TOWN OF GREENFIELD

ZONING BOARD OF APPEALS

October 6, 2015

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, Laura Sanda, Kevin Veitch and Curt Kolakowski, Alternate. Joseph Szpak is absent.

September 1, 2015 MINUTES
MOTION: K. Veitch
SECOND: D. Eskoff

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of September 1, 2015.

VOTE: Ayes: Conard, Eskoff, Sanda, Veitch — Absent: Szpak
Noes: None — Abstain: Kolakowski

NEW BUSINESS

JEFFREY DOUGLAS & TINA PETHICK – Area Variance
Case#953

Jeffrey Douglas and Tina Pethick are present. T. Conard reviews that the applicants would like to combine two lots on Wing Road, take out an old mobile home and move in a double wide. A 1.77 acre area variance and a 115' frontage variance are required. K. Veitch questions whether we need dimensions to adjoining lots. J. Douglas explains the way the properties are situated and that the mobile home will be further away from the neighboring structures than currently. L. Sanda comments that the plot plan does show the 100' separation between neighboring wells and septics. T. Conard states that this will be quite an improvement as they will have one structure as opposed to the two that were there. Board concurs.

RESOLUTION – J. Douglas & T. Pethick, Area Variance
MOTION: K. Veitch
SECOND: D. Eskoff

RESOLVED, that the Zoning Board of Appeals accepts the application of Jeffrey Douglas and Tina Pethick for an area variance for their property located at 42Wing Road, TM# 151.-2-67 and 256 Grange Road, TM#151.-2-66 and sets a public hearing for November 3, 2015 at 7:30 p.m.

VOTE: Ayes: Conard, Eskoff, Sanda, Veitch — Absent: Szpak
Noes: None — Abstain: Kolakowski

OLD BUSINESS

UMH NY BROOKVIEW MHP, LLC – Area Variance
Case#951, NYS Route 9N

October 6, 2015

T. Conard reviews that the applicant had previously been approved for a 64 dwelling lot expansion. The approval lapsed because the applicant stopped work on that project and the zoning changed to require larger sized lots. The public hearing had been previously closed, but Board decided to reopen it.

A public hearing is opened. James Snyder, attorney for the contiguous neighbors, the Mulder's and the Bulmer's, states that they are in opposition to the application. He provides a copy of the zoning ordinance applicable to this proceeding for the Board's review, Section 105-131. This is the regulation that was instituted just after this project was approved for a Special Use Permit by the Planning Board and this is the applicable code that is in place right now in the Town of Greenfield. He points out that the first paragraph states, "the following standards shall apply…within existing property boundaries." He also reads from subsection C regarding the overall density and width of the lots, also subsection C-3. He states that the applicants are here stating that they were approved in 2007, they started the project, they stopped the project and therefore they should still be entitled to a variance on this property, one variance for this property for the proposed 64 lots. J. Snyder states that he is bringing to this Board opposition because the special use permit ran out. They did not complete the project; they did not ask for an extension, they basically said that due to the great recession that they were not going to continue with the project. They very easily could have come in here and asked for an extension. They did not do that, they just decided to end the project. To their peril, soon after that the Town changed, thru the Comprehensive Plan, the zoning regulations. That regulation went from 6000 square feet per unit to 10,500 square feet per unit. They are asking for 64 lots to be approved. They are saying that that should require one area variance. J. Snyder states that the statute is very straight forward; it says that each lot has to be 10,500 square feet. They have not submitted a single item to this Board that J. Snyder knows of that has even one lot that is 10,500 square feet. Furthermore, he did not see on any of the submissions the width of the lots. If you look at the blue map, which was submitted in a letter dated just before the August 5th hearing, they show a breakdown of the lots. They don't have the width stated and those lots could not possibly have 100' in width. He states that it does not seem to be a situation where you can come in and ask for one variance when you have 64 lots that are substandard and not in conformance with the code. Arguably there are "74 area variances" that are required with the 10 lots that he counts. The applicant has only asked for one and they have come in here and said that since they have been approved before, they should be approved again. Well, by not following thru with the completion of the project in 2007, they basically are now subject to the laws as they are enacted since that time. They cannot continue to use that approval from 2007 and ask this Board to say that it is just one variance that we are going to change; we are going to change our laws to comply with what was approved in 2007. Certainly this Board is familiar with some of the factors that are required in order to get an area variance. One of those is whether the variance is substantial. J. Snyder states arguably we are talking about "74 area variances", not just one, and when they have asked for that one, they have not even brought up the 100'width. The 100' width is just as prominent in the statute as the 10,500 square feet. A variance would be required if any of those are lots are less than 100' in width. Obviously, "74 area variances" are very substantial. Is this a self-created situation? J. Snyder states that it certainly is. They could have done something to continue their 2007 approvals, they did not. They said they didn't have the money or the economy wasn't going forward – his argument is that they did so at their peril. They created this situation. As to the question of whether there is another feasible method without obtaining these area variances or even one area variance, he provides a copy of a tax map and states that UMH owns a 36 acre lot to the north of this parcel. That certainly would provide them with the room and abilities to get the number of lots that they want in conformance with the zoning code. They own the lot and why would they own a lot contiguous to this property unless there is going to be some use for it. Basically the neighbors are saying that the applicant has not submitted a proper application and even if the Board decided that the application could be amended or changed to consider this number of variances, there is a substantial question. None of these lots comply with the 10,500 square feet. His clients are not saying that they do not want this project; they are saying that they want the project to go in accordance with the code that is in place. The code was enacted for a reason and the Town, thru their Comprehensive Plan, decided that this is what they want mobile home lots to look like; this is what they want the expansion of mobile home lots to look like. He reiterates that his clients are not against this project, but the code is there for a reason and they would like to see the application denied tonight, and deny the

application if they come in and ask for any lots that are not in conformance with the code. J. Snyder asks permission to be able to respond to whatever comments the applicant makes. D. Eskoff suggests keeping it open as there is case law involved and that the Board is not totally privy to and to understand a case of this magnitude, we should do that. David Engel, from Nolan and Heller for UMH Properties, states that to set the record straight, the approval that they obtained in 2007 was not for a variance, it was site plan approval, it was a full permit, and there was no part of the code that they sought relief from at that time. As to J. Snyder's comments, as to whether this was a self-created hardship, in the letter that they submitted to the ZBA on August 19th, they addressed that issue. There is no authority under governing NY law by which this may be considered or concluded to have been a self-created hardship. A situation in which a code is changed after an applicant owns the property is not a self-created hardship that is the law in NY and has been for a long time. There are Court of Appeals decisions to that affect, there are Appellate decisions to that effect, that is laid out in their letter of August 19th. To suggest that anything that UMH did or did not do several years ago with respect to its prior approval can somehow be construed as a self-created hardship is simply at variance with the law and this Board should not follow such a suggestion because to do so would be fundamentally unfair and at variance with the established law in NY. As to the issue of whether the applicant needs one area variance or a multitude of area variances, they have addressed that in their papers. The fact is that in NY, this is not an unusual circumstance where a single project by a single applicant is looking for relief from a number of provisions in a code or it consists of a number of parts. It has long been held in NY that a single area variance will suffice. More typically these things occur in the context of big urban areas and D. Engel gives examples. The approach of a single area variance is completely consistent with established practice in NY and to now say to UMH that you have to go back and do additional individual applications for each lot and for each one of the individual provisions is simply unwarranted. It adds nothing to the process. D. Engel states that J. Snyder's speculation as to what UMH may or may not do at some point with other holdings in the Town of Greenfield is interesting but not relevant and there is no way that it is within the province of this Board to say that an applicant must do something with other land they own. As the Board well knows, UMH obtained approvals for this project in 2007 and following those approvals, UMH then proceeded to initiate site development. It complied with the ACOE permit that they acquired at that time, they put considerable lands under restrictive covenants, they undertook construction with respect to protecting the fresh water wetlands – simply put, the company invested a lot of money into this matter. There came a time with the recession of 2008 that the company ceased pursing this project. It did not, contrary to J. Snyder's speculative conclusion, decide to end the project. At that time, we could look back in hindsight and say that the company could have come back to the Planning Board and sought an extension on its approvals, but at that time, given the state of the economy, that was something that the company decided not to do and it waited until the market and the conditions of this matter were, in the company's judgement, appropriate to again pursue the project. Any business decisions that the company makes in that regard cannot be second guessed at this point because none of that has anything to do with whether or not the company, based on the submissions they have made, is entitled to this variance. The company is seeking approval for a project that was approved in full 8 years ago. This was recognized in the review that the Saratoga County Planning Board went thru and in which they said that the whole project was approved once before, it looks benign and recommended that the ZBA approve the matter. D. Engel states that that is wise advice and he urges this Board to follow that. They have laid out in their application to the ZBA and referenced all of the documents that historically they have submitted to the Town, what they intend to do here. The submission they made in August which includes the plans for the expansion is one small piece of a much larger set of documents that have been in existence for a very long time and nothing has changed. They have laid out what they seek in terms of relief from the Code, they have shown in detail the size of each one of the lots, they are not imaginary lots, they are lots that they intend to build and the extent that any one of those lots is going to be less than one of the dimensions that is otherwise stated in the code, that is something that falls within their grander area variance. To look at this and say that it is a substantial area variance simply because of the number of lots, the fact is that the numbers here speak for themselves. If they were to do 38 lots, which strictly speaking would allow them to do all lots at the minimum size of 10,500 square feet, the size of this project in terms of its footprint, in terms of its infrastructure, would be virtually unchanged from what they have applied for. They would require the same amount of road space,

the same layout, the same infrastructure. In their September 11th submission to the ZBA they pointed all that out and pointed out that in fact the very financial viability of what they are going to do depends upon obtaining the variance because at 38 lots, while it is something that the company could afford to do, it does not result in lots that the company could rent out at levels that would be marketable in this area. Saratoga, generally speaking, is not necessarily the cheapest place to live and that kind of spills over to the neighboring communities and many of us are aware of that. They would have to go to almost $800 a month in lot rent per unit in order to sustain a 38 lot development here and all of the costs of the expansion would fall on those 38 lot holders. That is simply not an approach that UMH, as a company which operates facilities such as this throughout the north east US and the mid-west, is prepared to pursue because it simply makes no sense. That is what motivates the company to seek 64 lots. D. Engel states that they are not here gratuitously, they are here because the company, in its judgment, recognizing what the market will bear, has concluded that that is the bare minimum that they can do here and have a financially viable project. He understands that the Board has been out to the site, they have seen where this project is proposed, and he trusts that they saw the work that was done there several years ago and the extent to which development was initiated at that time. He thinks that the members of the Board can also appreciate that the opposition that is expressed on the part of the Mulder's and the Bulmer's is in some sense highly theoretical, it doesn't seem to bear any real relationship to the alleged proximity of the expansion to where their residences are located. They are several hundred feet away, yet they come forward and presume to impose upon this company a restriction on its development which would strip the company of the financial return and financial viability that this project would otherwise provide. A single area variance application is sufficient here. They have provided detail as to what they are doing; they have shown the size of each of the lots, such an approach is consistent with accepted practice in the State of New York; it makes no sense for the opponents to come forward and cite to the ZBA the language of the code which says "shall", of course it says 'shall'. At the same time this town's code like every other town's code allows for the opportunity for variances under particular circumstances. Here an area variance is appropriate for the reasons they have stated all along. D. Engel states that they are prepared to answer any questions. Also present are Mark Millspaugh from Sterling Environmental, Craig Koster who is in-house counsel at UMH, Marty Mancini and others. James Snyder then states that the Board needs to look at the extent of the variances that are being asked for. An average of 6200 square feet for each lot is a substantial, 40% give-or-take, reduction in the size that this Town decided to make the rules about. The applicant did not follow through with the project, maybe they had intentions to, and all they needed to do was come in and ask. They made a business decision and this Board has a decision to make based upon the code. If they don't like the code the way it is they can go to the Town Board and ask that it be changed, but to have this Board make a change on one area variance and just blanketly say that 6200 square feet is big enough and they still haven't considered the 100' width argument. Another area variance would be required for that. D. Eskoff asks if there are other concerns from his clients. J. Snyder states that one of the concerns that Mr. Mulder has is that UMH has been relying on the fact that there are trees and area between his home and the UMH property. That does not provide a buffer that they can use, he could do whatever he wants with his trees and the area that he has there. They certainly do not have the right to rely on the fact that there is a buffer there because that land is owned by Mr. Mulder and not UMH. D. Eskoff states they are concerned about the trees, and light and noise she is assuming. J. Snyder states that is correct and obviously the more lots that are there, the more the natural consequences. He is sure that the Town Board had that in mind when they enacted the statute. D. Engel states that they addressed this issue. The question of how substantial this variance is in their papers of August 19th and it certainly is not something that reduces to a simple mathematical formula. It is a broader, looser approach than that. He states that he would draw the Board's attention to the arguments and substance that they set forth in the August 19th submission. As to some of the matters that J. Snyder just referenced in terms of the proximity of his clients to the UMH property, if he is hearing J. Snyder correctly, it seems as if he was suggesting that much of the trees in the intervening space between his clients home and the UMH property, those trees are on his clients land and somehow if UMH does its expansion, regardless of its size, the potential exists that if they remove their own trees, they will then be offended by the sights and sounds of the development. Ultimately, UMH is not responsible for what the neighbors decide to do with their property; those are choices they can make. D. Engel states that they have asked the Bulmer's and Mulder's to give UMH some reasonable ideas on plantings, etc. They will

consider that, but to suggest that somehow that their lands will be encumbered because of something that UMH does and they will lose the ability to take their trees down falls into the category of being fairly silly. D. Eskoff states that she wasn't getting that. She thought that J. Snyder was concerned that UMH was going to take down their trees and that the clients are going to be affected by that also. J. Snyder states that he believes that there were arguments in early proceedings that UMH was relying on the fact that there was a significant buffer between the properties. D. Eskoff states that there is a fairly significant buffer. J. Snyder states that is owned by his client and not UMH. D. Eskoff clarifies that J. Snyder is stating that his clients own the treed area. J. Snyder concurs and states that he is not saying that his client wants to take them down, he is just saying that the applicant cannot rely on the fact that the buffer they are providing is on someone else's land. D. Eskoff states that if you are the one complaining, she doesn't know. D. Engel states that they are not taking down any trees that are not the applicants and they are doing their development in a way that is going to retain as much in the way of trees and foliage as possible. It has been UMH's policy wherever it does a development to try to make these developments as tree lined and green as possible. An awful lot of what they have done out there already is for the sake of keeping things green. At the end of the day, if you look at their submissions, the overall average density of their expansion is well over the 10,500 standard and if you look at the entirety of the area that is part of this project, they are doing a limited number of residences, which is consistent with good practice, they are clustered and that saves an awful lot of open space, it saves a lot of natural areas and allows the most efficient use of infrastructure. He states that they are entitled to the variance and hopes the Board will act that way this evening. There being no further public comment, this public hearing is closed at 8:11 p.m.

D. Eskoff states that the Board did a site visit on September 3 and they walked through from the culvert through the entire area and back to the border of the neighboring properties. They did see it first hand to help envision it compared to the layout that we are seeing here. She asks what the setback is from the Mulder's property line to the rear of the units in that area. L. Sanda states that the map shows a 50' setback line and then a 129.78' to the nearest unit. She comments that the Saratoga County Planning Board's referral letter refers to 16.5 acres of that site and the applicant's map show 26.5 acres which gives them the 18,060 square feet referred to in their map within the August 19th submission. D. Engel states that his understanding is that they were looking at the area highlighted in the light blue. He does not believe that they were including the entire area. L. Sanda states that then the applicant's calculations include all the way to the property line in the back, including the setbacks, and then the 100' wetland buffer up to the freshwater wetland. D. Engel concurs. He states that in the existing park, by way of contrast, in these calculations they have included some areas in calculating the existing density, which they probably should not have included or they could have also included in the expansion, for example, the office, the wells. The only thing they excluded from any of the density calculations was the waste water treatment plant. They also excluded everything that is part of the freshwater wetland for the density calculations. T. Conard states that regarding individual variances vs. one variance, in effect you do not have individual lots; people do not own their lots. The company owns all the land. It is a different situation that you are looking at as opposed to individual lots going in for a development. D. Eskoff states that she agrees with that and she was the one who mentioned it, but she was not saying that it was or is a variance for 64 individual variances in this case or 26. You are going to get 38 lots no matter what happens, but when we look at the substantialness of it, we have to look at it in one way or the other so we look at those numbers and we look at them as if it was a set of variances coming before the ZBA, even though they are not a set of variances. It is definitely a comprehensive plan, a comprehensive approach. It is a mobile home park; they are not individual single lot mobile homes going up in Greenfield. She does not think that the Board was ever going to look at it that way. L. Sanda states that was one of her statements as well. She was not considering it to be separate applications, she was just considering that it is 64 lots and each one of those lots is smaller than what is required. K. Veitch states that it is like a parking lot and you want so many spots. You have to understand that every one of those when placed will be under the control of the Building Inspector so every site is going to have to be approved by him to meet the conditions that we are going to set forth here. Any concerns about dimensions or width or depth, G. McKenna will have that. D. Eskoff states that the thing that conflicts her the most is that in a matter of a month of this being approved, the zoning changed and it would seem that due diligence on the

part of UMH would have followed up when they needed to continue that special use permit and could have continued it. Had they, we would not be sitting here today. It is very difficult for the ZBA as a point of conflict to say that this could have been avoided and we wouldn't be looking at a variance and it would be up to the Planning Board. We are looking at it as a variance situation because the code has changed and we are dealing with a new code. In a hypothetical situation, if they had two lots and wanted to put a new mobile home park on the new lot, we would be looking at the new code. We have had people come before us who have had two lots and we have asked them to combine the lots or if they were open to combining the lots, and if that would help the situation. We do look at different ways to approach these, we try very hard to look at the overall picture, we understand the need for the housing, and we understand that if it is not cost effective to the builder then it is not going to be cost effective to the person wanting to rent it. We have to try to weigh all those things but at the end of the day we have to look at the test for an area variance and try to base it on that as best we can with the facts that we have been presented with. She states that we should go through that criteria and that we did request that UMH give us some type of alternative plan and they have not. The ZBA understands that they are holding firm to their 64 lots so the ZBA will go from that approach. T. Conard states that he would start with whether this was self-created and depending on how you look at it you can take it a number of different ways. He can interpret it in 2 different ways – they didn't come back for the upgrades and secondly, they didn't cause the town to change its zoning laws. K. Veitch reviews that the applicant got their approval for the variance for this, and within a month we changed the zoning law. C. Kolakowski questions that they got site plan and not a variance - the applicant received a site plan approval. D. Eskoff states they were approved February 27, 2007 and the Zoning changed on March 22, 2007. K. Veitch states that chances are that the project was just getting under way. Then you all of a sudden come to a stop. The change happened within 30 days of them getting approval, if they knew they were going to be stopping; they should have been in here all along the way if they wanted to keep this plan. D. Eskoff states that normally when you are under a special use permit, especially if you had legal counsel, you would do your diligence and make sure that the code was still the same and if it wasn't, maybe you might want to at least keep your special use permit up. K. Veitch states that it is not uncommon for people to get special uses for a mobile home on their property that they are living in while their house is being built, even for someone as simple as a single home owner going thru something like this who knows that they have to come in to get the continuation and extensions. T. Conard asks if there was a reason that no one pursued this. D. Engel states that he would remind the Board that the legal test in NY as to whether something is a self-created hardship in a situation such as this turns on one factor alone and that is whether the zoning restriction existed when the applicant in question purchased the property. UMH has owned this property for a very long time and the change in the code occurred well after UMH purchased the property. In considering the issue of self-created hardship, there is simply, under applicable NY law, no issue to consider because this is not legally a self-created hardship nor can it ever be. A self-created hardship would be if UMH went out to a piece of land which was subject to 5 acre zoning and said that they wanted to do a mobile home park – that would be a self-created hardship, this is not nor can it ever be. Not consistent with applicable NY law as established by the highest courts in this state. UMH's decisions back in 2007-2008, like a lot of decisions that people in businesses make, they started with a project and the problems with the economy for UMH, as was the case for a lot of people, arose incrementally over time and then at some point when the final problems really blossomed forth in 2008, clearly the company made a decision not to proceed at that time with further construction activities. As the Board knows, substantial efforts have already been undertaken and at some point, maybe in retrospect, the company could have come back and said we better keep that special use permit alive, but we are none of us without our flaws or 'would have, could have, should have'. That probably falls into that category. It has no legal significance. He thinks that the Board has to realize that and be bound by that. That is not a relevant factor here at all nor can it be. The law in NY does not allow that. K. Veitch questions that D. Engel is saying that the law in NY states that on the applicant's lack of action, it isn't self-created. D. Engel states it is not. A self-created hardship definitionally is one where you buy a piece of property that is subject to a certain type of zoning and then say – I can't do what I want and I need relief from that. Here the zoning changed after they owned it and what UMH could have or should have done in 2007-2008 is really of no relevance now. He states that they could have done things differently, but there were a lot of issues that were inflicting companies that were in the situation of UMH and were

generally in the housing industry at that time, and like everyone else, this company made its decisions and chose its priorities. D. Eskoff states that we have many people come before the Board for extensions on permits and variances, and many were because of the economy, but they did come in at least and request extensions. T. Conard states that next would be whether the benefit can be achieved by other means feasible to the applicant. K. Veitch states that they have submitted some numbers based on what they would have to charge for rents or how it would affect them financially. D. Eskoff states that those numbers are really not relevant to our discussion. If this was a use variance, they would be more relevant. She states that the initial project requested in 2007 was 80 units and they reduced it to 64. We asked them to provide us with a potential, to even take out one unit, and they haven't. The space that is there overall is more than enough to accommodate without a variance and the problem is the wetlands. It has been consolidated as most mobile home parks traditionally have been consolidated. They are usually not spread out like you would put a mobile home unit on a single piece of property and perhaps the code didn't take that into consideration or did, she was not on that committee. She is sure that when they looked at that they looked at the existing mobile home parks in the town and what they wanted them to look like in the future. C. Kolakowski states that if there was the idea of a clustering provision in the town before that, there wouldn't be that second section 3, because the code makes provision for both the total density of the entire project, but it specifically spells out the size for a lot as well. If they had contemplated clustering at the time that the code was written, he would think that they would just base it on overall density and if you wanted to cluster things they wouldn't have added section 3. D. Eskoff states that with that said, it kind of flies in the face of the way most of these mobile home parks are set up across the country. She is again conflicted as to whether they really meant that when they did the changes or were they more thinking about putting it on a single lot. We don't know. D. Eskoff states that as to undesirable change to the character of the neighborhood – we have two neighboring properties who are here with concerns. The actual character of the mobile home village is essentially unchanged or improved. These are larger units, newer units, it is very wooded in there and a protected area by what is there now. What would be there in the future or what restrictions can be put on that to preserve that and to mitigate noise, light, especially from those end units that border neighboring properties since the front units border the mobile home park. The biggest concern would be the units on the far right (South) of the map. She asks if there has been any thought, is there any secondary plan, any potential to move those units anywhere else. Not to get into the purview of the Planning Board, but to try to mitigate those concerns. D. Engel states that what you see today is the result of the lengthy and difficult process they went thru. D. Eskoff states that the Board understands that, but the Board does ask people to move their homes, etc. The Board is here to give the least amount possible for a variance and try to do the best we can for all the parties concerned and involved, and sometimes it is a simple change that can weigh into the discussion and make things somewhat better for everyone involved. D. Engel states that there is really no other place to put those 4 units which are at the south end of the property. D. Eskoff states there are 5 units on the end. D. Engel reiterates that they have no place to put them within that area. D. Eskoff states that she is looking at some open space and that is why she is asking. D. Engel states that the problem they have run into is having the number of lots that make this thing work on a roadway that is actually feasible and allows each one of these units to have an appropriate egress. D. Eskoff states that if we decide as a Board that we don't want to grant a variance, you can lose 26 units. She is asking if there is a potential to do something with the ones that are most bordering the neighboring properties. D. Engel states they would have to discuss that. M. Millspaugh states that the greenspaces that are being referred to where there are no units, there were slope issues and drainage issues. D. Eskoff states that these are the things that the Board needs to know. K. Veitch states that what it is coming down to is that they are allowed 38, and they are not willing to give up 4 or 5 to get to 59 or are they willing to go straight to 38. That is kind of what is on the table; we are negotiating and are asking for something. The applicant does not want to give up anything and we are trying to make both sides happy here. D. Engel states that C. Koster who is at UMH's corporate headquarters and who is in-house counsel, asks the relevant question, which is if the Board is saying that if the applicant gives up 4 units does that get this thing done. K. Veitch states that that being said, maybe if they had come in and presented this, as the Board shouldn't be the ones sitting here taking this thing apart, when the applicant was asked if they had any other plans that might fit better – nothing. M. Millspaugh states that from an engineering perspective, if you apply the larger lot size, you are on the same footprint, the same site

limitations, where there are steep slopes, wetlands, etc. D. Eskoff states that even within that area we are still looking at 64 individual units. Even though it is one variance application, the numbers still add up in there. We are looking for a buffer; we are looking for different aspects. L. Sanda states that basically there are alternatives to this or 38 and we asked for something to be presented. D. Engel states that they understand that. The question is if they are willing to give up 4 units on the south side, for example, in order to get this done – he would have to discuss that with his client. D. Eskoff states that the reason we are mentioning that is because we have concerns from the neighbors and although that is certainly not a determining factor, it is obviously a concern that has been brought forth and it goes to where we are now discussing the neighborhood, the character, etc. It is the biggest opposition we have had to this. D. Engel states that they understand that but that the Board should understand that in posing the question to them, that a 38 lot development in this area would present the very same outcome. D. Eskoff states that if we could take out some units or at least look at the option of taking out some units. D. Engel states that they can consult with their client. Clearly they are not going to sit here and agree to anything unless those who have voiced opposition are going to say ok. He states that before they said they were going to stick with their plans, he had discussions with Mr. Bulmer and asked him specifically what they could do. They would like to keep all the units but offered to do something with plantings, etc. D. Eskoff states that a lot of that does fall to the Planning Board and not the ZBA, but we are looking for some type of mitigation that may help the ZBA to make a determination. T. Conard states that he has mixed emotions. This was approved once before, it met all standards at the time and he can't say that he is as concerned about losing that property because with proper buffering you are not going to see it. That is up to the Planning Board and he thinks that we are getting bogged down in things that are actually Planning Board items. After having walked the property, you really can't see the neighboring houses. They can build up an additional buffer on the land; they still have 100-plus feet where they can build a lot of buffer in there where you are not going to be seeing other buildings, etc., to mitigate the light. There are a number of ways of doing it and that is not our concern. The concern he has is whether we approve this as it is. The land can obviously take it. Because of the wetlands you do have a lot of extra space there. D. Eskoff states that they do have enough land overall. The biggest concern is the change in the zoning, the meaning behind that change and trying to somehow balance that. 64 to 38 is a big number and the biggest concern seems to be on the right side. We asked for options and they didn't bring us one. K. Veitch states that if we were to come to an agreement where we want those end units gone to get this approved, when it goes to the Planning Board, they are going to have our minutes on what our concerns were. D. Eskoff states that we have the ability and the right to set restrictions on anything that involves a variance which we have done many times. K. Veitch states that he agrees and understands what was approved was all well and good then. We are under different regulations now. Had there been the continuous communication between the builder/developer and the Town, whether it be the extensions, he could very comfortably say year to year this doesn't impact, but when you go that large of a period of time, you are saying that although we have new zoning regulations we are not going to stick to them. D. Eskoff states that it is hard because it is not one mobile home. If it were one, it would be easier to give a variance to. Though it is not 64 individual variances, it is a whole bunch of mobile homes. If we could reduce that number somehow, that is all that he could think of in this case, if the parties are agreeable. K. Veitch states that even if the ZBA tells them to reduce by 5 or 10, the layout is going to be approved by the Planning Board. L. Sanda states that when they walked thru the existing mobile home park, someone informed her what the typical size was for the existing homes that were in the long way. M. Mancini states that the size of the homes in the old section range from 12' wide to 16' wide and lengths vary from 60' to 76'. L. Sanda states that in reviewing all the information and the Comprehensive Plan, she looks at the existing mobile home park and they saw the new homes that they are proposing. They are beautiful and she does agree that the applicant does a nice job with them and the way that they are going to be placed, parallel facing the street, really is an improvement. The only concern that she has is that the Town of Greenfield has been talking about increasing the lot sizes to increase the more rural nature of the Town and we have existing mobile home lot sizes that were 6,756 square feet per lot and the new lot sizes are 6,292 square feet per lot and the new homes are twice as wide. She knows that because they are facing the road you are not going to see that as much, but she still thinks it is something that should be taken into consideration because now there is a larger home on a smaller lot, so it is going to look more dense and more confined. D. Eskoff states

that they have consolidated the septic too she believes. D. Engel states that the average size in the existing part of the park is an artifact of the history of how the park developed and some of the original older portions developed when there was not a central sewer system there so there were individual lots with individual septic systems and that is why there is more of a spread out sort of approach there. The middle part of the park had a denser development because there was a sewer system. Most of that happened well before UMH took ownership of the facility. D. Eskoff states that the whole area from the culvert back becomes almost like a separate entity anyway. It is very isolated, very shielded. The only concern is the concern presented to the neighboring properties. She thinks that the land itself is capable of holding 64 units, that they have been engineered well which she presumes they are by everything that has been presented. The Planning Board thought it was fine but we have this code that doesn't seem to coordinate with what has been presented. T. Conard states that we have sort of discussed whether this will have any adverse physical or environmental effects. D. Eskoff states that it does not. Anything that is required to be updated will have to be done before this is built. K. Veitch states that it passed everything at the time that it was first approved. D. Eskoff states that there are restrictive covenants and the County does not have an issue with it. K. Veitch states that there is going to have to be some substantial buffering on their property. T. Conard states that that is up to the Planning Board. D. Eskoff states that we can impose that as a condition. T. Conard states that he is sure that the Planning Board was planning on that anyway. D. Eskoff asks if when the special use permit was approved, what did the Planning Board impose for that right side. D. Engel states that he thinks that the only thing was the setback. In theory, the lots on the south side are bigger. D. Eskoff states that the setbacks are there but the trees belong basically to the neighboring property. D. Engel states that there was nothing at that time that said that they had to do anything in terms of a buffer. He states that they are willing to do any kind of plantings, buffering - that want to do that. They are not in the business of trying to have issues with the neighbors. He states that they will plant a variety of things so that there would be no possibility of the neighbors being able to see the development even if they cut down every tree on their land. Lighting is discussed briefly. T. Conard states that the one thing that makes him not feel as bad about the number of units is that they have a complete sewer treatment center which can certainly handle everything. He states that it is just like with our regular lots where we have a smaller size lot if it is on sewer as opposed to septic. That is one thing that we should consider. It is a substantial variance, but we do make a difference in lot size for houses based on whether they are on sewer or septic. He states that he looks at is as there is a treatment plant here which is handling all of this as opposed to separate septics. L. Sanda states that our code does require for mobile home parks that they do have sewer provided. So the code takes that into consideration and then the 10,500. K. Veitch questions that the treatment plant was built to handle the additional units. D. Engel states that there are 130 units in the existing park and he believes that the treatment plant is sized to handle over 250, maybe 300 units. It is grossly oversized and was built to its present dimensions with the optimistic view that they would be doing far more than 64 additional units. L. Sanda states that when we define the overall density, she was looking for definitions or information that explained better how you calculate that density and whether you would include things like wetland buffers that are technically unbuildable and she is not clear on that. D. Engel states that the exhibit that was included with their August letter tends to provide a visual answer to that. You have to make decisions somewhere along the line when you do these exercises and the area that is in the blue cross hatch is the area that they considered as the expansion area for this development. They excluded all of the wetlands areas, the buffer areas and there was a time when they could have gone thru a whole process and attempted to get approvals for development even into the wetlands areas. That was a decision to avoid them entirely, made years ago to satisfy DEC and the ACOE, certainly at no small expense to the company and the decision as to how to define this expansion is really everything that is on the other side of that culvert or crossing of the existing wetlands and which is not actually in the wetlands. He states that they took a similar approach on the other side in terms of the density. K. Veitch states that he recalls looking at this when it came in the first time and based on what it is he didn't have a problem with it. He understands what the neighbors' concerns are. He thinks that the buffers are going to be a big thing that are going to have to be in place. D. Eskoff states on UMH's property somehow, it is a definite concern and a way to not have a substantial impact on the outside community or the neighboring properties because the rest of it is part of the mobile home park. K. Veitch states that 60 or 64 is not going to make any difference. D. Eskoff states that the overall property can sustain those units. If they

could have gone into those wetlands or any of those areas, they would not be here today – with or without the code (change). L. Sanda states that she does think that when we talk about the least variance possible, eliminating lots may not necessarily be in the right frame of mind in the sense of just pulling off a row. D. Eskoff states that we cannot tell them what to do; it is just a matter of suggesting. L. Sanda states that there are ways to make the existing lots slightly larger, maybe not to the 10,500, but larger without losing that much and that would be a feasible alternative. D. Eskoff states the potential for any of those lots to be increased, keeping 64 but increasing 64 is what L. Sanda is asking. D. Engel states they would have to check with the engineer. Could they theoretically bump out the size of some of those lots? The back sides of the lots on the south end of the project could be expanded out. It kind of runs at cross purposes however with the idea of enhancing the buffer there. Once they say to the tenants that their lot is bigger, they are going to have certain expectations of what they can do with it, but to the extent that the company has direct control over that whole strip of land, they would have the best assurance that they could tree it up. D. Eskoff states that the question is, is this the best possible way, the maximum that they can give on all the lots. L. Sanda states that there are ways to reorganize the lots on this plan that could allow for still a large number of lots with a lesser variance. It doesn't necessarily mean that they have to bump out the edges to make some lots slightly larger; there might be some loss of lot, but as a viable alternative. M. Millspaugh states that they pursued a Nationwide permit for the road crossing and in going thru that process with the ACOE, among other things, they had to limit the amount of ground disturbance thru their design; they had to have two points of ingress and egress to the park in the back which is why it is a double road; they had to avoid other stream crossings; the internal road pattern had to meet town requirements and be acceptable to the fire department for ingress and egress of emergency equipment. D. Eskoff states that might have also changed since then. L. Sanda questions that holding the road alignment, holding the area of disturbance and taking all the lots out, shuffling them and making them slightly larger, there are alternatives in there with maybe slightly less lots. M. Millspaugh states that he thinks that with the green space in the middle of the park, there is no restriction on those lot lines coming out a little more into that area. They just couldn't construct in there because of steep slopes. He would have to check the code about the slope limitations. They stayed off slopes of greater than "X" percent. He indicates that on the one side there is the limit of the restrictive easement where they cannot count that, if he expands those lots into that easement line – it is not allowed by the easement. Internally, drawing some of the lots a little bigger, they could possibly do it where they are not limited by other constraints. He states that they ended up where they are because of the constraints. This evolved over a period of years before the Planning Board. There was actually a much larger project and then we got into the limitations under the Town code and the ACOE. D. Eskoff asks if that is where they went from the 80 to 64, or was that the Planning Board cutting them. M. Millspaugh states that in applying the limitations, and the Planning Board was not receptive to having just one road in, the code didn't really allow for cul-de-sacs. Originally they had over 100 units. They ended up here after quite a back and forth with the Town. This had to go thru multiple agency review. D. Engel states that to the extent that they tweak lot sizes here, all of that comes at the expense of land that would otherwise be left alone. L. Sanda states that her point was that if you take the existing land that they are proposing for the 64 units, and pick them up and redistribute them with a slightly larger lot size, they might have less units at the end but we are not talking down to 38. Maybe it is 5 or 10 less. Instead of just pulling 5 off the map you are redistributing, proposing an alternative to make the lot size more in following the Comprehensive Plan where they are looking for larger lots and since we are going to have larger homes, a larger lot may provide more of that kind of feel that the Town seems to be encouraging. D. Eskoff states that this is such an isolated thing, it is hard to look at it that way. Her question is what if we looked at the possibility of a variance "up to" 64 units based on the special use permit review of the Planning Board in their discretion. T. Conard asks if she means contingent upon the Planning Board to make sure. D. Eskoff states that they are the ones who sit in that position and are capable of enforcing the setback. This is so different from looking at one particular unit or apartment building. It is based on where they are today too and it would provide them if they don't see fit or if it doesn't fit the current fire code. There have been other changes that they are going to have to look at. L. Sanda states that she just wants to make sure that we are focusing on the actual lot sizes because that is the code. We agree it is in the Planning Board's action to check the roads, we agree that the service areas are fine, the environmental impacts are fine – all of that stuff is good. The only thing in question here is the actual lot

size. Right now they are offering 6292 square feet per lot on average where our code requires 10,500. They are asking for that variance and everything else is kind of set aside in that discussion. What is the intent behind the 10,500 requirement and is this the least possible variance that we could grant? D. Eskoff states that if you looked at it from the standpoint that this is a project that was started prior to the code change and that all this was done with all these approvals before then, then it may very well be. L. Sanda states that she believes that most of the approvals that they discussed are based on the disturbance area which won't be affected by a reduction in the number of units and the drainage area doesn't get affected by that. She understands that the costs associated with building this are essentially the same as the cost associated with building something with lesser units because the infrastructure still needs to be there. It all needs to be in place and that definitely is a financial impact, and given the 10,500 maybe they wouldn't have even considered building this 8 years ago. We have been discussing a lot of other things when it really comes down to 10,500 versus the 6292. D. Eskoff states that it does and the ways to try to reduce that, mitigate it and/or determine whether or not it is not actually an issue. T. Conard states that he does not believe it is self-created; it is a change because of the change in the zoning laws. He does not look at it as just because they did not come back in; it still was created by the change in the zoning laws. D. Eskoff states that it is difficult because they could have followed up on it but she does agree that it occurred because of the change in the zoning laws. T. Conard states that therefore it is not self-created. D. Eskoff states that is not the most determining factor in an area variance anyway. T. Conard states that you don't have to take any of these necessarily that strongly in an area variance. This was a planned unit that certainly could sustain itself when it was done, what has happened is the zoning has changed and what concerns him is that it is like pulling the rug out from under somebody when you have an already developed system that was in and would have been legal had the zoning not changed. D. Eskoff states that regarding the change to the neighborhood character due to the concerns of the neighbors, the actual neighborhood that it is in – no. It is a matter of protecting that or finding a way to reduce that. It would be nice if they had given us something to work with, they didn't. We have all tried to throw out different options and maybe we just need to make a decision. K. Veitch states that he likes the idea of making a limitation "not to exceed" based on the Planning Board, that if they want to minimize the density, then they can. D. Eskoff states that they need to be very specific on that, that it needs to be a very good plan. L. Sanda states that in addition to the fact that it was started, something that makes this property unique, if you are looking at having an adverse physical or environmental effect, aside from the neighbors on the side, this if fairly well bounded by natural buffers that cannot be built on and with the 100' wetland buffer all around it, and then the natural wetland, it is slightly isolated and can be considered somewhat independent. C. Kolakowski states that as this is his first meeting with the ZBA, he hasn't listened to the previous testimony or attended the previous public hearing and he hasn't visited the site since he has just been recently appointed, he is going to abstain from any vote. K. Veitch asks how we would craft a motion with the concerns, with the recommendations that were suggested – the limitation of number, the buffer. D. Eskoff states that those would be the conditional factors; it is a 40% variance, as G. McKenna has noted. Discussion takes place. L. Sanda states that the useable space does not include the wetland buffers or the steep slopes as their engineer indicated, so if you take out the useable space then it would be different. However, in their application and the Saratoga County letter they reference 16.5 acres on which they are building which we believe is the area minus the setbacks which are not able to be built on and the wetland buffer, if you take the 16.5 acres and convert that to square feet and divide by 64 you still get 11,230, so they are still over the 10,500. Whether that is the correct way to calculate density as far as what is considered useable space, the only thing not eliminated from that is the steep slopes that were mentioned which is really not that significant. So they still meet the overall density.

RESOLUTION – UMH NY Brookview MHP, LLC

MOTION: D. Eskoff
SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals grants the request of UMH NY Brookview MHP, LLC for an area variance for property located at 2025 NYS Route 9N, TM#151.-2-7, as follows:

- **Area Variance, based on overall density, of 4208 square feet, on average, per unit, up to 64 units**

This variance would be contingent upon the following:

- **Planning Board approval of the Special Use Permit with site plan review for a strong buffer zone, including suitable vegetation, on the south perimeter of the property particularly in the areas that adjoin the neighboring Mulder and Bulmer properties**
- **Planning Board to find a solution for the strong buffer zone that includes mitigation for potential noise, light and other site pertinent concerns that would arise to neighboring properties from a cluster-type development of this type**

This variance is based on the following criteria:

- **Whether benefit can be achieved by other means - According to the testimony of the UMH engineer, because of the way this development expansion has been laid out since 2007, they cannot make any significant changes to the area of disturbance. They had gone through several changes prior to it being initially approved in 2007 by the Planning Board and they maintain that basically 64 units can be contained upon this area based on density and that given the density versus the actual lot size, if you were to look at this as a cluster development, this is the best way for them to achieve their goal for lower cost housing and to expand their mobile home park.**
- **Undesirable change to the neighborhood character or to nearby properties – UMH Brookview is essentially a self-contained shielded development and any expansion should remain as such. Any potential undesirable change affecting neighboring properties is to be mitigated by a buffer zone under the purview of the Planning Board to include appropriate undisturbed vegetation.**
- **Whether the request is substantial – Finding is overall not substantial despite increased lot size per town code change, in agreement and with reference to the Saratoga County Planning Board's notation on substantiability dated September 3, 2015 which is based on the fact that the site plan review was approved in 2007 and was determined, at that time, to not be substantially greater than what the property could sustain and that, based on density, this determination would still hold true for this particular piece of property and its proposed layout.**
- **Whether the request would have adverse physical or environmental effects – the evidence that we have been given by UMH, and by prior Planning Board approval, is very secure in saying that there are no adverse physical or environmental effects, that those have all been dealt with through prior approvals and if any need to be reapproved they will be looked at in the Planning Board again as part of their review process from this point forward.**
- **Whether the alleged difficulty is self-created – despite concerns that this project was abandoned due to economic considerations and was not brought for a special use permit renewal early in the procedural process, the governing factors of self-creation would not preclude this project from receiving a variance under established New York State case law.**

VOTE: Ayes: Conard, Eskoff, Sanda, Veitch — Absent: Szpak
Noes: None — Abstain: Kolakowski

Meeting adjourned at 9:23 p.m.

Respectfully submitted,

Rosamaria Rowland
Secretary