Murtlow are present. T. Conard reviews that the applicants are seeking an area variance for frontage to build a seasonal camp on a 9.47-acre parcel. The lot has no frontage and is on a road that is legally abandoned by the Town. It is being used but is considered abandoned by the Town and not maintained by the Town. A public hearing is opened at 7:56 p.m. There being no public comments, this public hearing is closed at 7:57 p.m. M. Granger asks if we have received a response from the Town Attorney regarding the letter requesting information. R. Rowland states that we have not. T. Conard states that he believes that the structure on this lot burned down and the applicant would now like to replace it. This road has been used as a right of way for all these camps for years. A variance was granted to construct a year round home on this road. P. Lunde states that there are double logging trucks using that road right now, so it is a road. S. Weeks asks about the difference in acreage from the tax map and the application. B. Murtlow states that they have had the parcel surveyed and it is 9.47 acres. P. Lunde asks that this is in the Adirondack Park. T. Conard states that there is a permit from the APA in the file. M. Granger states that her only concern is that we have not received a response from the Town Attorney, but that the ZBA could grant the variance contingent upon there being no identified legal issues. P. Lunde states that we have granted a similar variance before to build a home. D. Murtlow asks if they need an agreement regarding the road. M. Granger states that her concern as a Board member is that the applicant has all the information available to him and understands. J. Szpak states that the applicant understands the risk they are taking, so it may become a bad choice if they do not have a right of way to the lot, but that is not the concern of this Board. P. Lunde states that he does not think that there is an issue with any vehicle using this road. S. Weeks states that he does not have a problem, but that the ZBA should get an answer to the abandoned road question. He thinks it is appropriate for the ZBA to ask that question. P. Lunde states that he has read articles about abandoned roads and that the property owner does not have any legal right to the abandoned road, people can use it. R. Rowland reiterates some of what has been discussed at the Town Hall regarding abandoned roads. T. Conard states that we could act contingent upon there being no problems. J. Szpak questions why we would need that contingency because wouldn't the applicant need a building permit to build. R. Rowland explains that if the Board grants the variance, that is what allows the applicants to be able to get a building permit. J. Szpak states that then the Board is responsible to make sure that they have appropriate access. T. Conard states that the Board can just give the frontage variance, but if the applicant can't get to it, that is another problem. M. Granger states that it is not technically the ZBA's problem. She just feels that as a Board member, for her own edification and that of the applicants', at least the applicants are aware of the issue. S. Weeks states that he thinks that it is appropriate for the Board to ask the Town Attorney to give the Board his opinion regarding abandoned roads. He would like for the question to be asked again. P. Lunde states that the road is in great shape, even though it is abandoned legally. The Board consensus is that a contingency is not needed.

RESOLUTION – D. & B. Murtlow, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals grants the application of Darren & Bonnie Murtlow for an area variance for property located at Ormsbee Road, Rear, Tax Map # 110.-1-7, as follows:

- **250' road frontage variance**

This approval is based on the:

- **No change to the neighborhood as there are other parcels in that area that have structures on them now**
- **We have granted a similar variance in that area**

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- **The only question is that the Board would still like an opinion from the Town Attorney as to abandoned roads in the Greenfield area**
- **The applicant is aware that there is the possibility of not being able to use the road at some time in the future**
- **They have more than enough acreage to build**
- **There was a camp on this property that was destroyed by fire**

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

CAROL RICHMOND – Area Variance, Case #803

North Greenfield Road

Carol Richmond is present. T. Conard explains that this is a request for an extension and does not require a public hearing. This application was granted variances previously. The applicant is requesting a third extension from an original approval granted March 4, 2008. This is a pre-existing, non-conforming lot which the applicant is trying to sell. T. Conard asks why the applicant does not sell the lot as is and have the new owner request a variance. C. Richmond states that she has a contract with the contractor who is to find the buyer and he already has a house plan that will fit within the variances. S. Weeks states that it is fairly minimal in terms of the variance.

RESOLUTION – C. Richmond, Area Variance

MOTION: J. Szpak

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals grants the application of Carol Richmond for an extension of an area variance for property located at 142 North Greenfield Road, Tax Map # 125.1-1-5, as follows:

- **5’ left side yard variance**
- **5’ right side yard variance**

This is based on the following criteria:

- **No negative impact to the neighborhood or the environment**
- **The request is minimal**
- **No significant changes to the neighborhood**
- **This is an extension of an existing variance**

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

DISCUSSION

S. Weeks states that at the Planning Conference they discussed the SEQRA and that if the ZBA is the lead agency in a matter we should determine what type of action should be require. They suggested strongly that we should do that for each case. We have the SEQRA application but we tend never to mention it. He thinks that it is simple and reads from a handout that “ certain matters that commonly come before a board of February 1, 2011

appeals are listed as Type II. Among these are interpretations of the zoning regulations, as well as the granting of all setback and lot-line variances, and all area variance for one-, two-, and three-family residences.” If the Board determines that it is a Type II action, nothing further is required of SEQRA. He suggests that, in order to follow proper procedure, we probably should be doing that on each of these applications. Copies will be made of the handout for each of the Board members.

S. Weeks also states that several of the other attendees stated that their ZBA had periodic meetings with all three Boards – the ZBA, the Town Board and Planning Board. He would like to suggest that he thinks that is a good idea. He thinks that some of the Planning Board members who attended the conference thought that was a good idea also. T. Conard concurs. He states that if we want to recommend that to the Town Board and suggest that at the very least the Planning Board and the Zoning Board should get together, but it would be ideal to have the Town Board, Planning Board and Zoning Board meet once a year maybe just to talk about how things are going. It would be a good way to also show where we might need to change some of the laws and discuss those. He states that he thinks it is a good idea to get to know one another better also and have better communications. Some municipalities do it quarterly. S. Weeks states that perhaps we could extend any one of the three meetings for a half-hour or at the most an hour some time, that is one way that it could be done.

Meeting adjourned 8:16 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary