

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

MARCH 2, 2010

REGULAR MEETING

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

FEBRUARY 2, 2010 MINUTES

MOTION: S. Weeks

SECOND: K. Veitch

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

VOTE: Ayes: Conard, Granger, Veitch, Weeks,

Noes: None

Absent: Lunde

NEW BUSINESS

CARL HULETT – Area Variance, Case #836

Alpine Meadows Road

Carl Hulett is present. T. Conard reviews that the applicant is seeking to replace a mobile home that has been on the property since 1992. The septic system will need to be verified as to condition and capacity. The applicant is seeking a front yard setback variance of 50'; right side yard variance of 4' and a left side yard variance of 18'. T. Conard asks how the Board feels about the map provided. Board would like to see a drawing showing the distances from adjacent structures. The Board asks for that information two weeks prior to the next meeting.

RESOLUTION – C. Hulett, Area Variance

MOTION: K. Veitch

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals accepts the application of Carl Hulett for property located at 187 Alpine Meadows Road, TM#98.-2-11.2 and sets a public hearing for April 6, 2010 at 7:30 p.m., contingent upon receipt of:

- **Drawing showing the distances from adjacent structures, two weeks prior to next meeting**

VOTE: Ayes: Conard, Granger, Veitch, Weeks,

Noes: None

Absent: Lunde

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KENNETH MERCHANT – Area Variance, Case #837
South Greenfield Road

Kenneth Merchant is present. T. Conard reviews that the applicant would like to use an existing garage apartment as a rental. G. McKenna's notes indicate that the Building Department has a septic certification and the new code allows for garage apartments with a special use permit. The applicant requires a lot size variance of .5 acres and a frontage variance of 240.05'. The Board would like a map showing the distances, as accurately as possible, from adjacent structures two weeks prior to the next meeting.

RESOLUTION – K. Merchant, Area Variance

MOTION: K. Veitch

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals accepts the application of Kenneth Merchant for property located at 294 South Greenfield Road, TM#151.-1-34 and sets a public hearing for April 6, 2010 at 7:30 p.m., contingent upon receipt of:

- **Drawing showing the distances from adjacent structures, two weeks prior to next meeting**

VOTE: Ayes: Conard, Granger, Veitch, Weeks,

Noes: None

Absent: Lunde

GERALD MAGOOLAGHAN – Area Variance, Case#838
Greene Road

Gerald Magoolaghan is present. T. Conard reviews that the applicant is seeking a rear yard setback variance of 25'. This is a pre-existing lot. G. Magoolaghan states that the parcel to the rear is a vacant 50-acre parcel with no road frontage. He explains that when he purchased the property the setbacks were different. He states that the proposed house, as draw on the plans, is only a 32' home, it is not some mega-structure.

RESOLUTION – G. Magoolaghan, Area Variance

MOTION: K. Veitch

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals accepts the application of Gerald Magoolaghan for property located at 475 Greene Road, TM#126.-1-111 and sets a public hearing for April 6, 2010 at 7:30 p.m.

VOTE: Ayes: Conard, Granger, Veitch, Weeks,

Noes: None

Absent: Lunde

OLD BUSINESS

JOSEPH PONESSA – Area Variance, Case# 835
Wilton Road

Joseph Ponessa is present. A public hearing is opened at 7:51 p.m. T. Conard reviews that the applicant would like to convert the basement to an in-law apartment. This requires 4 acres, the lot is .925 acres and needs a 3.075-acre area variance. There being no public comment, this public hearing is closed at

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7:52 p.m. T. Conard states there will be no change in the footprint of the house and the same number of people will be living there. K. Veitch states that since the Town passed this new law allowing these conditions to change, what we are seeing in this case and the case coming up for next month are extreme requests for variances. The Zoning Board is not supposed to be giving extreme variances; we are supposed to be giving minimum variances within reason. His question is, and he would like to hear a response maybe from our attorney, how does that impact the Zoning Board when they are making these determinations. This one, for example, he has an existing condition, a building on which the applicant is not changing the footprint, but he is asking the Board do give a large variance. If we start setting precedent, he wants to know that we have some guidelines for how it is ok in this situation or where we are protected. K. Veitch states that it is not that he doesn't like the idea and he believes that we are going to start seeing a lot of these. S. Weeks states that he has the same concerns. He believes that the re-zoning group spent a considerable amount of time discussing these issues and in their wisdom decided to allow this but on a 4-acre lot. Here we are talking about something less than an acre. That seems like an extreme to him so he is also very concerned about the same issue. M. Granger states that she shares the same concern, not that she does not love the idea of it, but she would have to agree that there was some rationale for saying a 4-acre minimum. She states that she does not know if it is possible to get an advisory opinion. K. Veitch states that he would rather get an advisory before making a decision on this. He states that he understands that the applicant is waiting, but if he were going to be pushed to make a decision tonight, he would say no. T. Conard states that it is setting a very large precedent. If we could see a specific reason why, in this case, it would be different than others then he thinks we could do it, but he would want to be able to, in the future if there was a case that didn't quite fit as well into such a situation, he would like to be able to say no. He states that he thinks with a large precedent you are less able to do so. K. Veitch states that he would like to be able to say yes, if the Town Attorney can say that because these conditions are already in place you are not really granting another variance, all you are doing is allowing something to happen within the envelope of where there is already a pre-existing, non-conforming. T. Conard states that we do that anyway with the house. K. Veitch states that is what he wants to know. M. Granger asks if that is addressed the same way. K. Veitch questions that we can say because it is already a pre-existing, non-conforming you are not really pushing the envelope on the variance. The variance is already pretty much existing. S. Weeks asks how new the house is. J. Ponessa states that it was built in 2004 and he moved in 2005. M. Granger states that we also have to look ahead and say that if it is sold tomorrow and this condition exists, while it works with you and your neighbors now. K. Veitch asks if variances were needed when this was built. R. Rowland states that he did not, the zoning changed in 2007. S. Weeks asks why this particular lot is so much smaller than the neighboring lots. J. Ponessa explains some of the lot configurations. S. Weeks states that he is very concerned that this is such a big variance request from what the rezoning folks decided. It made sense to them so he would be very concerned about allowing that big a variance. K. Veitch asks the applicant if he has a problem with the Board tabling this until we get a response from the attorney. M. Granger states that she would prefer to be able to table this. K. Veitch states that he would rather have every piece of information that is there to be able to use before he makes a final decision. S. Weeks asks what question are we asking of the Town Attorney. J. Ponessa states that according to the code, it says that it should be considered a single-family. M. Granger states that she has looked at the definition, and understands that. The concern that we have is that when the Zoning Law changed there was a lot of careful consideration and discussion that established a 4-acre minimum, and right now we are starting to see applications come before this Board and if we set a precedent that if it is less than an acre you are still good to go, that is a problem in terms of the Board taking the freedom to do that. K. Veitch states that this is the first application, so he does not want to make any mistakes and he does not want to make a mistake that hurts the applicant. Being that it is all in the same dwelling, the dwelling is already existing on a substandard lot, are we making it more substandard; is the variance that we are giving excessive when you consider it to that property and the special conditions because it is already there, because it is already in place. We are not changing anything; we are not changing the footprint. He states that he could see if the applicant stated that he wanted to add a garage to this and put the apartment upstairs, then you are talking about a whole new structure and you are really pushing it. J. Ponessa states that it is a small house, 1800 square feet. K. Veitch states that it is not the size that matters to him. It is that it is there; it is already on a pre-existing, non-conforming lot. He states that he

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just wants to make sure, maybe there is something that the Town Attorney can give us that says the conditions are acceptable. T. Conard asks if this is going to be a complete apartment with a kitchen and bath. S. Weeks states that his assumption is that when folks looked at that zoning they said we are changing the character here, we no longer have just a single family residence, we have a residence and an apartment, and that means more people, more space and it means a change to the neighbors. Maybe no neighbors at this point had anything to say but we don't know about the next neighbor who moves in, who might say how can this be when I know you are supposed to have 4-acres here in order to have this situation. T. Conard states that is another thing, if the house gets sold and you have the in-law apartment in it, someone could actually bring someone else in so you actually double the amount of people in the building. K. Veitch states that he has the same concern with the other application from tonight.

RESOLUTION – J. Ponessa, Area Variance

MOTION: K. Veitch

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals tables the application of Joseph Ponessa for property located at 395 Wilton Road, TM#126.-1-26.3 to the April 6, 2010 at 7:30 p.m., so that the Board can have time to discuss some of the issues with the Town Attorney as to the impact that this variance could have and if it is precedent setting.

VOTE: Ayes: Conard, Granger, Veitch, Weeks,

Noes: None

Absent: Lunde

CAROL RICHMOND – Area Variance, Case#803

North Greenfield Road

James McLagan is present for the application. The applicant is requesting an extension on a variance originally granted in March of 2008 with an extension granted in March of 2009. K. Veitch asks the reason for the request. T. Conard reads from the original variance granting 5' each for a left and right side setback variance. S. Weeks asks if this house is being built yet. J. McLagan states that it is not. He states that the subdivision was originally approved in the late 1970's and variances are required because of the zoning changes that have taken place. The property is for sale. K. Veitch asks if J. McLagan has a model that he is going to build on that property, but they do not have a buyer for the property yet. J. McLagan states that they are marketing an affordable home on it. K. Veitch states that his question is what if the prospective buyer wants to buy the house but doesn't want the model. J. McLagan states that they have to build what he is offering on it because that is what will fit. K. Veitch states that normally the Board gives extensions when extenuating circumstances happen such as someone has begun the house and they request an extension because construction has been delayed for some reason - problems with contractors, problems with the bank, etc. and it didn't get started in time or completed. He states that those he can understand. He states that when not really knowing if you are going to build the house even within the next year, he is comfortable with giving a one-year extension, but he does not know if he can keep going year after year giving an extension. J. McLagan states that the extenuating circumstances, obviously, would be the current market conditions. That is really the reason why it hasn't sold yet. K. Veitch states that then J. McLagan is not going to come back in 6 months with someone who bought it to change the variance. J. McLagan states, no, the variance is what it is and they will build a house within that variance. He states that he does not have a problem with the model they are offering. He states that he thinks that they have a good shot of getting a buyer for it and the housing market is showing signs of improvement. S. Weeks states that it is a fairly minimal variance so he is comfortable with extending it. M. Granger states that she could go for a year, but if it doesn't sell, then she would not be inclined to extend it again. She states that if it expires the applicant can come back when they actually have a buyer and building plans. S. Weeks states that he would agree that continuing year after year

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is not a good policy for the Board. J. McLagan asks if they would not be precluded from coming back in with a set of plans if for some reason it did not sell within the next year or extension. The Board concurs.

RESOLUTION – C. Richmond, Area Variance

MOTION: S. Weeks

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals grants a one year extension to Carol Richmond for property located at 142 North Greenfield Road, TM#125.1-1-5 as spelled out in the letter of March 7, 2008 as follows:

- **5' left side yard variance**
- **5' right side yard variance**

This is based on the following criteria:

- **No significant change to the neighborhood, it fits in with the surrounding properties**
- **No negative impact**
- **No negative environmental impact**

VOTE: Ayes: Conard, Granger, Veitch, Weeks,

Noes: None

Absent: Lunde

DISCUSSION

K. Veitch states that back to the variances that are coming in for these in-law apartments, he would like a legal lesson as we are going to start getting a lot of them. T. Conard states that we are supposed to grant the minimum possible variance, but you get to the point where there seems to be an excessive amount of variance being requested. He states that he knows that the reason the committee went for the larger size acreage for any kind of apartments is that you are very often adding more people to that lot. In J. Ponessa's case, he doesn't happen to be but that doesn't mean that it isn't going to happen where a whole family is going to move into that lower apartment. K. Veitch states that the variance stays with the property, not the owner. He states that we could impose conditions that it can only be there as long as the property owner owns the property. T. Conard states that variances have never been that way. There are temporary special use permits now under the current code. M. Granger asks how the Board is going to make a determination that in this case that is appropriate and in another it is not? She thinks that the bottom line is that it is 4 acres because there is an increased concentration of people, activity and noise. In one case the neighbors can be fine with it, but they sell it and then a new set of people come in and the neighbors are faced with an intolerable situation because the Town has allowed an increased concentration of noise, traffic and people. She states that is a big concern. It is not that you want to deny someone because they need that situation, but looking forward she believes that we have an obligation, especially when someone else has sat and really thought out that 4 acres is appropriate. She does not think that it is within the Board's power to say that we should be changing it to that extent. S. Weeks states that we can always suggest that someone needs to take another look at that. He thinks the same thing about 6 acre lots. He is very concerned and he is not sure that is the way to go. He thinks that there are some issues like that we can suggest that maybe a group should take another look at that in terms of this Town and where we want to be, how useful is it, how well is it working, and what the ZBA is running up against where we see issues that someone should take a look at.

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S. Weeks comments that we had a discussion at the last meeting about some properties and what has occurred. R. Rowland states that G. McKenna has sent violations to J&J Enterprises and Scott Germain among others.

Meeting adjourned 8:18 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary