

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

**June 4, 2019**

**REGULAR MEETING**

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Joe Szpak, vice chair, at 7:01 p.m. On roll call the following members are present: J. Szpak, N. Toussaint A. Wine and K. Taub, Alternate. Denise Eskoff and C. Kolakowski are absent. Michael Waldron, Zoning Administrator/Codes Enforcement Officer is also present. J. Szpak states that Ken Taub, Alternate, will have full voting privileges this evening due to the absence D. Eskoff and C. Kolalkowski.

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**Minutes**

May 7, 2019 Minutes

MOTION: N. Toussaint  
 SECOND: K. Taub  
 ABSTAIN: None

RESOLVED, The Zoning Board of Appeals waives the reading of, and accepts the April 2, 2019 Minutes with minor corrections.

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

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**OLD BUSINESS & PUBLIC HEARING**

**Ovitt, G. & Berrigan, J.**  
**TM# 124.-1-38.26**

**Case #1013**  
**122 Plank Road**

Gerry Ovitt and Jackie Berrigan are present. J. Szpak states that this case had a Public Hearing last month and adjourned it.

**RESOLUTION: Ovitt, G. & Berrigan , J. 122 Plank Road Case #1013**

MOTION: A. Wine  
 SECOND: K. Taub

RESOLVED, The Zoning Board of Appeals re-opens the Public Hearing that was adjourned at their May 7, 2019 meeting.

VOTE: Ayes: J. Szpak, N. Toussaint, A. Wine and K. Taub

Noes: None

Abstain: None

Absent: D. Eskoff and C. Kolakowski

J. Szpak opens the Public Hearing at 7:04 p.m. Jamie Ellis states that she was unable to be present at the last meeting and is wondering what the process of opening a Public Hearing. Her understanding was that they would go over some things that were left to be done. J. Szpak states that the Board heard the case and the public hearing so the ZBA does not need to repeat any of that. J. Ellis states that she does not have any further information to present her understanding was that she thought they were going to go over that were contingent upon receipt of. J. Szpak states after the Public Hearing the Board will publicly review the case. J. Ellis states that she outlined concerns she and her husband have in an email to M. Waldron and she believes everyone received that for the last meeting. J. Szpak states yes. They are concerned if there will be any potential adverse impact physically or environmentally toward their property. Again, just seeking clarity. She does not have anything further. J. Szpak states that he read the minutes, he was not present for that meeting and several of the members did a site visit. He understands that they have some water concerns with their house (that has existed for a while). The drainage coming off their neighbors property and especially if that gets worse if they put a swimming pool on their property. J. Ellis asks is the request an in-ground pool or an above ground pool. Will there be more fill moved that could potentially cause more of a drainage issue. J. Szpak closes the Public Hearing at 7:08 p.m. G. Ovitt states that he gave the Board a plot plan and the some of the members came to see the property and he had it all marked out. They want to put an in-ground pool on his property. J. Szpak states that they built the house and deck and there really isn't any other place to put the pool on the property. G. Ovitt states that he has the septic system and the propane tank in the front yard. He can't put it in the front yard. J. Szpak states correct and the desire to have the pool in the back as close to the house as reasonable, that would require a variance from both a back yard setback and a side yard setback and that is what he is asking for. G. Ovitt states correct. J. Szpak asks if the Applicant is planning on any fill. G. Ovitt states maybe a little bit of a berm and add some evergreens. J. Szpak asks if they are planning on building a berm to plant trees to provide privacy between their property and their neighbor's property. G. Ovitt states correct because they complained about their fence, he took the fence down. That is why he would like to put evergreens there. A. Wine asks if the fill they are removing will not put down the hill. G. Ovitt no it will be on his property. They were thinking of planting acerbities. J. Szpak states the property slopes toward the Applicant's house. The water runs from the back where it had been built up towards the house and runs off towards the side of the house toward his barn. G. Ovitt agrees. J. Szpak states that he thought that was important to note because the ZBA looked at the current run off situation. If there are concerns about the current run off situation that not what the ZBA is present for tonight. They are present for evaluating any adverse impact of adding the pool to the current situation. A. Wine asks the Board member; their observation on site where his property slopes down toward the neighbor's property isn't flat. J. Szpak states what it does is it actually pitches up then goes down sharply. He is going to build the lip even higher. A. Wine asks that is where they are discussing the berm will be. G. Ovitt states pretty much. J. Szpak states that he is making the water run toward his property. G. Ovitt agrees. A. Wine states that the pictures that were in the packet were very comprehensive and answered all his questions. N. Toussaint states that it slopes up and he was under the impression that the Applicants property sloped to his neighbors and everything was running off. When they got on the site it is not a berm yet, but the water is going back toward his house. It was a good observation. K. Taub states that land was raised years ago. Given the situation will the pool placed where it is designated placed make the situation worse than it is. J. Szpak states let's go through the criteria. J. Szpak states that he has spoken with Town Counsel and he feels that

there are no legal issues and feels there is no reason for him to weigh in on this case. He went through the process the Board was going to use to make sure he was following the requirements performing this evaluation of this case. A. Wine was not at the site visit and the pictures that were taken by M. Waldron were comprehensive and laid out a lot of what he needed to know about the case. There was 2 pictures of just stakes he is wondering where they are on the map. Is it just showing the property line? K. Taub states that it is showing the property line and it shows the base of the hill. J. Szpak states that when he was on the property he looked to see if there was another reasonable place to put the pool and it would not make sense to put the pool anywhere else. Would it be reasonable to further limit the size of the variance and there are pre-existing structures there that prevents him from moving it closer to the house. Keep in mind that the Applicant has to make sure the water runs out of his area and doesn't run into his house or pool. A. Wine asks if the ZBA can mitigate the size of the pool to make it a smaller variance. N. Toussaint states that it is not a large pool. J. Szpak agrees and states it is a very modest size pool for a family. He feels it is a reasonable request. J. Szpak states that change in character would be the view from the neighbor and the question is undesirable it's such a steep hill no one will see it and he is putting in a berm with evergreens. He is mitigating that condition already. A. Wine asks the evergreen barrier is voluntarily could the ZBA mandate that. J. Szpak states that they definitely could. There is a natural barrier there already besides the barrier the Applicant is adding. It's a steep hill and if someone was to look up to their property no one will see the property. J. Ellis states from their porch they can see the property, less so when there are leaves on the trees. J. Szpak states 6 months out of the year. A. Wine asks if the ZBA wants to mandate the evergreen buffer that the Applicant has already proposing to do. J. Szpak states that they could consider that provide and maintain an evergreen buffer. A. Wine asks when they did a site visit did they notice any other neighbors that were this closer to the property line. N. Toussaint states that here was one on the left hand side and he already planted evergreens. J. Szpak states that if this project did not need a variance it's not unusual for people to put pools in that a neighbor can see. On the other hand it is nice to have a buffer and he is planning on it anyways. K. Taub states that he would be in favor of it if the ZBA has the authority to do so. He feels it would mitigate the concerns the neighbors have. J. Szpak states they do. By code do they have to have a fence around the pool? M. Waldron states yes. J. Szpak asks if the Applicant knows what kind of fence they are putting around the pool. K. Taub states that it looks like imitation raw iron. N. Toussaint states its black aluminum. It's nice. K. Taub states that at the site there were trees on the edge of the berm that were dead from the fill being raised the applicant was talking about cutting those down and replacing them and he assumes they will be replaced with live evergreens as a buffer. G. Ovitt states that he will build a berm with evergreens on top of it. J. Szpak asks what the actual variance the ZBA is looking for is. A. Wine states 28' to one corner and another is 55' to the other corner. A. Wine states the total pool with the concrete apron, and the fence total relief. J. Szpak asks will the request have adverse physical or environmental effects. A. Wine states that is they put the pool in and somehow destabilizes the fill that is in place and causes additional erosion down to the neighbor's property. J. Szpak states that at the site visit the evaluated that and their conclusion state that is not a concern. Weather the alleged difficulty was self-created, the house and deck are there, everything is pre-existing. He feels that it is not self-created. The ZBA members agree. A. Wine states that if they are giving a specific variance for rear yard and side yard setbacks he wants to make sure he has what is needed verses what is allowed in that area. J. Szpak states they have what is needed the question what is the code for rear yard setback. A. Wine states 75' in the LDR (Low Density Residential) District. J. Szpak asks M. Waldron if that is correct. M. Waldron states that it is 75' from the rear yard setback and 50' from the side yard setbacks. The members ask M. Waldron how he got those dimensions. M. Waldron states 63' to the rear. A. Wine asks to the rear of the Applicant's property. M. Waldron states correct. M. Waldron states he was not sure if the ZBA

wants from the fence or from the pool. J. Szpak and A. Wine state that they need it from the pool. 28' to the edge of the pool and they would have 65' if they included the apron and the fence. J. Szpak states that they are using different terminology than the Board is used to and asks when M. Waldron says the word relief what does he mean by that. M. Waldron explains the amount of the structure is beyond the building envelope, beyond the 75' setback. J. Szpak asks how close is the pool going to be to the rear property line. M. Waldron asks the property line or the building envelope. J. Szpak states correct because that is what variance they are giving is for. M. Waldron states I may stand corrected but the variance they are giving how much of this is outside the building envelope that's the relief they are seeking, because this is supposed to be in the building envelope. A. Wine states correct. M. Waldron states whatever is beyond the building envelope is what the Board would be giving for relief. Not the property line. They would not be giving relief to the property line they would be giving relief to the building setback. J. Szpak distance is needed. M. Waldron asks if they want to know from the edge of the pool 28'. M. Waldron states that if that was 28' closer to the house they would be requesting a variance. K. Taub states that the Applicant is asking for 28' beyond what would ordinarily be. J. Szpak asks what would the side variance be. M. Waldron states left side yard 10' variance. J. Szpak states that M. Waldron said that it is sand there and they do the excavation they have to move the pool 6' and they give a variance for 10' and they really need 10' 6" the question is what is a reasonable constructional margin to leave. He is comfortable with 10'. The person doing the excavation has to meet that 10'.

MOTION: A. Wine

SECOND: N. Toussaint

RESOLVED, The Town of Greenfield Zoning Board of Appeals, at their June 4, 2019 meeting, approved your request for an Area Variance for property located at 122 Plank Road, TM# 124.-1-38.26, as follows:

- 28' rear yard setback
- 10' left side 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 pool cannot be reasonably placed anywhere else on the property
- To mitigate changes to the character of the neighborhood, this Area Variance is granted contingent upon the Applicants creating an appropriately shielding berm with an evergreen buffer planted on top of it. The entire buffer, from the bottom of the berm to the top of the evergreen trees, must be no less than five (5) feet
- The Applicant is proposing a modest sized pool in a sand-filled lot,- therefore the request is not substantial
- There are no determined substantial environmental effects of the proposed pool
- This is not a self-created adversity. The lot was filled with sand before the Applicant purchased the property, the steep downhill slope on the back of their property leading to the neighbors lower-elevated property will be mitigated.

VOTE: Ayes: J. Szpak, N. Toussaint, A. Wine and K. Taub

Noes: None

Abstain: None

Absent: D. Eskoff and C. Kolakowski

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## **NEW BUSINESS**

Lally, A. & L. Case #990  
TM# 126.-1-20.111

Extension of Area Variance  
50 Ure Way

. J. Szpak asks why the variance expired. A. Lally states the time limit. J. Szpak asks if there was a problem. A. Lally states they are working through all the steps to get through this process. A. Wine asks there is no frontage and that is why they are going for Open Development. A. Lally states that they only have 50' of road frontage. They are requesting a keyhole lot minor subdivision. A. Wine asks if they are going to build a house. A. Lally states yes. A. Wine asks if there is an existing house on the property. A. Lally states yes. A. Wine asks that they are going through all the steps with the Planning Board and the Town Board what is their current status. A. Lally states he can't remember exactly where they are. Been back and forth with the surveyor. A. Wine asks if they have been approved by the Town Board. A. Lally states yes. J. Szpak asks the Applicant has 50' and needs 150'. A. Lally states yes. A. Wine a map that shows the subdivision. A. Lally states that it has been submitted. They have submitted a newer version that has the actual lines (subdivision) on it. A. Lally explains where they want to subdivide. J. Szpak states that the ZBA will need the map 2 weeks prior to the next meeting. J. Szpak states that they have pictures and the motion from last year. K. taub asks if there was a variance needed for the existing log cabin. A. Lally states that he does not know they if that were done before they purchased the house. He believes that the house was built in 1989 or 1990. He is not sure what was required then.

MOTION: A. Wine  
SECOND: K. Taub

RESOLVED, the Town of Greenfield Zoning Board of Appeals accepts the Application for a Variance for Frontage as complete for 50 Ure Way, Case #990, TM # 126.-1-20.111, and sets a Public Hearing for July 2, 2019 at 7:00 p.m. contingent upon receipt of the following by June 18, 2019:

- A map showing the location of the subdivision of properties.

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

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Rhodes, M Case #1014  
TM# 152.-1-20

Frontage Variance  
21 Bloomfield Road

Matt Rhodes is present. M. Rhodes states that he would like put a pool in and he needs 75' setback and his house is 75.2'. There really is no other spot it can go. J. Szpak asks if it is

a T shaped pool. M. Rhodes states that there is a picture of it. J. Szpak asks if the pool would actually be 3' from the property line. M. Rhodes states that he will say from listening to the other case that is the worst case scenario. J. Szpak states that they are supposed to minimize the variance. If there is any way that he could propose to the Board less than 72' variance that would make their job a lot easier. M. Rhodes states that it took a long time to design the pool and with the fence requirements it really is the only place. It would be 19' from the deck to where the pool is going to be. Where his septic no vehicle can be driven there. He is worried about leaving enough room between the back deck and the pool. N. Toussaint states this plan is hard to read. A. Wine states that there is a lot on the plan. J. Szpak states that he is wondering why the pool can't be pivoted. M. Rhodes states that is where the well is. N. Toussaint asks if the entire side of his house is the leach field. M. Rhodes explain where the tank and leach fields are. J. Szpak states that the Applicant desires to have the pool in the back yard not on the side yard. K. Taub asks if the land behind his property belongs to Skidmore. M. Rhodes yes. K. Taub asks if that is eligible to be built on. M. Rhodes states that it is protected wetlands and train tracks. There is no neighbor that will see this. M. Rhodes states no you will be able to see the fence. K. Taub asks if it can be seen from Daniels Road. M. Rhodes no. K. Taub states that the key point is there is no neighbor where he is seeking the variance. It won't get closer to a to the property line of any neighbor that would be building. M. Rhodes states correct. J. Szpak asks he is 3' from the boundary is the boundary wooded or can he drive through. M. Rhodes states apparently it just to be a road and that is how the boundaries were applied. J. Szpak states that it's only 3'. M. Rhodes states it's wide enough to get a lawn mower through there, but no need to get a truck through there because it is not his property. J. Szpak asks what is the consideration of not putting the pool closer to the house. M. Rhodes states that his main concern is to make sure that a big truck can get back there. The septic tanks will need to be pumped. J. Szpak states that the septic tank can be pumped from the road. J. Szpak states that he would like to see at least 10' so they can get a piece of equipment or a truck through there. J. Szpak asks if there is any consideration of minimize the extent of the variance. M. Rhodes states they can pull it back a little to make everyone's life easier. J. Szpak states that he is a little uncomfortable having a pool 3' from the boundary line. M. Rhodes state to be clear that is built in the with the concrete and the fence. N. Toussaint states it's not 3' from the pool. M. Rhodes states that Bob Gizzi called NYS DEC because it is protected wetlands and their position is as it is seeded and maintained that is not part of the wetlands. J. Szpak states this is a substantial request. They will look for every way to minimize the variance.

MOTION: N. Toussaint

SECOND: K. Taub

RESOLVED, the Town of Greenfield Zoning Board of Appeals accepts the Application for an Area Variance as complete for 21 Bloomfield Road, Case #1014 TM # 152.-1-20, and sets a Public Hearing for July 2, 2019 at 7:00 p.m.

VOTE: Ayes: J. Szpak, N. Toussaint, A. Wine and K. Taub

Noes: None

Abstain: None

Absent: D. Eskoff and C. Kolakowski

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Meeting adjourned at 8:13 p.m. All members in favor.

Respectfully submitted by,

Kimberley McMahon  
ZBA Secretary