

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

APRIL 6, 2010

REGULAR MEETING

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

MARCH 2, 2010 MINUTES

MOTION: S. Weeks

SECOND: P. Lunde

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of March 2, 2010, as submitted.

VOTE: Ayes: Conard, Lunde, Weeks, Szpak

Noes: None

Absent: Granger, Veitch

NEW BUSINESS

JOHN & SARAH SMACK – Area Variance, Case#839

Larkspur Court

Kurt Heiss is present for the application. T. Conard reviews that the applicant has a garage that was built about 2' too close to the property line setback and this came about during a lot line adjustment review. The applicant needs a 2' left side yard variance.

RESOLUTION – J. & S. Smack, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED that the Zoning Board of Appeals accepts the application of John and Sarah Smack for an area variance for property located at 4 Larkspur Court, TM#138.-2-91 and sets a public hearing for May 4, 2010 at 7:30 p.m.

VOTE: Ayes: Conard, Lunde, Weeks, Szpak

Noes: None

Absent: Granger, Veitch

HABITAT FOR HUMANITY – Area Variance, Case#840

Medbury Road

Tonya Yasenchak is present for the applicant. T. Conard reviews that this is a pre-existing lot in an LDR District, it is a non-conforming lot at roughly a half acre. The applicant will need three variances. He states that this is not unlike some of the other Habitat for the Humanity homes in that area so it is not

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changing the area too much. The applicant will need a front setback variance of 35' and both left and right side yard setback variances of 3'.

RESOLUTION – Habitat for Humanity, Area Variance

MOTION: P. Lunde

SECOND: J. Szpak

RESOLVED that the Zoning Board of Appeals accepts the application of Habitat for Humanity for an area variance for property located at 9 Medbury Road, TM#137.6-1-7 and sets a public hearing for May 4, 2010 at 7:30 p.m.

VOTE: Ayes: Conard, Lunde, Weeks, Szpak

Noes: None

Absent: Granger, Veitch

RYAN CHRISTOPHER – Area Variance, Case#842

Murray Road

Ryan and Helen Christopher are present. T. Conard reviews that the applicant has a Special Use Permit for vehicle repair and he is scheduled for Planning Board review to expand his current use on April 13, 2010. The applicant would like to add an 18' x 40' addition to the existing garage. A 15' rear setback is required and the applicant is seeking a 3' variance. T. Conard asks if the property behind this is vacant. R. Christopher states that it is vacant all the way to South Creek Road. S. Weeks states that this is pretty straightforward although the drawing is a little vague because it doesn't show it as attached.

RESOLUTION – R. Christopher, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED that the Zoning Board of Appeals accepts the application of Ryan Christopher for an area variance for property located at 983 Murray Road, TM#162.12-1-24 and sets a public hearing for May 4, 2010 at 7:30 p.m.

VOTE: Ayes: Conard, Lunde, Weeks, Szpak

Noes: None

Absent: Granger, Veitch

OLD BUSINESS

JOSEPH PONESSA – Area Variance, Case# 835

Wilton Road

Joseph Ponessa is present. T. Conard states that the public hearing was held for this case at the last meeting and closed. The applicant would like to add an in-law apartment in the existing basement. This district requires 6 acres and the applicant has .925 acres. J. Ponessa states that his engineer has stated that the septic would be fine. T. Conard states that the number of people in the house will not be changing. He asks if everyone has seen the letter from the Town Attorney. S. Weeks states that he has the same concern that he had when we discussed this at the last meeting. The new zoning requires 6 acres and the applicant has less than one acre, which in his mind is a very, very substantial difference in what was decided when the new code was put in place. He is reluctant to vote in favor of this because of the very large variance that is being asked for. J. Szpak states that the variance is significant, are there other alternatives that we could consider? Is there any precedence for grandfathering? He states that he read the minutes and understands the concerns

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about what happens when there is a new owner, when you increase occupancy – he was just wondering if there were any other alternatives other than granting the variance, which would then set a precedence in his mind. T. Conard states that there is not with the new zoning laws. You could put conditions on it for the number of people who can live in the residence. You cannot do anything with grandfathering because the zoning law has changed. Things can be grandfathered when it is done before changes are made. J. Szpak is questioning how you could control new landowners. T. Conard states that it would have to be a completely unique situation, which he frankly cannot think of. J. Szpak states that he is having a problem because of the significance of the variance and respecting the new zoning requirements. P. Lunde states that it is quite a bit of a variance. T. Conard states that it is a substantial variance even though an in-law apartment does not change the outer dimensions of the house at all, but it does lead to possibilities down the road because the variance stays with the property no matter who owns it. That is why the only thing that you might be able to do is to put a condition limiting the number of people who could occupy the entire house. T. Conard states that he is a little skeptical about going that route. S. Weeks states that an additional part of his concern is that this is one of the smaller, if not the smallest, lot in that area and so that is another issue to consider. We already have a small lot in relation to the rest of the neighborhood and then to give this variance, he thinks, is just accentuating that. P. Lunde questions the size of the house currently. J. Ponessa states that it is 1800 square feet, 30' x 30', but the apartment would only be 600 square feet. P. Lunde states that he thinks that it is too substantial, that the Board will be setting a precedent if they approve this and then there will be tons of other people coming in to do the same thing. He states that realistically the applicant can use the basement any way he wants without the variance as long as he does not put a kitchen down there.

RESOLUTION – J. Ponessa, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals denies the application of Joseph Ponessa for an area variance for property located at 395 Wilton Road, TM#126.-1-26.3 as follows:

- **Too substantial of a variance request. Applicant needs 6 acres and has less than one acre**
- **Undesirable change to the character of the neighborhood as this is already a small lot**

VOTE: Ayes: Conard, Lunde, Weeks, Szpak

Noes: None

Absent: Granger, Veitch

KENNETH MERCHANT – Area Variance, Case #837

South Greenfield Road

Kenneth Merchant is present. T. Conard reviews that the applicant would like to use an existing garage apartment as a rental. A lot size area variance of .5 acres and a frontage variance of 240.05' are required in this MDR1 District. A public hearing is opened on this case. James Fox, South Greenfield Road, states that this has been going on since 2001 on this garage, 4 years before K. Merchant even owned the property. J. Fox spoke before the Planning Board at their recent public hearing. He states that the garage was built illegally many years ago; it was in State Supreme Court before Judge Nolan; a variance was received for the structure to remain. He states that his problem has not been the garage, but the septic system. He states that the previous owner, Ethan Lawas, was to correct the septic issues but did not and sold it to K. Merchant. There is a letter from E. Gailor certifying the septic system, however, J. Fox met with E. Gailor and showed him photos. E. Gailor had no written documentation of anything and stated that he would not have certified it had he seen those pictures. He states that it is his understanding that the Town does not do their own septic inspections anymore. J. Fox states that the only time this yard has been dug up was when he took these photos and they are only about 5' from his property line. He states that there is one, straight,

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20' pipe that is coming out of there, there is no distribution box, the leach field would have to go away from the bordering properties and in that case it would have to go under the driveway. J. Fox states that he is aware that garage apartments are now legal. His issue is with the septic system and it being approved the way it should have been. T. Conard questions whether the structure has a CO and he thinks it would have to be inspected before anyone could move into the apartment, even if the septic system were working. J. Fox states that K. Merchant did have someone living there. He states that before K. Merchant bought it, Prudential had this property listed as having an in-law apartment and he sent them a letter regarding this. He reiterates that his concern is with the septic system. Tonya Yasenchak, Engineering America and Town of Greenfield Planning Board, states that the Town does not hire engineers to inspect septic systems, it is the responsibility of the individual property owners. There being no further public comment, this public hearing is closed at 8:00 p.m.

T. Conard states that one thing that the Planning Board is concerned with, as is the ZBA, is the septic systems and getting proper certification. Part of it has to do with the proximity of the septic system to the well on J. Fox's property. He states that nothing can be done in that apartment until a NYS certification can be obtained and that requires a good inspection of that septic system. K. Merchant states that he has Stone coming out to do an inspection to see if it is practical to modify it. J. Fox states that his well is downhill. K. Merchant asks where the well is. J. Fox states that it is in the front yard. T. Conard states that the building was never properly inspected either. K. Merchant states that he has a list from E. Gailor of what needs to be done to inspect the apartment. T. Conard questions that a good inspection can be done of the electrical, plumbing, etc. He believes that in order to get a CO it will have to be inspected to make sure it was properly built in the first place. P. Lunde questions that it will have to be brought up to code. P. Lunde questions that there are no current violations on the property and that the applicant is not using it as an apartment currently. K. Merchant states that no one has lived there since 2005. J. Szpak questions the role of the ZBA, whether the building can be occupied or whether the septic system is acceptable or not, isn't that independent of the ZBA's judgment here for the variance. T. Conard states that is correct, the ZBA is looking at whether the variance is too substantial. The ZBA can put contingencies on it. J. Szpak states that his comment is that the road frontage variance is substantial. S. Weeks agrees and states that back to the same issue again with the requirements that we have now for lots, frontages and setbacks, that this is a substantial change. He would be reluctant to approve that much of a variance. T. Conard states that we do have keyhole lots, so frontage is not always a determining factor. S. Weeks and J. Szpak concur. T. Conard states that he would be more concerned with acreage and location of the buildings. The acreage isn't that substantial of a variance, however the location of the building is near the property line, which is not uncommon on many properties here in Greenfield, especially those built before zoning. T. Conard states that the frontage variance is not as much of a concern to him since we do have many situations where we do have long narrow lots. J. Szpak states that it is hard to determine what the difficulty is too because what we don't know is how substantial it would be to upgrade that structure to be used as an apartment. P. Lunde states that we cannot, by law, consider that. T. Conard states that we can make any variance contingent upon getting a CO with a full inspection of the building to make sure that all electrical and everything is properly inspected, make sure that the septic system conforms and is approved by NYS. In a garage apartment, T. Conard believes that the Town Code states that it must have a separate septic system. J. Szpak states that is what he heard as the neighbor's major concern. J. Fox concurs. J. Szpak states, to clarify what he thinks he heard J. Fox say, is that if K. Merchant had a certified acceptable septic system, then J. Fox does not have an issue with the area variance. J. Fox agrees. P. Lunde asks, for clarification, if it has its own septic system now. K. Merchant states that it does. S. Weeks states that there is no 'as built' drawing of the septic system and with this controversy he thinks the applicant must have an 'as built' drawing of where the septic and leach field actually exist and without that he has issues. P. Lunde asks if the applicant would like to table this. K. Merchant states that the Planning Board has tabled his request until he gets something on the septic system. He asks if he does table this, then will he be approved for the variances after he spends the money to make the improvements. J. Szpak states that the road frontage is significant and does not stand alone, but it seems that there are other feasible means for the applicant to not have to ask for the road frontage variance due to

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the other parcel he owns. T. Conard states that he could combine the properties if there were no problems with the financial institutions, etc. P. Lunde states that in looking at the neighborhood, it does have the smallest frontage but not the smallest acreage. Even if he combines his two parcels he won't have the frontage so it won't solve the problem. He states that we could approve this with contingencies regarding the CO and septic system approval. J. Szpak asks if it is not redundant to have the contingencies because he will have to get those for the Planning Board anyway. P. Lunde states that if we make it part of the ZBA approval, the applicant has one year to do it. If he doesn't do it within the year, he then he loses it. S. Weeks states that he feels that the ZBA should do that, that they should not assume that the Planning Board is going to do something. He thinks it is important for the ZBA to take that stand. J. Szpak states that if the Board acts tonight, the applicant is put on a timeclock. K. Merchant states that he should be able to have something done within a year, it is either going to be feasible or it's not.

RESOLUTION – K. Merchant, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals approves the application of Kenneth Merchant for area variances for property located at 294 South Greenfield Road, TM#151.-1-34, as follows:

- **Frontage variance of 240.05 feet**
- **Acreage variance of .5 acres**

This approval is contingent upon:

- **The building being brought up to current code for a Certificate of Occupancy**
- **New York State approved Septic System**

VOTE: Ayes: Conard, Lunde, Weeks, Szpak

Noes: None

Absent: Granger, Veitch

GERALD MAGOOLAGHAN – Area Variance, Case#838

Greene Road

Gerald Magoolaghan is present. T. Conard reviews that this request is for a variance in the LDR District due to wetlands. The required rear setback is 75' and the applicant is seeking a 25' variance. There is not adequate space for the proposed structure due to a wetland. A public hearing is opened at 8:20 p.m. Peter Barber states that he has just recently purchased the vacant land behind this parcel and just learned about the variance request. He asks for clarification on the proposed house location. He states that knowing the challenges with the Zoning Laws, he subsequently purchased the 50 acres to the rear of this lot from Mr. Maloney on which he plans to build. His concern at first was that the house would be 25' from the property line. S. Weeks asks P. Barber how he found out about this if he didn't get the letter. P. Barber states that he was reading the draft minutes on-line to become familiar with things. Dan Lill states that he owns the adjoining parcel to the west and shares the driveway. He states that he had staked out a proposed house without knowing that the zoning had changed. D. Lill asks when the zoning changed. R. Rowland states March of 2007. D. Lill questions that anything done before March of 2007 would be grandfathered in. P. Lunde states that if it was already built it would be pre-existing, non-conforming. He states that he supports the request of G. Magoolaghan as both the building envelopes were restricted due to DEC wetlands. He believes that he has the more restrictive building envelope. He states that he has spoken with G. McKenna about a possible variance for his property. He is currently undecided and may explore an option with the DEC, but he is in a 10-15 year timeframe. He states that he has a concern with a comment of G. McKenna's

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that the DEC could increase the wetlands and then this mini-estate lot would be worth less than what they have into the project right now. There being no further public comment, this public hearing is closed at 8:30 p.m.

T. Conard states that there is not a lot of choice on this property. S. Weeks asks if the public hearing notice was posted. G. Magoolaghan states that he did post it at the edge of the driveway. P. Lunde states that this is a unique property. T. Conard states that due to the location of the Snook Kill there is no way you could build any closer, you do have to maintain a buffer. It is not too substantial a request, it is not going to change the neighborhood as there are a lot of unusual structures up there right now.

RESOLUTION – G. Magoolaghan, Area Variance

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals grants the application of Gerald Magoolaghan for an area variance for property located at 475 Greene Road, TM#126.-1-111, as follows:

- **25' rear setback variance**

This is based on the following criteria:

- **No change to the nature of the neighborhood**
- **With the wetlands and the Snook Kill, it is definitely a unique situation to that piece of property**
- **There is no other means of relief**

VOTE: Ayes: Conard, Lunde, Weeks, Szpak

Noes: None

Absent: Granger, Veitch

Meeting adjourned 8:36 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary