

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

May 3, 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, Kevin Veitch, Stanley Weeks and Joseph Szpak, Alternate.

April 5, 2011 MINUTES

MOTION: P. Lunde

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of April 5, 2011, as submitted.

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

NEW BUSINESS

There are no new applications for this meeting.

OLD BUSINESS

JOHN AND HETAL HERZOG – Area Variance, Case #869

Coy Road

John Herzog is present. T. Conard asks the applicant if there are any changes and states that he wants to point out some things that he spoke with G. McKenna about. He reviews G. McKenna's notes that in the LDR zone, with 20 acres, agricultural structures are allowed to be 75' in height with no site plan review or special use permit. G. McKenna pointed out that there are 11 adjoining properties that have that amount of acreage and therefore could have buildings as tall as 75'. T. Conard asks the applicant how far back from the road they would be building. J. Herzog states 250' to 300' back. M. Granger shows the applicant the map he provided and states that it looks like it is 120'. J. Herzog states that 120 was an estimate but he believes it is more than that, they were going to try to put it as close to the stream on the property as possible. S. Weeks states that he believes that a SEQRA motion should be made.

SEQRA - JOHN AND HETAL HERZOG – Area Variance

MOTION: S. Weeks

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals determines that the application of John and Hetal Herzog for property located at 812 Coy Road, TM# 137.-1-3 is determined to be a Type II action for an area variance for a single family residence and therefore no further action is required on SEQRA.

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

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J. Herzog states that the architect was asked to play around with lowering the roof but it was not plausible. He states that the attic space was a concern for the Board that someone might try to live there, but if you look at the height of the attic space it would be no different than a regular house with a small roof. So the actual height for any rescue would be about 19 to 20 feet. J. Herzog states that he looks at this like a cupola, which are allowed as an architectural feature to elevate the roofline. He states that this is just an architectural feature. P. Lunde asks if the applicant planned to put a sprinkler system in. J. Herzog states yes. P. Lunde states that if the Board were to grant the application that could be a contingency. He states that the applicant had stated that they would make it so that the fire equipment could be double-parked. That could also be a contingency. P. Lunde states that his only concern is safety of the family if a fire did break out. J. Herzog states that this is the same situation that you have with any attic. K. Veitch states that Zoning Law is not based on safety concerns. It is based on something else, although yes, that is a concern, the Building Inspector is going to have to address all that and there are requirements by NYS for the amount of driveway you must have, how accessible for fire trucks, etc. That is all good, but the 35' restriction, he does not know why they based it on that, but it is there for a reason. In looking at the agricultural levels of 75', if you are going to say that it is ok for agricultural buildings to be 75', then we might as well make them all 75', but there is a reason those are there like that. S. Weeks states that in reality, the only agricultural building that is going to even approach that is a silo. A farm barn is not going to approach that height. P. Lunde states that this house could be built in town center with a 2' variance. He states that it is allowable right here to build a house 50' high. He states that it is not like you couldn't do it somewhere else in the community. K. Veitch states we are here because of the restrictions, the restrictions say 35', and we have to be careful how much variance we are going to give. He states that he didn't make the laws or rules. P. Lunde states that he knows where K. Veitch is going because of the precedent. J. Herzog states that if someone built a 4-story building in the middle of nowhere, there could be a major safety problem to evacuate someone from the 3rd or 4th floor. K. Veitch states that you would be forced by State code to meet all the requirements. J. Herzog states that he is assuming that that is what this is about, getting resources out there to get the fire out. K. Veitch states that the safety is a part of it but the Zoning Law is not based on safety. It is based on restrictions that the municipality decides. It is about the impact to the neighborhood, does something fit somewhere, etc. T. Conard states that some of it has to do with the fact that the previous zoning allowed a lot smaller lots in what now is LDR. For example, there is the development right next to the subject property, which has what are now substandard lots by current zoning. The height also has to do with that. He discusses height in relation to acreage. S. Weeks states that we were not thinking about that when we were talking about things like wind turbines. We said that we have a 35' height limit in these areas of town and in their wisdom, the group that put together this code decided that that should be the limit. He knows that the ZBA is here to give variances, to give the minimum that we can, and he thinks that this is a pretty big variance when we have said that 35' is the height limit on structures in this part of Town. S. Weeks states that is his concern and where he is coming from. K. Veitch states that he can see where we are allowed to do that when you are putting something in like a wind turbine that they don't make any smaller, it doesn't function the right way, but this is more of the cart before the horse. We designed a building for a property, got it all set and ready to go, and then find out that there is a height limit when we should have found out if there was a height limit before designing the house. K. Veitch states that the applicant is stuck in the middle because the architect dropped the ball. M. Granger states that she still has the same concerns that she did at the last meeting, which is basically that, the code states 35'. She states that she understands the notes that G. McKenna has provided for the Board that the allowance for an agricultural building is different and that those adjoining properties could have that. She, however, does not believe it is relevant in this situation because we are talking about a residence versus an agricultural building. J. Herzog asks what the difference is; he does not understand the difference. If you have a beautiful tall house, what is the difference for the neighborhood, for the community? He understands that the Board cannot get themselves into trouble, but what is the difference. M. Granger states that she goes back to what she discussed at the last meeting. She looks at the criteria that the Board members are supposed to abide by, the Zoning Laws, the fact that the ZBA is supposed to give the minimum variance necessary. The reason the applicant is here for a variance is that they had an architect who designed a building that already exceeded the code and came prepared to build the house. Beyond that, regardless of how she may feel personally, and she recognizes the

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fact that the applicant has a beautiful drawing and 35 acres, she does not believe that before her as a Board member, the safety issue is something that she is supposed to rule on. As S. Weeks said, decisions were made. She understands the question that was asked, she just does not want to get into a disagreement about that. She is trying to help the applicant understand what she believes her limitations are as a Board member. She states that the applicant has other means available to him. She understands on a personal level that he has something here that he has fallen in love with and would like to build. She looks at her role here as, we are a community and what are the restrictions we are supposed work within. P. Lunde asks if the applicant has approached anyone on the Town Board. J. Herzog states that he has not. S. Weeks explains that the Town Board is currently considering some changes to the Zoning Code. They have half a dozen issues now that they are in the process of finalizing, that is a possibility. J. Herzog questions how long the ZBA has to act. P. Lunde states 62 days. K. Veitch states that there are things that can happen. The ZBA can rule on it and if they rule against the applicant he cannot reapply for the same variance for a year. If the applicant pulls the application and gets in contact with the Town Board, and they make some kind of changes within the next 60 to 90 days, then the applicant can be right back here in 90 days. J. Szpak asks if there are any other conditions that would address some of these concerns. He states that he is not hearing a safety concern like in the first meeting. If there are concerns over impact to the surrounding neighborhood, one could argue that it is a positive impact but one could also argue that it is out of place compared to the neighborhood. If you argued it is out of place, are there other conditions? Certainly you could block the exposure from the road for others. P. Lunde states that setting it back 150-200 feet, driving by you would never see the house. J. Szpak states that certainly for some of the criteria, the balance is out of whack. It is a substantial request, it is self-imposed, but does the weight of the fact that it is a positive impact to the neighborhood, to the community, does that one factor help balance that. Technically we could rule yes. He is wondering if there are any other conditions that could help balance. P. Lunde states to keep it from being a precedent. T. Conard states that it is going to be a precedent, but a limited precedent, in his estimation if we are talking about the fact that it is on 20-plus acres. M. Granger asks what if the next person comes in with 18.5 or 17.6. T. Conard states that it is on the books that it is 20-plus acres for an agricultural building. We are merely keeping it within that minimum size. He does not see any need to go below that. We could say that because this is over 20 acres by a substantial amount that we are allowing it. He does not have a problem with going down to 20 acres, but he can certainly see where we could stop there. There is no zoning for a larger structure of that size under 20 acres unless you go through a site plan review. P. Lunde states that the other thing would be the sprinkler system. T. Conard states the sprinkler system and that the Fire Department recommended a wider driveway. J. Szpak states that say someone came in tomorrow with a request for the same height building, same lot conditions, but it was built like a space ship. That would actually change your balancing of it with the impact that it would have in character to the neighborhood, so you could rule a different ruling based on what the structure would look like. M. Granger states that when you look at undesirable change to the neighborhood, with what is being described, that sounds more subjective than sometimes when we have other conditions before us. T. Conard states that there is nothing on the books that says you can judge a style. K. Veitch states that we are not judging the house by its style, we are judging it by its height. P. Lunde states that one thing that we have to remember is that no one has made any comment negatively in the community about this at all. There has been no comment either way. J. Szpak states that we are judging if it is a desired or undesired change to the neighborhood character, and that is more than height. P. Lunde states that he does not see where it is a negative impact. J. Szpak states that he thinks where he is making the argument is that he is not sure the Board would be setting a precedent based on height alone. S. Weeks states that he still thinks this is a very, very substantial variance that is being asked for and he can't get passed that. He feels that any decent architect ought to know what the rules are when he designs a place for a town and the fact that he didn't is unfortunate, but it doesn't change that in his mind. He could argue all day whether 6-acre lots ought to be necessary, because he has strong feelings about that, but that is the way it is. If we want to change that, then we need to talk to the Town about changing those codes in some areas. It is what it is and he just does not see a substantial enough argument to feel that this big a variance should be granted. M. Granger states that she agrees with S. Weeks. J. Szpak states that certainly when you are weighing it, it is a substantial request. Then the question can the benefit be achieved by other feasible means – yes, it can. Undesirable change to the character of the neighborhood or nearby

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properties – J. Szpak states to him that is pretty heavily weighted so it would counter somewhat. K. Veitch asks if he means it is undesirable or not. J. Szpak states that in his personal opinion it is desirable to the Town and the neighborhood. He personally would place quite a heavy weight on that, but he also appreciates that it is a substantial request. Whether the request will have an adverse physical or environmental effect – he has not heard that to be the case and he does not think that it is. J. Herzog states that if you build a 45' house and put a cupola on it you are almost at the same height as this, and these are architectural elements of the roofline. They are not living space. K. Veitch states that the applicant is right, but you can't put it higher than 35'. J. Herzog states that you can put a cupola higher, the roof is the detail so that is the cupola instead of being a separate structure on top of a 35' building. K. Veitch questions that this is going to be usable space. J. Herzog states that it is a flat roof and you are going to add the same storage space or potential that someone can move in and turn it into an apartment or whatever in the future. The 35' doesn't protect the Town from that at all. This is just an architectural feature that makes it taller than 35'. S. Weeks states that architectural details can be changed. J. Herzog states that you can change the roof but you are not going to end up with the same thing. He states that he spent the last month with the guy going through this. It doesn't look right and he would have to start from scratch now. T. Conard states that as a point of information, a cupola can be above the 35'. K. Veitch states that it is pretty easy to say that no one is going to be living in a cupola and reiterates that this is an attic here with dormers. You want to make more room out of an attic area – you put dormers in there. J. Herzog states that this is not extra room. It is an architectural detail. K. Veitch states that the applicant may not want extra room, but they may not be living in this house in 10 years. J. Herzog questions that this is being looked at as a 4th floor. K. Veitch says absolutely. J. Herzog states that it is a steep roof and if you did the 4th floor, it would not be big enough. T. Conard suggests looking at the side view. The top dormer is right there, you would have no headroom. K. Veitch acknowledges that the applicant is saying that this is just an architectural design but states that he is saying that it is not because they have so much structure there, so much space there, so many windows there – if it is just storage space, why all the windows? J. Herzog states that this is not a regular house that he is building. It is a certain artistic style. J. Herzog states that this is a high-end home with a fancy roof. He did try to change the roofline and someone could still live in that space. K. Veitch states that the applicant is stating that this is the same thing as a cupola and he does not agree. He states that anybody can make a 3rd floor livable, that is absolutely true, but they can do it in a 35' house. J. Herzog states that he does not understand what the Board is worried about. S. Weeks states that the Board is worried about the fact that this house is way higher than the 35' restriction. J. Herzog states that he understands that. S. Weeks states that is the issue. M. Granger states that the question for the applicant becomes, that the Board can vote tonight. If it goes against the applicant, the applicant can go to the Town Board and if they change the height restriction, then the applicant can come back within that year. The Board could table it, but the question would be what would be the purpose of tabling it again. J. Herzog states that he can build a house the whole width of the property, he can afford to do that, but this is what they like. He states that he is mad at the architect. S. Weeks states that the Board is also. K. Veitch states that the Board feels like they are being squeezed. T. Conard asks if the Board would like to table this for another meeting. M. Granger states that before we do that, she would like to know from the Board's perspective and the applicant's, what the goal would be in tabling this because she thinks it is a very difficult situation for the applicant and the Board. K. Veitch states that it would benefit him because the other Board members have been dwelling on this for the last month, they got to listen to a lot of arguments and he has only read them. He states that he is hearing good arguments all around on both sides. P. Lunde states that it is up to the applicant. J. Herzog states that he would like to table this and he might have time to talk to the people at the Town. He states that he feels that the Board feels like they are handcuffed about the precedent. P. Lunde states that he has been on the Board 12-13 years and this is the first time we have ever dealt with height. K. Veitch states that because this is one of the first, that makes it very difficult when the next one comes down the road. K. Veitch states that he has a question that maybe is more for the Building Inspector. The front of the house is 47' and the back is 57'. He states that they are making the applicant get the variance for the 57'. T. Conard states that it is for 52', it is an average between the 2. If it were built on one level it would be 47.9' and the variance would be a lot less. P. Lunde states that all you would see if you ever saw it would be the 47', so the 52' is kind of deceiving. M. Granger states that she feels that when someone comes in with a development, they have

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developed the size of the lots, they have allocated green space, they designed homes and then they come in and ask for a variance because they have built a house that is too big for the lot. In her mind it is somewhat analogous to that, because you knew what the restrictions were before you started. Although she knows that the applicant's architect didn't. S. Weeks states that the Planning Board did not have a negative declaration, they just basically said that they were concerned and they were passing it on to the Zoning Board. They were concerned about how this would be dealt with with this substantial variance. He states that this Board is struggling with that same thing because we are supposed to give the minimum possible. The most difficult thing for the ZBA is when something is almost already built and someone comes in for a variance. The Board is really having the gun held to their head then. This is a better situation than that, the Board understands that the applicant is a long ways down the road, they like this design, but it is very tough for the ZBA. M. Granger states that the Planning Board also passed along the remarks that they did not allow Polo to be built in excess of 35'. T. Conard states that they did allow the cupola to be over 35'. P. Lunde states that Polo can be seen from 3 sides, this is going to be in the middle of nowhere and no one will be able to see it. S. Weeks states that he does not believe that is a good argument for the Board to use. T. Conard states that back then they had the old zoning.

RESOLUTION – J. & H. Herzog, Area Variance

MOTION: P. Lunde

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals tables the application of John and Hetal Herzog for property located at 812 Coy Road, TM#137.-1-3 to the June 6, 2011 meeting.

DISCUSSION: K. Veitch asks if the Board wants to see anything additional from the property owner. P. Lunde asks if the Board would like to see plans for the third floor. K. Veitch states that it is not that, the argument is over what it is being called and what it really is. P. Lunde states that it is obvious what it is. The Building is a massive structure and the roofline fits the building, and that is what the applicant is trying to do. Whether the ZBA allows it or not is the question. J. Szpak asks what is the value of tabling this. K. Veitch states that he would like a little more time but he is hoping that the applicant would take some time and go back and struggle with the architect a little more. J. Herzog states that he has done that and it doesn't work. S. Weeks states that we tabled it before with that in mind and he does not think it is going to happen. K. Veitch states that it is hard to picture this building even where it is supposed to go. T. Conard states that if the applicant does go to the Town Board it would be interesting to hear what their response is as far as the structure. That would be helpful. K. Veitch asks if the architect can do an overlay of this on the property. How it would look sitting on the land, like a view from the street. J. Herzog states absolutely. He states that the pines are 70' tall and you will not see the house. You will only see a little curved driveway going into the back. M. Granger states that she has been by and knows where it is. S. Weeks states that he has also. K. Veitch asks if M. Granger went on the property. M. Granger states that she has not but that she has been to the property. K. Veitch states that he does not know how much more the Board will gain in information. J. Herzog reiterates that he can have the architect put a visual together with an overlay of the map, the height of the trees, etc. J. Szpak states that he is an alternate tonight so he doesn't vote, but he would like to say that because there is subjectivity here, but he would certainly respect any Board member who weighs some of the negatives against the positives. For him being a subjective kind of person, yes it is a substantial request, but it is a substantially nice building that he would want in our community so he is in favor. P. Lunde states that he feels the same way. M. Granger states that her difficulty comes with the fact that we have criteria. It is a little more black and white for her because when we interject our subjective personal opinions in some of this, she has difficulty with that. K. Veitch asks if Greenfield is that far behind the times that they did not realize that buildings were going to be coming in at that size. J. Herzog states that the architects are from Glens Falls. T. Conard states that he has very mixed emotions. He can see, with the amount of acreage, that this could actually fit very well, it is far away from the road, but again, he has to think about precedent, it is a huge precedent. If it were only a 10' precedent with that type of a design he could go along with it. Being lower in the front makes him lean more towards it. He thinks that maybe if you want to look for things to prevent too big an exception, the fact that it is only 12' in the front is certainly better than the 17+ that we are
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looking at. K. Veitch states that is what is confusing him. Is it the visual impact, then the ZBA should be looking at the part that is impacting.

VOTE: Ayes: Conard, Lunde
Noes: Granger, Veitch, Weeks

K. Veitch asks the applicant if he would like to table or withdraw his application. J. Herzog asks if K. Veitch still wants the additional information. K. Veitch states that he does not think it will make a difference. S. Weeks states that we are talking about where did the 35 feet come from. It is like him asking were 6-acre lots come from. He asks why this Town decided that you need 6 acres to build a house. In their wisdom they decided that this is the way they want this town to look and be represented. That is what they decided and there is an option because they are in the process now of talking about changes to the Zoning law. J. Herzog states that he was hoping to talk with them about what the situation is. S. Weeks states that the applicant can make the presentation, but it is going to take time for the Town Board to react to that. J. Herzog states that then he will withdraw his application. S. Weeks states that if he withdraws it now he can resubmit it, that is not a problem. K. Veitch states that we just voted on tabling this. T. Conard states that is correct, but that the applicant can withdraw it and then resubmit it. He would not have to wait a year. If the ZBA votes it down, the applicant cannot come back with the same variance for a year. If it is withdrawn, he can come back any time with it. T. Conard states that he thinks that might be the wisest step and then talk to the Town Board. M. Granger explains the procedure the Town Board would have to go through to change the zoning and states that provided that it is changed in a way that solves the height issue for the applicant, he may not have to come back to the Zoning Board and build the house he wants.

Meeting adjourned 8:20 p.m., all members in favor.

Respectfully submitted,

Lorraine Fiorino