

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

December 3, 2019

REGULAR MEETING

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by D. Eskoff, Chair, at 7:00 p.m. On roll call the following members are present: D. Eskoff, C. Kolakowski, N. Toussaint, Ken Taub, and S. MacDonald, Alternate. A. Wine is absent. M. Waldron Zoning Administrator/Code Enforcement Officer is also present. D. Eskoff states that J. Szpak has resigned from the Zoning Board of Appeals and she thanks him for his years of service. D. Eskoff states that the Town Board has appointed Stacey MacDonald to the Zoning Board and welcomes her.

Minutes

November 5, 2019

MOTION: N. Toussaint

SECOND: K. Taub

RESOLVED, The Zoning Board of Appeals waives the reading of, and accepts the November 5, 2019 Minutes.

VOTE: Ayes: D. Eskoff, C. Kolakowski N. Toussaint, A. Wine, K. Taub, and S. MacDonald

Noes: None

Abstain: None

Absent: A. Wine

OLD BUSINESS & PUBLIC HEARING

Zirofsky, H. Case #1016
TM# 126.-1-45 & 46

366 Brigham Road
Area Variance

William Dennison is present for the Applicant. D. Eskoff opens the Public Hearing at 7:03 p.m. W. Dennison states that they are outside of the building envelope and they were not aware of this. The soffit was about 4" out of the building envelope. The back deck was a few feet over the building envelope. D. Eskoff states that the request in 2' for safety purposes to make sure there is adequate space and 10' for the stairs and deck. The ZBA is looking at a 2 part variance request. Rear yard setback of 10' and right yard setback for the residence. There being no one present from the public for or against and no correspondence, D. Eskoff closes the Public Hearing at 7:04 p.m. C. Kolakowski states that at the last meeting the ZBA decided that the 2' and 10' would be enough Area Variance. D. Eskoff states she feels it is more than sufficient. She believes that the need is smaller than the request. It's more of a safety issue for

the building envelope in this case. It is already built and they are waiting on a Certificate of Occupancy.

MOTION: C. Kolakowski

SECOND: K. Taub

RESOLVED, The Town of Greenfield Zoning Board of Appeals hereby grants an Area Variance for property located at 372 Brigham Road, TM# 126.-1-45, as follows:

- 2' Right Side Yard Setback
- 10' Rear Yard Setback

This approval is based on the following criteria:

- The benefit cannot be achieved by any other means feasible to the Applicant because the house is already there
- No undesirable changes to the character of the neighborhood or detriment to nearby properties or bordering property
- The request is not substantial it is the minimum to achieve what the Applicant needs
- There are no adverse physical or environmental effects
- This is not a self-created adversity because the Applicant themselves didn't do it, the contractor did.

VOTE: Ayes: D. Eskoff and C. Kolakowski, N. Toussaint, K. Taub and S. MacDonald

Noes: None

Abstain: None

Absent: A. Wine

Bayer, L. Case #1018
TM# 151.2-1-12

43 Locust Grove Road
Area Variance

Louise Bayer is present. No one from the public is present for this Application. D. Eskoff states that there was a slight issue with a typographical error on the notices in this case when they went out. L. Bayer was contacted by K. McMahon to notify her of this error. The ZBA wants to make sure there is proper notice for the proper address. With L. Bayer's permission, the ZBA would like to postpone this Public Hearing for this case until next month so that adequate corrected notices can go out to everyone involved. L. Bayer gives the Board her approval to postpone the Public Hearing for this case until January 7, 2020. D. Eskoff thanks L. Bayer.

MOTION: D. Eskoff

SECOND: N. Toussaint

RESOLVED, that the Town of Greenfield Zoning Board of Appeals hereby postpones the Public Hearing for this case, with the Applicant's approval, to January 7, 2020 at 7:00 p.m. Due to a typographical error on notice and for corrected notice to be issued.

VOTE: Ayes: D. Eskoff and C. Kolakowski, N. Toussaint, K. Taub and S. MacDonald

Noes: None

Abstain: None

Absent: A. Wine

OLD BUSINESS

Gupta-Carlson, J. & H. Case # 1017
TM# 137.-2-36.112

141 Squashville Road
Area Variance

Jim and Himanee Gupta-Carlson, Applicants, and Stephanie Ferradino, Esq., Ferradino Firm PLLC, as counsel for the Applicants, are present for the Application. S. Ferradino states that this Application is seeking two minor Area Variances. One for the lot size and one for frontage. She had an opportunity to review the minutes of the last meeting. She feels that she is somewhat up to speed on this case. What she would like to do is start with some of the issues that she saw that were raised in the last meeting and provide some information on them and segue into the specific areas and standards. One of the questions that dominated the discussion related to agriculture whether the home was a principal use. She went to the Town's Code and specifically was searching the definitions in order to provide some clarity for the issue. She believes the definition for Farm Housing is probably the one that is most clear on the issue. It defines Farm Housing as dwelling units on an active farm which are accessory to the agricultural use and are occupied by employees of the farm or members of the farm household. She states that is exactly what they have here. It continues to say any farm housing shall be located on the same parcel as the agricultural use. If the Board looks at the definition of Agricultural Structure in MDR-2 District its agricultural structure in use that they are seeking the Special Use Permit for. In that definition, it includes all the things that the Applicants are trying to do on the property - barns, stable, shed silo, garage, farm housing. That agricultural use includes what they are trying to put on the site. If the ZBA looks at the definition of Agricultural Use it talks about the things that are actually being done there including management of the land for agriculture. It includes raising cows, horses, and poultry and other livestock. Selling the products that are grown and raised on the farm they believe that the butchering, everything that is happening on the site, is encompassed within the two definitions that are the specific part of MDR-2. Agricultural Structure and uses is one category for the five acre requirement. She states there was some mention of Agricultural District and whether the Applicants could apply for that. They reached out to the County and found that they can only do that in October. D. Eskoff states that she thought there was a time frame. S. Ferradino states that they also need to be an owner to apply and they are not there yet. D. Eskoff states the question was just in general was to try to define this better to the Board because of falling into different areas and they don't have a determination on that. That is something the Board would look at to try to classify something more towards a farm than toward a Hobby Farm. S. Ferradino states that she does not see her clients qualify for a Hobby Farm because of the activities that they wish to pursue. It kind of started out that way, but fell in love with it. This is what brought them here today. The next part that she feels should be addressed is acreage and whether they remove things like wetlands and steep slopes from the calculations. Some Codes specifically call that out right in their Code. They say constrained lands removed from the acreage calculation. She word searched the Town's entire Code and could not find a thing. She does not think that this is allowed absent the Code specifically saying that the ZBA (Town) would remove those from there. In fact, they reached out and found that her clients can perform some types of agricultural on the wetlands. They are not intending on doing that initially, but maybe things that happen on the wetlands. D. Eskoff states that if the Board can have that information in writing or have someone come in. S. Ferradino states yes, that do have a DEC opinion from 2005 and will provide that to the ZBA. She looked at the definition of Lot Area and the Town's definitions are fantastic, it is unusual. They actually provide some good guidance. The definition of Lot

Area which it states minimum area of lot area. It's the computed area maintain within the lot lines. It does not mention anything about pulling out constrained lands. She thinks that the wetlands should be included in those calculations which keep the request for the Area Variance at 4.96. This is the third jurisdiction this month that is confusing the practical difficulties test she has seen it in somebody's Code and in two Applications. The practical difficulties were replaced in 1992. 27 years ago that was wiped out by the new statute that has the five part test. D. Eskoff states that the ZBA uses the 5 part test, but the ZBA is still in the process of accepting this Application so the ZBA will not discuss this case. S. Ferradino states that the Application itself is outdated. D. Eskoff states the Application form is in the process of being updated. The ZBA will address those questions as they go through them. S. Ferradino states that she has prepared a supplement to the Application which she will give to the Board at the conclusion of this which addresses each of the five issues so the ZBA has a record their responses. D. Eskoff states the ZBA will have that for when the time comes too. S. Ferradino reviews the five standards. She states whether there is an undesirable change that will be produced and then the character of the neighborhood or a detriment to the nearby properties. Not of the use but in the granting of the variance. In this instance, the ZBA has to look at specific standard will .2% change in the acreage requirement produce a drastic change in the neighborhood. She thinks the answer to that has to be no just like the answer to will 15' out of 200' difference in their frontage. So drastically change the character of the neighborhood as to it will almost change the zoning. It looks specifically at the standard; she read it word for word. She thinks most people think what's the use that is happening and will that drastically change, but that is not what the standard says. The standard says in the granting of the variance. If the Applicants were asking to put a farm on a half-acre parcel with 97 goats maybe there is an issue there. That's not the type of variance they are asking for. They are asking for a very tiny percentage of a variance. Granting this variance will not be out of conformance with the other properties. These 2 variances will be indistinguishable by the human eye. They have information from their engineer which says not only do they meet but they exceed the safety standards which is in part why it is important. Which is the site distance either way when cars are coming by? There is information in the record which addresses that specific issue. If they go on to the second requirement whether the benefits sought by the Applicant can be achieved by some method feasible for the Applicant to pursue other than an Area Variance they would say no, they absolutely couldn't. Her clients moved here from Seattle didn't intend to be farmers and started a farm and got pretty passionate about it and really enjoy what they are doing. Then found out that the activities that they were conducting at their home right now don't fit the lot size. Their first thought was what do they do, how do they resolve this. Obviously to have the benefit of the land they have really worked hard over the eight years to really cultivate. They have really changed the soils they have made this area a high producer. To be able to relocate on the same street is hugely valuable and it cannot be replicated in anyway. Other than to move to another county. They don't want to do that. If the ZBA looks at the standard again, could this be achieved by some other method they are saying no it can't. There isn't other available property on this street that would apply in the way this does. C. Kolakowski asks does it state that it has to be a convenient. D. Eskoff states that she thinks the ZBA should stay away from discussing the case at this time. She asks what they are representing now is going to supplement for the Applicants Application that they put forward in their answers. S. Ferradino states it's going to supplement it, yes. D. Eskoff states all this is somewhat what the Applicants have said. Just so the ZBA knows where they are and she would appreciate is they address the ZBA in that aspect because if and when the ZBA accepts the Application then they will discuss these various things. Your point of view and the Applicants point of view regarding them. S. Ferradino asks when D. Eskoff states accepts the Application does the ZBA mean when everything the ZBA has asked for has been provided. D. Eskoff states when the ZBA is comfortable with that and they are comfortable with the Zoning Officer's decision on the case

and they know exactly what he is looking at and he was waiting for outstanding information. They are not there yet. S. Ferradino states she understands. Along the same standard they can't increase frontage because either side of them are other property owners and one has a driveway and one has a structure on the other side. They are not able to increase that. Only a nearby property will work for her clients to be able to maintain their existing property and continue their farming. The third standard whether the requested Area Variance is substantial. She feels it is absolutely not. She has reviewed a ton of cases that have requested Area Variances substantial and has been to the appellate division on this issue just this year. Substantially might be found at 60% but she has never seen a case where it is less than 1% or less than 7%, Which are the percentages they are asking for relief. The next standard whether the proposed Variance will have adverse effect or impact on the physical or environmental conditions of the neighborhood. They are saying absolutely not. Runoff is not going to change because they are .06 acres short of the 5 acre requirement. The visual impact is not going to be any different. There just really aren't any challenges to the physical or environmental conditions within the property from the two minor variances that they are requesting. Finally, whether the alleged difficulty was self-created they would say no, they did not purchase this property with knowledge of the variance and then try to utilize it for purpose that wasn't permitted. They have come to the ZBA and asked for the appropriate relief in advance of purchasing the property. This arose because passion outgrew the property. They are coming through the proper channels in order to come to the ZBA seeking the variance relief in advance of purchase. D. Eskoff thanks S. Ferradino and states that anything they can supplement to the Board is helpful. S. Ferradino states that she has pictures and eight copies of her letter which kind of summarizes these points. D. Eskoff asks if the Applicants wish to speak as well or is S. Ferradino speaking solely for them. S. Ferradino states she is speaking for them she thinks if the ZBA has questions they would be absolutely happy to answer them. If there is more information that the ZBA thinks would be helpful they would love present that. D. Eskoff asks M. Waldron for his update on this case and where the ZBA and M. Waldron are in their path in reviewing this Application. M. Waldron states that he was able to reach out to Town Counsel and has made a determination that the uses in the table are not cumulative. They are still working on some definitions to make a determination. He asks for a little more time. He apologizes. S. Ferradino asks who Town Counsel is. Is it still Mark Schachner. She wasn't sure if he was handling it from his firm or someone else. M. Waldron states it is. D. Eskoff asks if the ZBA has any questions for the Applicants in addition while they wait for M. Waldron to make a final determination for them to be able to move forward. She states at this point they cannot because they would be into a Public Hearing and they don't have a final full determination on outstanding questions but if there is anything that could help prepare the Applicant's and put them in the position of being able to provide the ZBA with that information in the interest of time the Board could certainly request it. K. Taub asks with respect of the neighbors looking at the survey that was prepared he sees, for example, to the north there is approximate house location. He does not know if that is to scale or not. The house of the neighbor to the north. Do they know how far it is to the property line? In respect to the neighbor to the south where the barn and garage are right at the road. He sees an indication of a septic field and does not have any idea how far the southerly neighbor's house is from the property line. K. Bedore, K.B. Engineering & Consulting PLLC, is now also present with the Applicants and asks does K. Taub mean west to east. K. Taub apologizes and states yes. K. Taub states that his question involves the house to the east. Where is it in relation to the property line? It is not indicated on the survey. K. Bedore states that the distance that he depicted on the site plan is approximate since he couldn't go on private property. He scaled from the property line from the right of way with a measuring wheel and he did a 90 degree offset. He has a fair degree of confidence in the separation distance that he has depicted. The house on the left is also an approximation to the west is an approximation based on GIS. K. Taub states that he does not

see any numbers there that is why he is asking. S. Ferradino states that they have updated information that has not been presented yet. K. Bedore asks if K. Taub is he talking the area computations. K. Taub states no he is talking about fronting property lines to the edge of the house on either side. K. Bedore states that he did not show that. He only showed separation distances for the purposes. D. Eskoff states the ZBA can ask for that. K. Taub states that he would like to know where the existing house is to the east in relation to the eastern property boundary and to the west in relation to the western boundary to the houses. S. Ferradino asks why that is important. She is trying to follow his thought process. K. Taub states at this point more information is more valuable than less information. K. Taub states that he is just trying to get a picture. D. Eskoff states that the ZBA often asks for those distances. K. Bedore states that as a licensed engineer and a project surveyor he feels it is appropriate in the interest in accuracy for the record it would be more appropriate to determine more accurately. D. Eskoff states that the ZBA likes to know where the neighbors live. Their envelope of where they are living. How close it is to what is going on next to them. It could be a pool, for example, it does not have to be this situation. They try to at least look at a general distance. Sometimes it can be an overhead map so the ZBA has a better idea. K. Bedore states that he thinks that the polite way to do that without approaching the neighbors and asking for permission to get on their lots and survey this to do something like GIS website. D. Eskoff states that would be fine. It does not have to be exact just something that gives the ZBA a ball park idea. K. Bedore states based on recollection the house to the east is maybe 30'-40' past where he shows their septic. D. Eskoff asks if the house on the right is the seller. K. Bedore states that the Bencze's are. To the west the driveway is fairly close to their property line. There is a very small wooded buffer on their lot. There will be a natural wooded buffer. D. Eskoff states something that could be presented to the ZBA would be helpful. K. Taub states with respect to the wetlands at the rear of the property is there a distance from the beginning of the wetland that he marked as wetlands buffer 100' to the southern property line. What percentage of this slightly less than 5 acre lot is encompassed by the wetlands? K. Bedore states that they did compute that recently. D. Eskoff states that she believes the ZBA asked for that last meeting. K. Bedore states yes, that came from the land surveyor. The wetlands are 53,369 square feet. D. Eskoff states as long as the ZBA has it in writing it will help everyone. K. Bedore states that the wetlands consist of 24.79%. They also added the cemetery approximately 50'x54' which is 2,700 square feet. That constitutes 1.25%. D. Eskoff states that they provided photos. S. Ferradino states for clarity in the photos the Board will see blue flags and those are where the location of grave sites are in the cemetery. K. Taub asks if the intension of most of the pine to be cut down immediately after purchase. J. Gupta-Carlson states no. K. Taub asks what the intension is. J. Gupta-Carlson states that they are going to hand cut not excavate the minimum amount of trees necessary simply to install fencing. There are open spots available for structures. The goal is to minimally impact the land over a very long period of time rather than doing things at once. N. Toussaint asks are the plans for the cemetery to put a fence around it and just preserve it forever. J. Gupta-Carlson states that was their initially intent but then Ron Feulner who is the cemetery expert in Town told them that actually the best thing to do is simply mark off the corners and let the animals graze over the cemetery because that would keep the clearing of brush down. When the family wanted to come out and see it, it would be cleared. D. Eskoff states that it is a very old cemetery to her understanding and graves barely noticeable. H. Gupta-Carlson states their intension is to keep it clean so it keeps the historical character of it. D. Eskoff states they are going to have to postpone the acceptance of this Application. The Applicants have time to submit any information that they wish to the ZBA and anything else that was requested tonight. Discussion takes place among the Board regarding the timing for submission of requested information given the holidays. The Board requests the Applicants submit everything to the Building Department by December 31, 2019. S. Ferradino believes they will get it to the Building Department before Christmas. S. Ferradino asks if the ZBA takes electronic circulation

or data. D. Eskoff states that they can email some things. K. McMahon states that it depends on what it is. D. Eskoff agrees. K. McMahon states not a map. S. Ferradino states that letters and pictures can they email those. K. McMahon states that she would prefer copies sent because then she is not making the copies for the ZBA members. D. Eskoff states that if it is last minute and they can't get it in to call K. McMahon. S. Ferradino asks if they come back on January 7, 2020 and they have submitted everything does the ZBA set the Public Hearing at that point. D. Eskoff states their goal is to get the information not only from the Applicants but they also need that information so the Zoning Officer can make a full and complete determination on their Application from the information that they have provided in addition. M. Waldron states that he has to finish whatever he was consulting on last time. D. Eskoff states if the ZBA has everything and feels comfortable with it then they will accept the Application. Then the following month will be the beginning of the Public Hearing. That is when anyone is here from the audience can speak. M. Waldron asks for the documentation from 2015 from DEC. S. Ferradino states that she will email it to him tomorrow. M. Waldron states if she can submit it with the rest of the information he will review it all at once. He asks if there was any jurisdiction body that had information about the farm animals and their benefit of the use of the wetlands or detriment to the wetlands. D. Eskoff states that she thinks what M. Waldron is saying is DEC are experts on wetlands they are not necessarily experts on farm animals. M. Waldron states from Agriculture and Markets. S. Ferradino states that she is not sure what M. Waldron is asking for. M. Waldron states what comes to mind is if the Applicants have animals in the wetlands. S. Ferradino states if it is bad for the animals. M. Waldron states yes. J. Gupta-Carlson states that they have no intension of putting animals on the wetlands. There are many things that are allowed including cattle. The goal is to use the lands in a way that will benefit the wetlands and people. D. Eskoff states that last month they had mentioned that they could put the goats on the wetlands. She believes that is where M. Waldron is going with that and Ms. Ferradino mentioned that DEC is saying that it is ok.

MOTION: N. Toussaint
 SECOND: C. Kolakowski

RESOLVED, that the Town of Greenfield Zoning Board of Appeals hereby tables and postpones the review of the Application for an Area Variance for 141 Squashville Road, Case #1017, TM # 137.-2-36.112 until the January 7, 2020 Zoning Board of Appeals meeting pending:

- Receipt of requested information by December 31, 2019

VOTE: Ayes: D. Eskoff, C. Kolakowski, N. Toussaint, K. Taub, and S. MacDonald
 Noes: None
 Abstain: None
 Absent: A. Wine

Meeting adjourned at 7:39 p.m. All members in favor.

Respectfully submitted by,

Kimberley McMahon
 ZBA Secretary