

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

June 7, 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, Curt Kolakowski, Laura Sanda, Joseph Szpak, and Andrew Wine, Alternate.

May 3, 2016 MINUTES

MOTION: J. Szpak

SECOND: D. Eskoff

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of May 3, 2016.

VOTE: Ayes: Veitch, Eskoff, Kolakowski, Sanda, Szpak

Noes: None

D. Eskoff states that she had stated incorrectly on the G. David Evans case, the applicant had asked if he had to come back annually to renew his variances. D. Eskoff had stated that if he hadn't sold the lots that he would have to come back. If the subdivision amendment is approved and filed, he would not have to come back. K. Veitch states if the applicant does not do that, the variances are only good for one year.

NEW BUSINESS

COHEN CARTIER – Area Variance

Case# 963, Wilton Road

Cohen and Melissa Cartier are present. C. Cartier reviews that after hearing the Planning Board's comments and receiving a copy of the Environmental Commission's comments, the thought is that it is a little too dense for the property so they have revised their plot plan, eliminating the 2-family and they are now just looking to do office space. They now have the 10' buffer on the left side, no parking in the front – which are a couple of the things that the Planning Board brought up. They are seeking an area variance for acreage and a frontage variance. They will meet all the building setbacks. They will be removing the building completely as the foundation is in very poor condition. D. Eskoff states that the only thing that she noted on the application that is incorrect is that Wilton Road is a County Road, so we have to correct that on the application. K. Veitch questions that the applicant addressed the Planning Board's comments. C. Cartier states they did and M. Cartier states that they were pretty favorable to the idea of an office rather than the dwellings because of the septic and well issue.

RESOLUTION – Cohen Cartier, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts the application of Cohen Cartier for area variances for property located at 39 Wilton Road, TM#138.3-1-11 as submitted and sets a public hearing for July 5, 2016 at 7:30 p.m., pending:

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- **Correction to application regarding county highway**
- **Correction to description of the proposed project**

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

OLD BUSINESS

MICHAEL RAYBURN – Area Variance

Case#960, NYS Route 9N

Michael Rayburn is present. K. Veitch reviews that the house construction is on hold due to legal issues and this would also require a special use permit. The lot has 2.3 acres and a garage apartment requires 3 acres. A public hearing is opened at 7:37 p.m. There being no public comments, this public hearing is closed at 7:38 p.m.

D. Eskoff questions that there were variances and they expired. R. Rowland states that the applicant has a temporary use variance for the mobile home that does not expire in the normal manner because he is in the middle of constructing the house. That is on hold. This is a different variance. J. Szpak states that the Planning Board had no issues. K. Veitch states that this is a pretty easy site. D. Eskoff states that there is a lot of frontage. M. Rayburn states a lot of frontage but unfortunately not enough acreage. K. Veitch states that the applicant is maintaining his distance from the existing well. C. Kolakowski states that all the setbacks are being met.

RESOLUTION – M. Rayburn, Area Variance

MOTION: J. Szpak

SECOND: C. Kolakowski

RESOLVED, that the Zoning Board of Appeals approves the application of Michael Rayburn for an area variance for property located at 965 NYS Route 9N, TM#151.-2-22, as follows:

- **.7 acre area variance**

This approval is based on the following criteria:

- **Benefit cannot be achieved by other feasible means**
- **There is no undesirable change to the neighborhood or character of the nearby properties**
- **The lot is very spacious and well laid out**
- **The request is not substantial**
- **No adverse physical or environmental impacts**
- **Difficulty was not self-created**

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

A. Wine questions that this is self-created because the applicant cannot finish the house. K. Veitch states that it is out of the applicant's control. D. Eskoff states that there are legal issues. A. Wine questions that there is a dispute with the contractor. K. Veitch states with justifiable reasons.

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464 MAPLE AVENUE LLC – Area Variance

Case#961, Maple Avenue

Eric Carlson is not present. K. Veitch reviews the request and opens a public hearing at 7:43 p.m. The applicant received an approval on August 6, 2013 and an extension on July 1, 2014. The area variances have expired. D. Eskoff states that this has also gone to the Planning Board for site plan review and does not yet have an approval. K. Veitch states that this is for mixed use. Theresa DeLong, Maple Avenue, questions that this area is zoned for apartments. K. Veitch states that it is residential and office; the applicant is only requesting an area variance and not a use variance. D. Eskoff states that the buffers, etc. will be reviewed by the Planning Board. There being no further public comments, this public hearing is closed at 7:46 p.m.

J. Szpak questions that there is anything that has changed at all. D. Eskoff states only if the Planning Board had him change anything. R. Rowland states that there are some issues that are being discussed, but nothing to do with the variances. D. Eskoff states that when we granted the variances we had requested that the Planning Board look specifically at strong buffers, which they are doing. K. Veitch states parking, lighting, buffers, etc. D. Eskoff states that they are also looking at the septic. J. Szpak reviews the previous approval letters. There are three lots that would be combined into one, the previous approval states that this ‘will offer a much needed option for residents of this community’. He reviews the contingency. K. Veitch questions that the applicant notified us that he would not be here tonight. R. Rowland states that she did not hear from him. J. Szpak questions why variances were granted for building A and building B. Discussion takes place that this will be all on one lot so the variance would be for the whole lot.

RESOLUTION – 464 Maple Avenue LLC, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals grants the application of 464 Maple Avenue LLC for an area variance for property located at 464 Maple Avenue, TM#153.13-1-13.1, TM#153.13-1-35 and TM#153.-13-1-13.2, as follows:

- **1.16 acre area variance**

This approval is based on the following criteria:

- **Although the request is substantial, it is consistent with the surrounding neighborhood and character of nearby properties**
- **This will be an improvement to the lots because three lots will be combined into one and it will offer a much needed option for residents of this community**
- **It will not have adverse physical or environmental effects**

This approval is contingent upon:

- **No further variances will be granted for this project. If there are any changes that need to be made, the applicant has previously agreed to make any changes necessary to conform to any other zoning codes or regulations that may come into play based upon what the Planning Board requires, including the buffers**
- **This variance is only good for one year**

VOTE: Ayes: Veitch, Eskoff, Kolakowski, Sanda, Szpak

Noes: None

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TOM ROOHAN, 519 Broadway LLC – Use Variance/Area Variance
Case#962, Maple Avenue

Tom Roohan and David Carr, The LA Group, are present. K. Veitch opens a public hearing at 7:57 p.m. Stephanie Ryall, Hillside Avenue, asks how tall the building will be. D. Carr states that it is one-story so it will be less than 20'. S. Ryall asks if there will be moving vans pulling up and she is not sure that there is enough space. K. Veitch states that in the case of any type of operation like that, there is the chance of that. This is the kind of thing that will be brought up at the Planning Board. S. Ryall asks when customers will have access to the building. D. Eskoff states that parameters can be set for hours of operation and that could come from the Planning and/or the Zoning Board. S. Ryall states that she has seen 3 storage places and they all have fences around them which are locked, security cameras, etc. She asks if this would have to have those, is that part of the building code. D. Eskoff states that those things are for security purposes mostly and they do tend to look fairly stark, but there are other things that can be done in some situations. K. Veitch states especially if there are hours of operation, the only way they could control that would be with those types of things. D. Eskoff states that in this day and age you cannot just have a building like that, you are securing someone else's property and there are reasons for them to be doing that because no one inhabits it and most of them don't have offices, especially the smaller ones. S. Ryall questions security cameras, fire alarms, smoke detectors, etc. She states that she is sure that the other commercial buildings on the lot have those. K. Veitch states that lighting would be something that the Planning Board would address. All the other things would be addressed through the building code. They would have to meet all State requirements on how that structure is built. S. Ryall states that they currently have water that runs down the driveway when there is a big snow year and will this add to that. K. Veitch states that those are things that the Planning Board would require regarding drainage, etc. They look at these sites and make determinations. He states that he is sure that the applicant also has an engineer involved who will be telling them what they are going to need for that site because you do have to control runoff from your property. S. Ryall questions the buffer required between the proposed building and the residential buildings on two sides of this. What is the nature of the buffers? K. Veitch states that buffers are sometimes required by the Planning and the Zoning Boards, depending on the activity. Things such as trees, shrubbery, fencing, etc., would be required and required to be maintained. S. Ryall questions why a variance is needed in this case. Is this type of building not an approved use of that property? K. Veitch states that at this current time it is not, this is the OR Zone which is Office/Residential. Applying for a variance of this type is a little bit harder. You have to prove a lot of things. It is not that it is impossible, but sometimes in those situations where you see areas changing, it might be something more acceptable. Although it is not accepted as per the zoning law, the Zoning Board of Appeals is here to give flexibility and some leniency into the law to allow certain things to happen. D. Eskoff states that applicants have to meet a minimum standard of tests for a use variance. We will go through those standards with the applicant and look at all those points in deciding. Right now, the only district in Greenfield that allows for self-storage units without getting a use variance is the IM District, which is the Industrial/Manufacturing district, which is a very limited district in this town. She states that the area variance means that it does not meet the parameters of the size of the property required. S. Ryall states that she has a question about the size of it and the amount of traffic going out. From looking at the plans, there are only two exits and entrances from the property. One on to Route 9 between the bank and the dental office and then another one onto Hillside Avenue. Hillside Avenue is not very wide, she does not know the dimensions, but she does have a concern about that. The building has been a good neighbor and it really has improved since she moved there 20+ years ago when it was kind of a falling down mobile home park, but it is more developed and noisier now. K. Veitch states that the traffic will be addressed in both the Planning Board and he believes that the State is going to have to give some approval of the additional traffic. D. Eskoff states that the ZBA has to look at traffic too, to some extent. S. Ryall states that it is a problem with people not looking and not expecting someone to be coming in the other direction. There aren't many homes beyond that area, probably 10 maybe. It is becoming a different area, changing the character. Change happens and it is not all bad. She states that she just wanted to get some questions answered. S. Ryall asks when the next meeting will be. K. Veitch states that many things can happen – there could be a denial, there could be an approval, it could be tabled for more information or to make some changes that the applicant

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feels might make it better, etc. He suggests that S. Ryall stay abreast of it and get to the Planning Board when they have their opportunity to review this application. D. Eskoff states that this will not go to the Planning Board if the ZBA denies it. The Planning Board has already made some comments on it, she suggests S. Ryall stay for the rest of the meeting and then she will know where it will go from here. C. Kolakowski asks for clarification of where S. Ryall's home is and she explains. Barbara Baker, Hillside Avenue, states that she already submitted a letter regarding her concerns and asks if the Board has any questions of her. C. Kolakowski asks if she is the other house that shares the driveway. B. Baker states that the subject property is her front yard, she is right next door to S. Ryall. K. Veitch states that he does not have any questions. D. Eskoff states that B. Baker's letter had referred to 7 businesses on the property and 3 parcels. Even though the same owner owns them, it does not mean that in the future the same owner is going to own it and all the ZBA can look at is the one parcel that is before the ZBA. B. Baker states that she was concerned about the adjacent because if the properties are split up, it is going to impact. K. Veitch comments that letters were received from B. Baker who is opposed; J. & M. Stevens and one from B. Wolf who do not object; and M. Dickinson who is opposed. D. Eskoff asks if we have anything from the State. R. Rowland states that she sends referrals to the County. L. Sanda states that the State DOT would probably be in favor as they are proposing removing a curb cut. There being no further public comments, this public hearing is closed at 8:12 p.m.

D. Carr states that he received a copy of the draft Planning Board minutes and it would have been nice to be there to answer some of the questions, but he can answer some of them now. He states that they understand that there are a lot of uses allowed in the OR zone and the reason why they chose this use was, in T. Roohan's opinion, from an impact standpoint it was the least obtrusive use as far as, number one, traffic. D. Carr states that in his opinion, and he did not look at the IT manual because he did not think it would be an issue but he can do that, 14 storage units will probably not generate 1 vehicle trip per day. He believes that the 14 units will generate less traffic than the existing apartment that is there now, because people just don't go back and forth to a unit. They are removing the curb cut on Route 9. Secondly, one of the reasons why they chose this use is that they are not planning any septic system; no power, no lighting, and this will only be open in the daytime hours. If they need power for security it would be for that only so that people cannot pull up and plug in, hang out there in the evening. D. Carr states that his office has a storage unit where they have the same type deal – there is no lighting. No security lighting would be added as T. Roohan feels there is enough lighting in the plaza now, that there is enough ambient lighting. In talking with Mr. & Mrs. Stevens, who are probably impacted the most, that this building really would shield the plaza from them. T. Roohan is looking for a return on his property, they know it is not allowed and further more R. Roeckle stated in the minutes that this is being used as a residential apartment now and he was getting a return on his property. Point of fact is that the insurance is being cancelled on that building as of November 2016 because of its condition. He has to do significant improvements to the building or pretty much demolish it at this point. The rent is \$600 a month now. There is a significant amount of work that needs to be done that in T. Roohan's mind just does not make sense. D. Eskoff states that for a use variance we are going to have to see some type of financial layout that details that to us. That is a requirement to look at for a use variance. What they have in it, what it is going to cost to rehabilitate it for an offered use and that could be an office, an apartment, anything that is allowed in the OR zone vs. using it as a self-storage unit. K. Veitch asks if the applicant understands the criteria for the use variance. That is what the ZBA is stuck with. He reviews that the hardship has to be unique- it does not apply to substantial portions of the district or the neighborhood; cannot realize a reasonable return – substantial is shown by competent financial evidence; requested variance will not alter the essential character of the neighborhood; and the alleged hardship has not been self-created. K. Veitch states that it seems like the financials is the thing we are going to need to see. D. Eskoff states that the rest is pretty self-explanatory and things that we have to go over as far as the 4 issues that we have to go through in detail. J. Szpak states that it is a go/no go thing. He states that this is a very difficult area to deal with and it is pretty unique. He does appreciate trying to make the best use of that particular lot. That being said, it is still a go/no go that you cannot realize a reasonable return with financial evidence without making a change to the use. He states that there is some amount of subjectivity in there based on all the other criteria, too, because you do want to try to get the best solution for this lot. D. Eskoff

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states that it comes down to the lot, not the person, the actual piece of property. J. Szpak states that we have to have the financials but it does not say how compelling that argument needs to be. D. Eskoff states that use variances are very compelling; all 4 criteria have to be met in order for the ZBA to grant the use variance. There is some subjectivity as far as a change to the character of the neighborhood. The other 3 are pretty specific, there is a lot of case law behind them and we have to be very careful how we go through them. A. Wine asks if we can ask for the financial evidence in a specific format or is it at the applicant's discretion. D. Eskoff states that we need to know the amount that was paid for the parcel, the present value of the parcel, maintenance costs, taxes, mortgages, income from land at this time and any other factors that affect it. Basically you would be looking at what the present use is vs. what the future use is. A. Wine questions that the future use, we are saying, could be any number of allowed uses. D. Eskoff states this is NYS law. A. Wine states that then the applicant needs to say what his financial return would be if he were building a pet shop vs. something else. D. Carr states that you have to assume that you would be able to rent it. If you put in 3000 square feet of office space, you are under the assumption that you can rent that space. D. Eskoff states that as the purchaser who purchases the property and then comes to the ZBA after the fact for a change of use, has to look at the potentials that are out there. It is a pretty high threshold, even though the character of that area is definitely in change. She states that one of the things that troubles her with the way our Comprehensive Plan looks at self-storage units is that we do have them relegated to only one section associated with manufacturing and industrial, which we have very little of the IM. Yet in the OR zone we allow manufacturing and assembly. There is some conflict there and sometimes these cases end up going not just for a use variance but for a change of zoning. She see the Planning Board saying why not an office. K. Veitch states that they did say that in their minutes. D. Eskoff suggests looking at that as part of the financial and saying that it is not feasible or this is the best use of the property because of it. T. Roohan states that 519 Broadway LLC is a partnership with his brothers and sisters. He states that they bought this from J. Dorsey with three tax parcels – which are the credit union and the plaza, Dr. Flemming's office and this rental. The rental and Dr. Flemming's office are on their own tax parcels. As soon as they bought it they removed over 100 cubic yards of leaves, dead trees, junk; they extended the fence more than 50' down the back of the property; they like to be good neighbors. He met with Mr. Stevens immediately before he thought about any of this, because his thought is – what is the way to least impact people. If he had an office that people came to at night, he didn't want to add any more ambient light into the neighborhood because he has neighbors on Hillside who are already affected by the changes that have happened over the years. He didn't want to add any more traffic; he wanted to reduce it as much as possible. It would look like a residential building from the road, it will look like the back of a house, it is not going to have a fence, no exterior lighting, just 14 garage bays and it is not going to have power. There will not be people working on their cars there, working on their motor cycles, etc. There will not be any lights in the building or on the building; he just wants to blend in because every neighborhood is already a delicate ecosystem. The lady from Pepper Lane is complaining about the traffic. Any impact that you make, they are very sensitive to, and they want to be good neighbors. He states that they work very hard, and you can check, the family owns a number of buildings, and you can check with any of their neighbors – it is about being a good neighbor, it is about adding value. D. Eskoff states that the ZBA is not questioning that, we have to have the information. She states that if they put up a buffer of trees from the front, that property is so narrow, you wouldn't even see it from the road. We do have to look at all the details. T. Roohan states that they will do a math model, whatever the Board wants. D. Eskoff states the basic figures, a basic comparison of what his thought process in coming not only to the physical layout and feasibility of this, but we have to look at the financials. T. Roohan states that it was pretty disappointing to come and find out that there was a Planning Board meeting that they were not invited to – that is bad form as far as he is concerned. R. Rowland explains that it is not an agenda item, per se, it is a referral. All ZBA applications are referred to the Planning Board. T. Roohan states that his name is in the minutes and he does not think that is fair. K. Veitch indicates that there is going to be a joint meeting of the Boards and there are some things that need to be addressed, some of which are communication and procedures that need to be modified. J. Szpak reiterates that the applicant must demonstrate that there is unnecessary hardship and you cannot realize a reasonable return using the other options in zoning. Whether you are trying to do the right thing or not, you still have to demonstrate that. D. Eskoff states that from what she read up on self-storage units a lot of them are going for changes of zoning

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because they cannot get past the use variance. That area is changing dramatically. There may be some things in our plan that don't make particular sense and need to be looked at. We have to wrestle with that on top of these variance criteria. K. Veitch states that a lot of people look at these storage facilities as these tin buildings, awful colors, transients, etc. He states that our biggest thing is not what it looks like. He understands what they are talking about when dealing with neighbors and he agrees with the applicant as he has seen a lot of his work and knows what he is talking about. It is these 4 things that make us liable as a Board. We need to make sure that we cover our end. D. Carr states that they want that too, because if the ZBA approves something and there is a problem.... K. Veitch states that it is then likely to be both our problems. D. Eskoff states that she does not know the background of why they relegated that except that a lot of towns do relegate it as a warehouse vs. as a garage. Some of them are used by contractor's who go in and out on a daily basis. You can rent to whomever you want to rent to. We have another self-storage unit place in Greenfield, it is in a residential district but it has been there a very long time. It was put there with a use variance. She states that they are very conscientious business people who keep a nice property like T. Roohan, keep specific hours, etc. She does not see the deterrent in putting them in when they are put in and maintained the right way. In this case, the zoning has changed significantly and the Comprehensive Plan has changed since that was put in so we are starting at a different place. L. Sanda states that we have this existing lot that looks like it is mostly grass and trees. The applicant is proposing paving and putting in storage units on the majority of it. It looks like it is a low lying. Where does that currently drain and do they have a rough plan of what the drainage will be, as the neighbors have said that they already have water flowing down their road. D. Carr states that their thought would be to utilize the front and buffer area. He indicates on the plans. There was a question about setbacks. Every use in this zone has 15 and 10, so that is what they used. D. Eskoff states that she thinks that the Planning Board was also referring to the setbacks in the IM district for that. We need to make sure that they are meeting those also. D. Carr states that he went to the OR zone and every use has the same setbacks. D. Eskoff states that that would require additional variances from the ZBA if that is the case. L. Sanda states that storm water would be a big concern of hers and how that affects the properties, because to her that would be changing the character of the neighborhood. She states that in the section on self-storage units it does require buffering or fencing at the road frontage, then she believes there is a fence on the backside, and then it does require buffers between adjoining lots. She asks if there is a plan for buffering in those areas as well. D. Carr states that they would when they got to the Planning Board. The Code says that between a commercial and a residential use it is 10' and they have 15'. The Code is not very detailed as far as landscaping goes. He thinks it is one tree every 100' and they would definitely do more than that. D. Eskoff states that there are specifics for the number of parking spaces required also. L. Sanda states that it sounds to her like they will have to come back with the financials anyway, when that happens, if they could also maybe include a short narrative on how they plan to insure that they don't have after-hours activity. If there is no fence, how are they going to control people accessing the property, having car lights shining into residential property, etc? T. Roohan states that it will be part of the lease, but the other lights are on all the time. L. Sanda states that she does not know how self-storage units work when they are open like this. She has never used one without a gate that locks you out at a certain time. If you have people coming in with moving vans, with high headlights and they are shining into someone's living room window, that is a little more obtrusive than the overhead lights from some of these places will be. T. Roohan states that he thinks those places need gates and things because you can go around a blind corner and be surprised by someone. This one you pull in and that's it. There is no place to hide behind a building, etc. They will look at it for their lease language. D. Carr states that with the unit they have, it is in the lease that they cannot use it after 6:00 p.m., however, the gate only has a padlock on it and you can open that gate at any time. There is no security measure that locks you out at a certain time. If they find you there, you are breaking your lease. K. Veitch states that it would have to be complaint driven. J. Szpak questions that we would reopen a public hearing at the next meeting. K. Veitch states that we closed it but if there is a need for it, we would reopen it. A. Wine asks if there are any security cameras at all on any of those parcels. He would guess there are some on the bank. T. Roohan states he believes there are some on the bank; however, he does not monitor them. K. Veitch states that it wouldn't be a bad idea to have a security camera there and then the applicant can tell if, when a complaint comes in, whether someone was there.

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RESOLUTION – T. Roohan, 519 Broadway LLC

MOTION: J. Szpak

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals tables the application of Tom Roohan, 519 Broadway LLC for a use variance and area variance for property located at 420 Maple Avenue, TM#153.17-2-21.2 to the July 5, 2016 meeting, contingent upon:

- **Receipt of information requested by June 21, 2016**

VOTE: Ayes: Veitch, Eskoff, Kolakowski, Sanda, Szpak

Noes: None

K. Veitch explains for the public that this is being tabled to the next meeting. B. Baker asks if there is any information that addresses the size of the building. She thought that there was a question as to the area as well as the use. D. Eskoff states that there is but the use is pivotal, because without the use, they don't need the area variance.

Meeting adjourned at 8:40 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary