

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

**December 2, 2014**

**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, Denise Eskoff, Michelle Granger, Joseph Szpak, Kevin Veitch and Laura Sanda, Alternate.

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**November 4, 2014 MINUTES**

MOTION: K. Veitch

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of November 4, 2014, as submitted.

**VOTE:** Ayes: Conard, Eskoff, Granger, Szpak, Veitch

Noes: None

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**OLD BUSINESS**

**A. JAMES MASON – Case# 940, Area Variance**

Locust Grove Road

James Mason is present. T. Conard reviews that the applicant is requesting a left side yard area variance to build a lean-to attached to his existing garage and that a variance was granted in 2009 for a side yard setback. The lot is 100' wide.

A public hearing is opened at 7:32 p.m. and closed as there are no public comments.

T. Conard states that the additional information requested was received from the applicant. This is a very narrow lot. J. Szpak states that he likes the pictures provided because it shows that where the applicant adds on will not cause any negative views from the adjacent dwellings.

**RESOLUTION – A. James Mason, Area Variance**

MOTION: J. Streit

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals approves the application of A. James Mason for an area variance for property located at 217 Locust Grove Road, TM#152.-1-69, as follows:

- **24' Left Side Yard Variance**

This approval is based on the following criteria:

- **Benefit cannot be achieved by other feasible means**
- **No undesirable change to the neighborhood character or nearby properties**
- **No adverse physical or environmental impacts**
- **This was not a self-created issue, the lot itself is a narrow lot**

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VOTE: Ayes: Conard, Eskoff, Granger, Szpak, Veitch  
Noes: None

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**MICHAEL GYARMATHY – Case# 941, Area Variance**

Spier Falls Road

James Vianna, Surveyor, and Michael Gyarmathy are present for the application. T. Conard reviews that the applicant is seeking a 41' front yard setback variance as the builder did not follow the original site plan.

A public hearing is opened at 7:36 p.m. and closed as there are no public comments.

K. Veitch asks how we got to this point. J. Vianna states that he did the original survey to subdivide this property into 2 lots in 2006, lot 2A and lot 2B. M. Gyarmathy purchased lot 2A on which there was once a double-wide which was destroyed by fire. Last month he submitted a sketch of where that was located and the relationship to today's plot plan. In 2007 M. Gyarmathy submitted a building permit for the construction of the new house. The house was originally to be in the back with the septic in the front, but he encountered the typical Greenfield rock there at a shallower depth so the locations were switched. M. Gyarmathy thought that it would be ok because it was in the footprint of the old building and he measured off the center of the road for the setback. K. Veitch asks who did that. M. Gyarmathy states that he did. J. Vianna states that there was no survey done for stakeout, etc. A number of years went by, the first house burnt and was rebuilt a second time. Now in 2014, he finally finished the house and called the surveyor of record to come out and do a plot plan to get a CO from the Building Inspector, and we found this issue. J. Vianna states that having talked with M. Gyarmathy, with his position on the Planning Board, he is very remiss and remorseful about this. D. Eskoff asks how wide the road is as we are off by 41'. M. Gyarmathy states that this is a county road and it has a different setback requirement than a Town Road. J. Vianna states that from the center of the road to the corner of the house is 82'. He states that what has happened here is a combination of things – you have a large front yard setback of 75' for the zoning district and this County road actually has an appropriation, it is not like a 25' off the center kind of thing, it is actually something that the county took many, many years ago, back in the 1930's and that pushed it even further into the property. K. Veitch states that the house was originally built under these conditions and it wasn't caught then. So now, rebuild, banks involved, more professionals involved and we catch the mistake. D. Eskoff asks if the house that burnt down was a very old house or double wide, before current zoning. M. Gyarmathy states that it was Joe Mihalek's old house. K. Veitch and T. Conard state that they know exactly where it is. J. Vianna explains that the garage appears to be over the setback, that is the original garage. The existing garage has been cut off in the back and on the sides, so that is pre-existing. T. Conard states that there really is no change for the garage. K. Veitch states that he does not have an issue with these like he has with new construction and first build on a lot. D. Eskoff states that it just kind of drives home the point that maybe there needs to be an extra step somewhere to just catch these things before they occur. K. Veitch states that this is something that needs to be addressed at the Town Board level when they are redoing the zoning. The fact that there was a mistake prior to this mistake, and this mistake has been going on for a while, it is not like it is brand new. L. Sanda states that when a new house is laid out on a plot plan, who actually stakes out the location of the house for the builder? J. Vianna states that most of the time it is the builder. L. Sanda states that J. Vianna did the survey for her house. She knows that he did the original survey for the subdivision and then the survey at the end, but in between she laid out the location and now looking back on it, she wonders if there should be a step where your surveyor is required or an inspection is required to verify the house location. We do inspections for the foundation, etc., throughout, why can't we just take the extra step of having someone verify the location of the house. No one ever verified the location of her house for her. The applicant laid out his house based on what he thought was the right thing to do thinking it was fine, but without having a licensed surveyor you just won't know. J. Vianna states that every town is different about this, there are a few who require a proposed site plan signed off by an engineer or land surveyor. L. Sanda states that the Town does require a site plan stamped by an engineer. She is a professional engineer and stamped her own site plan, and measured it out herself, so there was no check or balance there. If she

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had hired an engineer to lay it out, without having the licensed surveyor, the engineer does not have the tools and could be pulling off the wrong point. If they pull off the wrong point, you can still have a setback issue. J. Vianna states that the road thing is quite common, quite a few people measure from the center of the road. K. Veitch states that he knows the location and if you were just driving by, you would not know that it was too close to the road. It actually looks like it sits back quite a way and he knows why we have setback regulations, but he does not have a problem with this like with some others.

**RESOLUTION – M. Gyarmathy, Area Variance**

MOTION: K. Veitch

SECOND: J. Szpak

RESOLVED, that the Zoning Board of Appeals approves the application of Michael Gyarmathy for an area variance for property located at 249 Spier Falls Road, TM#112.-2-7.111, as follows:

- **41' front yard setback variance**

This approval is based on the following criteria:

- **Benefit cannot be achieved by any other feasible means**
- **This property has a history in effect**
- **It is not an undesirable change to the neighborhood**
- **It is not out of the range as far as being a substantial variance compared to other variances granted**
- **No adverse impact to the environment**
- **This was complicated by a pre-existing issue**

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

Noes: None

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**DISCUSSION**

T. Conard states that he feels that some kind of bond is a good idea. K. Veitch states that we talked about that – bonding is the right way to go as well as someone inspecting the stakes. It doesn't really take a lot for someone to show measurements before you pour. It would seem to him that that would be an appropriate time to make sure that these points are accurate. It might just have to be an additional site. It is easier to take those things down then instead of the ZBA having to grant variances. J. Szpak states that he was a full time excavator in Chatauqua County, for septic systems and foundation pours there was always a pre-inspection before you actually laid cement and that was many, many years ago. There must have been something in that code. K. Veitch states that it is one thing when you are going, as a building inspector, to a site to determine that the foundation that they are pouring is the right depth, the right thickness, it is in compliance with the footprint of what is being built. Then the next step should be that here is the footprint that is laid out, you know where the corners are, what does it take to run the measurements then. L. Sanda states that all those inspections fall into G. McKenna's court. When they laid out their house, there wasn't really anything there to measure off of, so for him to go out there and know – there was no road, etc. K. Veitch states that then at that time he knows he is coming out there, those pins had to be set for the subdivision and that is the builder's responsibility to show where the corner marks are and where the lines run. L. Sanda states that some are very easy, but think about someone who has 6 or 7 acres and their pins are so far away from the house that they are not going to be able to get there conveniently. You may not be able to see exactly where the front line is. K. Veitch states that you are going to end up having to bring the surveyor in. L. Sanda states that is why she is wondering that instead of putting it on G. McKenna, that the builder gets a letter, you have to have someone do the site plan, if you could get a letter from the surveyor saying that he verified the location and sign it. K. Veitch states that G. McKenna is then not held responsible for trying to find the pins, etc. K. Veitch states that G. McKenna doesn't have to find the pins, he has to

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make sure that those measurements are being calculated – ‘show me that you’ve done this’. L. Sanda states that it is not always easy to do in the field without the survey equipment. She feels that for a surveyor to do it, it is almost a non-issue to get them to write a letter and sign it. K. Veitch asks if this gives us the surveyor to go after if a mistake is made. L. Sanda states that if a surveyor signs off on a letter saying that, then he is responsible for the location of that house. K. Veitch questions who do we hold responsible and how. He does not want to hold G. McKenna responsible, he wants to give G. McKenna the opportunity to catch it before it happens. L. Sanda states that it is a lot of work and not necessarily easily done. M. Granger states that it takes the builder out of the loop, she does not think that the letter is a bad idea, but it takes the builder out. So if the surveyor signs off on it, but the builder still builds it wrong... J. Szpak states that he does not like the surveyor idea at all, because that forces the surveyor to know what the zoning is. He believes that it is the builder, whether it is a contractor or the individual who is building. There is a point there when getting a building permit that they have to become aware of what the zoning requirements are and then that person has to be held responsible for meeting the zoning requirements. He thinks that when the setbacks are hard to find they are usually far way. L. Sanda describes her lot, house location and the process she went thru. K. Veitch states that the technology is there and it is going to have to be an extra step to verify. L. Sanda states that the applicant had a proposed site plan, but that the septic didn’t work, so where is the plan. J. Szpak states that he can’t imagine moving a septic system. R. Rowland explains that the engineer of record has to do an ‘as built’ drawing and letter when it is done, so even though they bring in a proposed septic system, there are times when things are changed in the field. This happens quite often. The Building Inspector does not do any inspections on septic systems, it is all done by the engineer who then provides the changes in a letter and an ‘as built’ drawing to get a CO. M. Granger states that she recognizes G. McKenna’s comments that he gave to the Board, but she thinks that it comes up often enough that somehow we have to have a mechanism in there that helps people to understand that they are going to be held accountable.

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Meeting adjourned 7:57 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland  
Secretary