

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

December 6, 2016

REGULAR MEETING

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Kevin Veitch at 7:30 p.m. On roll call the following members are present: Kevin Veitch, Denise Eskoff, Joseph Szpak and Andrew Wine, Alternate. Curt Kolakowski and Laura Sanda are absent.

November 1, 2016 MINUTES

Both K. Veitch and A. Wine would need to recuse themselves as they were absent from the November 1, 2016 meeting, the approval of the November minutes will be at the January meeting.

OLD BUSINESS

DAVID KWIAT – Area Variance

Case#969, Hovey Road

No one is present for the applicant.

NICHOLAS GATZENDORFER – Area Variance

Case#972, Cauty Road

Nicholas Daigle is present for the application. A public hearing is opened at 7:33 p.m. K. Veitch reviews the request. J. Szpak states that after the foundation was poured it was recognized that the foundation did not meet front setbacks. There being no public comments, this public hearing is closed at 7:34 p.m.

J. Szpak states that the lot was a difficult one to build on; there was a contractor who mis-measured for the placement and that builder is no longer involved; the new builder poured on those marks which were wrong; they angled the house a little more to better place it on the property, but it didn't meet the setback requirements which was noted after the foundation was poured. The corner of the garage is what sticks out a little bit towards the road by 7.3-feet. K. Veitch questions that knowing that there was a problem, construction was continued. J. Szpak states that we did not know that last month and there was no hold order on it. D. Eskoff states that that does not mean that the construction should have continued and that increases the substantiality of the variance request because it was a foundation and now it is a foundation with a building on it. J. Szpak states that he does not appreciate that the construction continued because he thinks it puts unreasonable pressure on the Board. K. Veitch states that he is bothered by that fact also. J. Szpak questions that it was the assumption of the applicant that they would move the whole foundation or if this is not approved, would they redesign the garage. N. Daigle states that he did not have an assumption in either direction. The framer took the initiative to frame the walls. He explained that there was a cease and desist. He does not want to say that there is a simple solution to that, but if it was necessary to move the foundation, they could pick it up, suspend it in the air to move the foundation. It would be a challenge, but not impossible by any stretch. The foundation would be a major event to move. D. Eskoff states that to the Board it is not minor that they built those walls. A. Wine asks if someone told them to stop building. N. Daigle states that when they had the property surveyed for the bank, that is when they realized that they had a

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problem. He then applied for the variance and when he was here last time, he was not told not to do anything. He did not believe it was a smart move to do it either, but unfortunately he subbed the framing out and the framing contractor decided to continue. D. Eskoff states that one must assume when you have a pending application that has not been decided upon, you would think you would wait until a decision was made. N. Daigle states that once he was aware he told them to stop and they have done nothing else. He apologizes for that but from their perspective that is the smaller expense. N. Daigle states that they had the survey done when they took over. This project has had issues, it is a tough site. To meet the setbacks from the brook, the garage theoretically, if you go further back you start to push the septic system towards the brook. D. Eskoff states that then maybe the garage needs to be smaller. K. Veitch states that N. Daigle is the builder who took over, but the garage was framed by a subcontractor. He states that right now there is not a lot going in the applicant's direction for an approval. One of the things that the applicant has to show the Board is that the benefit cannot be achieved by other feasible means. He asks N. Daigle to think about going back to the owner and come up with a mitigation that would satisfy Greenfield. D. Eskoff states some type of mitigation. K. Veitch states that it sounds like no one is too happy with the situation and we don't have a full Board present. N. Daigle states that then the Board is basically saying, take the garage down. J. Szpak states that they could do that and move the garage back the 7'. N. Daigle states that then that puts the septic closer to the brook and the Town has a 50' setback from water bodies. K. Veitch states that this would give N. Daigle the opportunity to speak to the Building Inspector and see if there are minor changes that could be made. He states that he did meet at the site with the Building Inspector; the foundation is in, so short of tearing down the foundation and pushing it back which will cause them to start encroaching on the brook. From his experience, most municipalities would rather one stay away from the brook. K. Veitch states that the original design and measurements didn't have an impact on the brook, so the hardship is self-created. D. Eskoff states that the foundation is in but what is on top of it is what changes the character of the neighborhood. If there were a way to somehow mitigate that. N. Daigle explains on the plot plan. He states that the Planning Board approved this lot. D. Eskoff states that it was approved with the assumption that the setbacks would be maintained. The overall picture has now changed. N. Daigle states that there is an encroachment but it is relatively minor. J. Szpak states that this sparked a very emotional reaction, that it wasn't measured right and then on top of that it puts the Board in a very bad position that it was built on top of a non-compliant foundation. N. Daigle states that he apologizes if he has given the impression that this was an arrogant move, it was not. Structurally you would be compromising things – you have to cut the foundation, slide it back, etc. J. Szpak suggests going through the criteria. Whether the benefit can be achieved by other feasible means – J. Szpak states that the benefit is to actually retain the garage. D. Eskoff states that the garage is the benefit, not to keep it. There are other ways to do the garage. J. Szpak states that there is no question that something different could be done for a garage, but how feasible is it. A. Wine states that it doesn't sound terribly feasible, especially at this time of year. D. Eskoff states that she does not think that it is ever not a hardship to tear something down or redo construction. A. Wine states that if we are talking about not moving the foundation because he can't go any closer to the brook, shaving 7' off the side of the garage, all of a sudden it looks like you are taking away an entire stall. K. Veitch states that the biggest problem is that these things come back to the ZBA as problems that have not been dealt with by the municipality. It is a violation; there should be a penalty involved. Unfortunately we are stuck here and the only penalty we can give someone is to not approve. It is not fair to the homeowner. D. Eskoff states that the penalty is far more substantial because of what it would cost to tear it down would way exceed any violation penalty. Undesirable change to the neighborhood character or nearby properties – D. Eskoff states that continuing construction whether or not it was authorized sets a very bad neighborhood precedent and goes against the code. A. Wine questions that D. Eskoff means that other neighbors would do the same thing. J. Szpak states that although he agrees with what is being said, his view is that that is a separate issue than an undesirable change to the neighborhood. Somethings don't meet setbacks but they could make the neighborhood look better. For example, if all the houses in a neighborhood were all nicely lined up in a row, that were non-compliant, then it could look nice. In this case, there is a neighboring non-compliant house that is sitting almost right on the road, the closest house on the curve. D. Eskoff states that it is sitting there legally. J. Szpak states it is pre-existing, non-compliant and across the street there is a median between 9N and Cauty Road. You can see the house coming down 9N, that is where it looks the oddest because it points

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out just a little bit. It was going to look like that anyway; it's just a little more. Coming from Cauty Road, because there is the pre-existing, non-compliant house that is right on the road, it does not make this house look close to the road, it makes it look farther away from the road. He states that the cars going by have a house 7' closer; it is not the neighborhood that is impacted in his mind. A. Wine asks if we have received any correspondence from anyone. We have not. J. Szpak states that while he hates to set a precedent, which is not a precedent because it is a very unique case, and he agrees with what has been said, from an undesirable change to the neighborhood, from his personal perspective, there is no undesirable change to the neighborhood due to pre-existing conditions. D. Eskoff asks if it matters that the Planning Board looked at this house and had it set to a certain standard and now the standard has been changed because the setback wasn't met. J. Szpak states that he does not see the Planning Board being relevant in this. D. Eskoff states that the end result is not what was expected. K. Veitch asks if the applicant has a site plan showing where the septic is on this property. N. Daigle states he does not have one with him but he indicates on the plans where the tank is but the field has not been installed yet. The well has been drilled and there is a setback requirement from that for the leach field and he points out the location where that has to be. R. Rowland states that N. Daigle and the current property owners did not put the well in that location. The person who subdivided the lot put the well in. J. Szpak states that the only thing that he can think of for a potential mitigating action, and he is not recommending this if the project is approved, is that coming down the road from 9N, they could easily put a buffer on the road side to block the garage. N. Daigle states that that is something that was suggested to the homeowner and they would like to do that. They would like some privacy also. Whether the request is substantial and what can be done to mitigate that – J. Szpak states that we have discussed scaling back and they all come with a cost. K. Veitch states that it probably wouldn't be so substantial if this was coming to us as a design to be built. J. Szpak states that taking out the emotional he does not think it is substantial. D. Eskoff states that she does not think that you can separate that, there is a procedural element. K. Veitch states that it is the legality. He states that it is not so much what the applicant is asking for, the fact of the matter is that we don't have a system in place that penalizes these things. A. Wine states that it is substantial in the fact that the work is already done and to change it would be substantial. K. Veitch states that would be a substantial hardship, holding the owner responsible for a mistake that someone else made who is no longer even in the picture. A. Wine states that it is also not our problem to figure out how this would be paid for. D. Eskoff states that it would be easier to get passed that if they had just stopped building. J. Szpak states that he agrees with what has been said, but in his view the request is not substantial. Whether the request will have adverse physical or environmental effects – D. Eskoff states that she thinks that in this case the opposite would be true because if they move it that would be more risk to the environmental factors because they are unknown to us at this time. As it stands now, the way it was approved, 7' in the other direction, it fits. Whether the alleged difficulty is self-created – Board consensus is that it is, but that is not determinative. A. Wine states that we were discussing some middle ground; the applicant is going to have to pour more, pick up the whole structure and move it, which will then make him uncompliant with the distance he needs to be from the stream or he needs to grind away the foundation all the way. K. Veitch states that now with more discussion, it makes sense. He was hoping that they could meet with the Building Department and come up with some alternative to the structure that would give them what they wanted, asking possibly for less of a variance. A. Wine states that he feels that if they asked for a 2' variance we would have the same reaction because of the process. K. Veitch states that if they made some changes, came back asking for 2', then it would be a lot easier for the Board to acknowledge that they made a mistake, but they made some changes and mitigated the situation. A. Wine asks if the Board could grant a lesser variance contingent on the applicant working something out with the Building Inspector. D. Eskoff states that all the Board can do is deny it to be torn down or approve it with the contingency of some sort of buffer. J. Szpak states that if we grant it our reputation suffers and if we don't it places hardship on the owner. K. Veitch states that he is not concerned about our reputation because there will be another reference to the Town Board that these things have to be addressed and handled differently. It has to happen administratively in the Building Department and not on the Zoning Board table. There is no reason these mistakes are happening if things are being done right. D. Eskoff states that the contractor has to be aware of code, whether it is State or local, they are signing a building permit that signifies that they are going to follow the code – the first person didn't and now this contractor has inherited this. The Board reviews the

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balancing criteria. D. Eskoff states that whether this is self-created is not detrimental to the case; the other 4 criteria are the more prevalent ones. K. Veitch states that the environmental impact is going to be affected if we make a change and so that makes it weigh more towards an approval than a denial. A. Wine states that if we deny this, it doesn't mean he is just going to go ahead and do something else; he will have to start the process over again. He would have to make the garage smaller and start that over, keeping it away from the creek and the road. J. Szpak states that the balance test is between the benefit to the applicant vs. the detrimental health, safety and welfare to the community. A. Wine states that the community is going to be fine. D. Eskoff states that the issue with the community is exactly what K. Veitch stated. The Town needs to have a better way of dealing with this and that would benefit the community more than perhaps tearing down a garage. K. Veitch states that he does not think that the ZBA should be setting examples or setting precedent in these situations, it is an administrative issue. K. Veitch asks the applicant if he would like to adjourn this to the next meeting since we don't have all Board members present tonight. D. Eskoff states that we don't have any public opposition to this. J. Szpak asks if N. Daigle would be opposed to a mitigating action to have some evergreens planted that would provide some partial blocking of that corner from Route 9N. N. Daigle states that he will pick up the expense for that. The owners got ripped off by the other builder and N. Daigle feels bad for them. It is not a very expensive solution to a big problem and it achieves everyone's goals. J. Szpak states that with a mature height of at least 6' tall. Discussion takes place as to how many trees and in what area. J. Szpak states that we could make the approval contingent upon a buffering plan to be submitted to the Board or someone else. Discussion takes place about the location of the plantings which is suggested to be as one comes in from the Route 9N side to partially block the view. J. Szpak suggests 3 or more evergreens, 6' or greater at planting, to him that would be satisfactory. D. Eskoff suggests 6 trees, spaced out so that they don't crowd each other and die. K. Veitch states that part of the condition would be that whatever is planted must be maintained.

RESOLUTION – N. Gatzendorfer, Area Variance

MOTION: J. Szpak

SECOND: A. Wine

RESOLVED, that the Zoning Board of Appeals approves the application of Nicholas Gatzendorfer for an area variance for property located at 11 Canty Road, TM# 151.-2-105.4, as follows:

- **7.3' front yard setback variance**

This approval is based on the following criteria:

- **Benefit cannot be achieved by other feasible means**
- **No undesired change to the neighborhood or character of the nearby properties and view of the garage will be mitigated by planting a minimum of six 6' tall or greater evergreens between the garage and the surrounding road front**
- **The request will not have any adverse physical or environmental effects and moving the location of the garage and house brings it closer to an existing stream with a potential risk of adverse effects**
- **Although the difficulty is self-created, it was not purposely performed and is not judged overall to outweigh the other criteria**

VOTE: Ayes: Eskoff, Szpak, Veitch, Wine

Noes: None

Absent: Kolakowski, Sanda

AMANDA THOMAS – AREA VARIANCE

Case#973, Boyhaven Road

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Stuart Thomas and his daughter, Amanda Thomas, are present. K. Veitch reviews that the applicant is seeking area variances to subdivide a 9.65 acre lot into two lots, each requiring 1.17 acres of variance. D. Eskoff states that there are a number of issues here with drainage, wet area, environmental issues and there were comments from the Planning Board's 11/8 meeting.

A public hearing is opened at 8:25 p.m. and closed as there are no public comments.

J. Szpak states that the owner has not been able to sell this lot and the applicant is trying to make it more attractive to sell. D. Eskoff states that this is the only offer that they have had and the person making the offer wants to develop it into two lots. She did ask L. Fiorino, the Town Assessor, to put together some figures on pricing of lots in and around Greenfield and that area, not that we sit in judgement of a price, but the pricing is all over the place. She states that she does have a lot of empathy for the Evans who obviously have health issues; things that have changed the course of how they led their lives; moving away and not building the house they bought that property for, but it doesn't mean that it has been for sale at the right price or marketed correctly. We cannot make an assumption on that. There were no purchase offers. K. Veitch asks if the applicant owns the property or is going to buy the property. S. Thomas states that the Evans are friends of theirs, she is a realtor and knows much about the value of property. They have this lot and A. Thomas, who is an interior designer, thought that this would be an opportunity. A. Thomas states that she wanted to use this land to create some really nice houses. K. Veitch reiterates his question regarding whether they own the property. S. Thomas states that they have an ownership interest only through contract. D. Eskoff asks if they have considered building one really great house. A. Thomas states that she thinks that for the price that the Evans need to get out of the land, the size and price of the house that would have to go on it to make it work in the end is probably too high. D. Eskoff states that it is a big lot and they could put a big house on it. She states that she lives not far from this and there is a big variety in the types of homes in the area. D. Eskoff states that she is opposed to this and her problem is that that area is very rural, we are trying to keep LDR very rural, the Town was very clear when they made the Comprehensive Plan that they want 6 acre lots, they want the space. She realizes that there is a house in the area on 3 acres, many of the ones where she lives are on 3 acres, but there is a horse farm nearby and a more suburban type development on Rebecca Drive which is not really what that area wants to see. A beautiful home on a 9 acre lot, which does have some environmental concerns so that when you split that lot into 2 non-conforming lots, and then potential wet/drainage issues, you have a lot more space to work with to make it comply. By splitting this lot, she thinks the applicant is risking having potentially more problems which may cost them more in the long run. S. Thomas states that he understands but he has been in real estate for many years, done a lot of new construction deals, when you have a subdivision like Rebecca Drive, those lots are vastly smaller than 4 acres and it is almost tracty. The idea of rural, once you get the frontage, and if you have over 300' of frontage, that takes the idea of a tract house out of the picture. The way they are proposing this subdivision is to maintain the frontage as rural by not developing the house too close to the front. There is no environmental impact whatsoever that they could see. The Planning Board asked the applicant to have it re-delineated and they have contacted the surveyor, who has given them a proposal and they are prepared to go ahead. D. Eskoff states that the ZBA does not have that information to go by and one of the criteria the Board has to look at is whether or not the request will have any adverse physical or environmental effects and without that information, the ZBA cannot make a complete determination. S. Thomas states that the Board has that information if they go to the survey. D. Eskoff states that we don't have complete answers. S. Thomas states that we have what we have. K. Veitch asks what the applicant was going to prepare for the Planning Board. S. Thomas states that the Planning Board asked for sight distance and they have staked out the driveway; they have to get one more thing on the building permit to submit. The main issue is that it is not wetlands; it is called a wet area. They were asked to have this re-delineated and put on the survey. If you look at what was there in 2002 and take a look at the pictures of the drainage that S. Thomas provided, it is not currently wet. K. Veitch states that the whole thing about what they are going to have redone is important because they have changed a lot of the wetland areas and how they rate them now. S. Thomas indicates the recheck zone on his submission and reiterates that these lots would be almost 5 acres. D. Eskoff

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reads from the code stating that ‘no building or land shall be used or occupied, no building or part thereof shall be erected, removed or altered except in conforming with the regulations herein set forth for the district in which it is located with the requirements of the storm water management erosion and sediment control provisions of the Town Code’(S. 105-21). As you go through the code it talks about non-conforming lots and this is what it says about multiple unimproved lots – let’s consider the situation that these were two lots. “Multiple unimproved lots – 2 or more contiguous unimproved, non-conforming lots held in the same ownership as of record as of March 22, 2007 shall be combined to the extent necessary to comply with the space and bulk regulations of the district in which they are located and thereafter shall be considered under the provisions of 105-45, A”(S. 105-45). What they are saying is the opposite of what the applicant wants to do. This piece of land which has been held since 2006, which is prior to this date, our code states the complete opposite of what the applicant is trying to do. S. Thomas states that he understands that and asks if the Board wants them to amend their variance to include that to be an exception, he would be willing to do that. D. Eskoff states that is not an option. What she is saying is that we have to refer to our code and to the Comprehensive Plan. She states that from the date of the Code and Comprehensive Plan forward, the purpose is to make lots as conforming as possible, not to take conforming lots and make them un-conforming. In this case, while they may be able to meet the frontage, they don’t meet acreage and that is always the most pivotal part of looking at a lot. That is what the Board goes by and how the Town zones. She states that the request the applicant is making is very significant and they are not only making it for one lot, they are making it for two lots. S. Thomas states that he thinks that the issue is that why they are here is because it is a hardship. D. Eskoff states that it is a hardship for the owner. K. Veitch states that the applicant cannot claim hardship. S. Thomas states that he is here representing himself and the owners. He states that his daughter has an ownership interest through a contract. K. Veitch states that a hardship can be presented but they are asking the Board to take a legal sized lot and make it into two illegal sized lots – it just doesn’t fly. S. Thomas states that he looked through that and one of the things he looked at is what is the process for the ZBA and what they are supposed to do. He states that his understanding of what a ZBA is supposed to do is to balance the non-conformity, pre-existing with the zoning law, but in doing that they also have to do minimum requests. D. Eskoff states that the ZBA does not have to do minimum requests. The ZBA’s goal is to balance – “The Board of Appeals shall balance benefit to applicant with detriment to health, safety and welfare of the community.” Basically taking everything into account that goes on in the Town of Greenfield and then there is the five factor test. If we approve the variance, then we should grant the minimum variance necessary and we may impose reasonable conditions. An applicant may ask for a variance of 5’ and the Board may give a variance of 2’. In this case the applicant is asking the Board to divide 1 lot into 2 lots, taking a perfectly legal, conforming lot and making it into 2 non-conforming lots, which totally flies in the face of zoning. S. Thomas states that it doesn’t in the sense that this is significant that the owner has tried to sell this, has reduced the price; there are comparable lots in the area but not the same size which came on the market recently at the reduced price. He states that when you have a 3 acre lot with 300’ of frontage or a 9 acre lot with 300’ of frontage, what ends up happening is that extra 4 acres – nothing happens to it. He states that they are trying to take care of the hardship. They have had this property listed for 8 years. D. Eskoff states that obviously they have lowered their price. We are not realtors, but we are homeowners. When someone buys a house and can’t sell it, they don’t come to the ZBA and say, I want to cut my house in half. This is really the same thing because the ZBA is not here so that they can help to sell property. They are here to help if there is a real burden to the property. S. Thomas states that it is. A. Wine states that the applicant can buy the property and build one house, granted that won’t lend to their vision of selling 2 houses on a subdivided piece of property, but they don’t have to do anything to the property to build on it. If you had to do something to the property, then the Board would be more favorable to that. S. Thomas states that one of the things is about characteristics of the neighborhood. He states that he could pick 15 different properties that are not 6 acres in that area. This property was subdivided in 2002 before the current zoning and it was a little different then. The Evans bought this property in good faith to build on. They are just trying to get the money back that they put into it. He states that whether this is 9.654 acres or whether it is 4.8, it is not going to change the characteristics or the neighborhood. So it is consistent that there are other lots less than 6 acres in this area. If you take a look at the number of building permits that have been issued in Greenfield in the last 2 years, and you look at how many houses were built on lots of this

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size, you will see that there are probably none. He states that a couple of years ago he checked with G. McKenna and there was one stick built house and everything else was modular. He states that they are trying to build nice houses here because they believe it will add to the market but they have to do so in such a way that it will work. If they build one house it is not going to help the neighborhood nor Greenfield nor the Evans because it just won't be able to be marketed or sold. K. Veitch states that it seems to him that S. Thomas is trying to capitalize; that he is into this for a financial investment. They are trying to buy a piece of property at a good price, subdivide it so they can build 2 houses so they can financially gain from this. K. Veitch states that he does not see the hardship, all he sees is that the applicant can compare all the properties he wants, every one of them is either pre-existing, they might have been zoned a certain way at a certain time and zoning may have changed, which makes them pre-existing, non-conforming, but the fact of the matter is that the applicant is asking the ZBA to totally forget that what the Town wants is this lot to be this size. K. Veitch states that he has a hard time saying forget what the Town and the Planning Board want. He has a hard time creating 2 substandard lots. He states it would be different if this was 12 acres and they needed a frontage variance. D. Eskoff states that is not as significant. S. Thomas reiterates that he is doing this for a reason, and of course he is in business, but the Evans wrote this hardship letter and the reason they did so is why he is here. He could go find other land and do the same thing, but he considers the Evans friends and he is trying to help them out in their hardship. They have diligently tried to sell their property. He states that if the Board did choose to grant the variance, it would not be a significant change in the Town of Greenfield, it wouldn't affect the community; it wouldn't affect health and safety. K. Veitch states that the letter definitely proves hardship, if S. Thomas were standing here telling them that they needed to do this to be able to sell it, but S. Thomas is standing as the one who is going to benefit from the sale. S. Thomas states that they are creating the same hardship by building one house, a little bigger. J. Szpak states that we should discuss the balancing test. Benefit to the applicant – the ZBA is not here to maximize the profitability of the sale of a piece of property. The benefit is that it is creating a higher sale value to the applicant. He does not believe that is the Board's concern, he feels bad that there is this situation that exists, but it has nothing to do with zoning. D. Eskoff states that their benefit can be achieved by other means by selling the lot for a single house. J. Szpak states that the Board is not accountable to accommodate a profit. He does not believe that the hardship is related to the zoning. Undesirable change to the neighborhood – he states that he would agree with almost everything he heard but from his perspective when he was interviewed for this position, he took an oath that he would hold with the direction of Greenfield and he does not believe that this is in the direction of goodness. It is against what the Town Code wants. We would try to take two properties owned by the same owner and put them together, and this would be just the opposite. A. Wine asks what is going on around this property. J. Szpak states it is a mismatch of things. D. Eskoff states that from her perspective, it is not hugely significant, but when you have 2 houses you increase the amount of noise, traffic, etc. J. Szpak states that he does not weigh that very heavily, but in his view that is a factor. Whether the request is substantial – J. Szpak states that he does not know if it would help at all if one were conforming and the other were non-conforming. One would have a bigger variance than the other but then there would be one conforming lot. D. Eskoff states that it would be better but it would not resolve the difference. J. Szpak states that it is not substantial, it is acreage only. D. Eskoff states that it is 1.17 per lot and she states that is substantial when you are taking a standard lot and making it substandard, it becomes very substantial. J. Szpak states that is the part he objects to all together. Whether the request would have adverse physical or environmental effects – J. Szpak states that he does not have any information that would state that it would have adverse effects. D. Eskoff states that we don't know for sure, there are some unknowns. J. Szpak states that it is kind of an awkward lot. He remembers looking at this lot himself personally years ago and he did not like it at all because of the water situation. Whether the alleged difficulty is self-created – J. Szpak states that he thinks it is totally self-created. There is no issue here – we are creating an issue. There is a difficulty but it has nothing to do with this piece of property. D. Eskoff states that we have empathy for the property owners in their inability to sell this despite having it listed, but it does not preclude that it is not the ZBA's role to determine whether or not the property owners could in fact sell it or not. They bought the property to live on it. J. Szpak states that they paid what it was worth to them, but it is not worth that to the market. K. Veitch states that it is only worth what someone is willing to pay for it. J. Szpak states that he is opposed to this fundamentally because he thinks it is going in the wrong direction from where we are trying to take

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Greenfield, the weighing test he thinks would be somewhat close, but he would not be favorable to it. A. Wine questions that the issue at hand is that the lot is perceived to be unsellable as is and that they applicant needs to subdivide it to sell it, and that is a condition of sale? J. Szpak states that he totally respects what they are trying to do here, he just does not think, as a Board member, that it is the right thing to do. S. Thomas states that he does not know if they should withdraw this or just go ahead and let the Board vote. It does not seem positive. He understands the issues with it and having gone thru many Zoning Boards he is not surprised, but he was hoping for a little indulgence in the Evans' situation. He does not think that it is going to make a big change. The significance of 4.8 or 6 acres is not really significant. J. Szpak asks if the applicant is proposing that the Board not act on this and they come back with a new proposal. S. Thomas states if the Board decides not to approve this, can he come back another time with another proposal if the Evans choose to. K. Veitch states that if the Board denies it, the applicant has to wait a year. If they withdraw the application based on what they are hearing, then they can come back whenever. Applicant withdraws application.

DAVID KWIAT – Area Variance

Case#969, Hovey Road

K. Veitch asks if there is anyone present representing the D. Kwiat case. There is no one present for the applicant. He asks for a motion to table the case until we hear from a representative. J. Szpak asks if the Board can have a discussion on the criteria. D. Eskoff states that it would be best if we did not. We have asked for permission to go on the land and we have never gotten a response. There is some indication that we may be getting some correspondence but we don't know that for a fact. No one has shown up. This case is kind of in limbo, we have neighbors sitting here who have shown up. K. Veitch states that we have been informed that there is additional legal representation that has been hired for this case. A. Wine asks if there is any function through which the neighbors who have been here for the last hour and a half, can get their thoughts on the record. D. Eskoff states that we want to make sure and give them the opportunity that if they did show up to be able to listen to them and the applicant did not show up. K. Veitch states that the public hearing has been adjourned and it will not be closed until the Board is ready to make a decision. When the applicant does come back, the opportunity for the public to speak again will be there. A neighbor states that some lawyer did not show up and the Board is going to give them another opportunity – that is inappropriate. D. Eskoff states that we do not know what is happening. K. Veitch states that it is not appreciated. J. Szpak states that it is not inappropriate, it is not necessarily logical or fair, but it is appropriate. D. Eskoff states that we have been told that the potential is there for representation and paperwork. This is a detailed case and we definitely want to have it reviewed by our own attorney. J. Szpak states that it is not in our best interest to act at all tonight. K. Veitch asks if there is any new information that anyone wants to present. M. Cassavant states that the neighbors have been waiting for the Board to visit their properties. K. Veitch states that it is not the neighbors' properties that the Board wants to see. D. Eskoff state that we have been waiting for permission from the applicant to visit that property. J. Szpak states that he has driven the neighborhood, but actually wants to go on the applicant's property. D. Eskoff explains that the Board normally stays on the property involved with the case and not the neighbors' properties. K. Veitch explains that there are proper procedures that must be followed. The Board discusses tabling the application and asking for a response from the applicant.

RESOLUTION – D. Kwiat, Area Variance

MOTION: D. Eskoff

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals tables the application of David Kwiat for an area variance for property located at 19 Hovey Road, TM#125.-2-56 to the January 3, 2017 meeting with the stipulation that D. Kwiat and/or any representation for D. Kwiat respond to the Zoning Board of Appeals with their intention to continue this case by December 20, 2016.

VOTE: Ayes: Eskoff, Szpak, Veitch, Wine
Noes: None
Absent: Kolakowski, Sanda

DISCUSSION

K. Veitch will be stepping down as Chair of the ZBA and D. Eskoff thanks him for his leadership.

Meeting adjourned at 9:12 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary