TOWN OF GREENFIELD

ZONING BOARD OF APPEALS

March 3, 2015

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: Denise Eskoff, Michelle Granger, Joseph Szpak, and Kevin Veitch. Taylor Conard and Laura Sanda, Alternate, are absent.

February 3, 2015 MINUTES

MOTION: M. Granger
SECOND: J. Szpak

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of February 3, 2015, as submitted.

VOTE: Ayes: Granger, Szpak, Veitch
Noes: None
Absent: Conard
Abstain: Eskoff

OLD BUSINESS

CASEY CORNELL – Area Variance
Case#912, South Greenfield Road

C. Cornell is present, states that he was here a year ago and at that time he was hopeful that the other project he had going on was going to move somewhere and they are still waiting for that to finish up. This has gone nowhere in a year and he is looking to extend it, get the development off the ground hopefully next week and then get back to this project. K. Veitch asks what is holding the applicant up from acting on this one and what is holding up the other project. C. Cornell states time for this one, and lawyers and engineers on the subdivision. He thinks we are thru that. K. Veitch asks if the applicant has any thought on when he would be getting into this one. C. Cornell states that at this point it would be the fall. He is hoping to get the subdivision set in the next couple of weeks, spring is here, probably concentrate on outside stuff over the summer and then towards fall get back to this project. J. Szpak asks if anything has happened with the two contingencies – combining the lots and the Site Plan from the Planning Board. C. Cornell states that he did combine the lots and it has been recorded. J. Szpak asks if anything else has changed about the situation. C. Cornell states he has not. M. Granger asks if he has been before the Planning Board for the site plan review. C. Cornell states not on this. M. Granger states that we have gone two years since the original approval, she is glad that something has been done, but her expectation would be that something more substantial would happen over the next year towards this project. C. Cornell states that he would like that too. M. Granger states that normally the Board only gives one extension. Her expectation would be that there is something else happening with this. J. Szpak asks if she means a plan to have something happen shortly on this. M. Granger states that she is saying that she is in favor of granting this, there has been some progress and her expectation would be that there would be more progress. How many times are we going to grant an extension, because we have been in that position before? She is hoping that the other things that the applicant is working on and represents to the Board that he wants to get this moving along – that something happens. C. Cornell states that he would like to turn it into some income instead of just a tax bill.

March 3, 2015

RESOLUTION – C. Cornell, Area Variance
MOTION: J. Szpak
SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals grants the request of Casey Cornell for an extension of the previously approved area variance for property located at 14 South Greenfield Road, TM#138.3-1-1, as follows:

- **Area Variance of 1.26 acres**

This approval is contingent upon:

- **Meeting Planning Board requirements as to parking and the Site Plan Review**

This approval is based on:

- **No changes to the project since the last time**
- **There was progress on combining the lots**
- **The use is consistent with the surrounding neighborhood, therefore there is no undesirable change**
- **Benefit cannot be achieved by other means**
- **No adverse physical or environmental impacts**
- **Hardship is not self-created, it is a pre-existing, non-conforming lot**
- **This is an extension of a variance previously granted on May 7, 2013 and an extension granted on April 1, 2014**

VOTE: Ayes: Eskoff, Granger, Szpak, Veitch
Noes: None
Absent: Conard

SHAWN & KATHERINE HARRIS – Area Variance
Case# 944, Liberty Drive

Jason Hover, Attorney, and Katherine Harris are present. K. Veitch reviews that the applicant is requesting an area variance of 1.34 acres to allow an in-law apartment. This is a request in order for them to receive a Certificate of Occupancy, there is the intention of a sale and this condition was created by a prior owner.

A public hearing is opened at 7:39 p.m. John Harding, Liberty Drive, states that he owns a single family house within 150 yards and he does not see the benefit of allowing this. He does not know that they intend to rent to someone, he has concerns about the value of his house and he knows that at least one of his neighbors who is currently out of state had voiced the same concerns to him. J. Szpak asks if there is a particular thing that J. Harding is concerned about with the value of his home. J. Harding states that a prior owner had rented this home to 10 Skidmore girls and the police were there at least twice. Not that that is going to happen again, but he wants to keep this a single family neighborhood. There being no further public comment, this public hearing is closed at 7:42 p.m.

J. Hover states that he understands the concerns voiced. His clients bought the property with the in-law apartment already constructed and unfortunately the due diligence that was performed did not discover this issue, that there was illegally an in-law apartment above the garage. They are now going to sell and the prospective buyer has done due diligence and realized that there is no Certificate of Occupancy for that area. That is what has brought on this concern. The potential buyer is not buying the property to rent out; he is going to live there. He is unwilling to purchase the property with a code violation in place – the in-law

apartment with no certificate of occupancy. In order for the Harris' to sell the property, they need to bring this up to code which requires having a certificate of occupancy for that area and they cannot get that without having the zoning variance. He reiterates that the intention of the buyer is to have this as his primary residence; he is not there to rent it to anyone. The reason for the in-law apartment variance is not to create a rental situation but simply to allow them to bring what is already constructed up to code. J. Harding states that J. Hover cannot guarantee that on future sales. J. Hover states that is correct, but whether or not there is an in-law apartment, that does not prevent the owner of the property from renting it out to students or others. He does not think that by having that in-law apartment variance granted and having a certificate of occupancy for the area is going to change what the property is going to be used as. He does not know that having the variance granted and the CO creates any additional possibility of this being rented to college kids. He thinks that possibility exists whether or not the variance is granted. J. Harding states that it is not the college individuals that bothered him, his concern is the value. You would now have a two family house in an area which was a single family neighborhood. K. Veitch states that comments should be directed to the Board. J. Hover reiterates that he does not believe that the value of the property would change much, the house is already constructed the way it is constructed and there is no change in appearance to the property. You cannot tell whether or not the area above the garage is finished or not from the outside. He does not think there will be a change to the values in the area by having this on the tax roll as a two family; he does not think that by granting this, it would open this up to being more likely to be rented to college students. K. Veitch states he does not believe that the applicant needs a variance for an in-law apartment to get the CO on that space. That space was made habitable without a building permit. To make that a legal habitable space all they need is the CO; they do not need the variance. What the applicant is asking for is the CO and something on top of that – the best of both worlds. J. Hover states that when they went to make the application for the building permit they were told by the Building Department that they need this variance in place before they would issue the building permit and then the CO. K. Veitch states that he still thinks they can get a CO. He states that he is looking at this from the standpoint of density in the area, and although anyone can rent their house any way they want, whether it is a single family or a two-family. He asks how long ago the owner bought the property. K. Harris states that they bought the house in May of 2011. K. Veitch asks that no one questioned the fact that that apartment was there and thought that was strange in a single family area. K. Harris states that their previous attorney did not catch that. She states that they like that it had the in-law apartment because her parents live in Connecticut, she has three kids and when her parents come to visit, it gives them their own space. She states that they did not buy it with any intention of renting that space. K. Veitch states that statements were made that the new owners don't plan on using it that way, which could be good for the next 90 days. They could turn around and sell the property or do whatever they want. J. Hover states that what he was suggesting was, due to the public hearing comments, whether or not the variance is granted, he knows that does not impact their ability to rent the main structure. K. Veitch states that is correct. He states that if the new buyer is concerned about having that area and being able to use it, actually use it as a habitable space for their family, whether it is for family members to be able to stay for a week, etc., the applicant can still get what they want without the variance. J. Hover states that the prospective purchaser has stated that he would not purchase the property unless all the proper permitting is in place, which included the CO as well as the zoning variance. J. Szpak states that the sale can go thru with a CO, so that is to standards, they don't plan on renting it, so why a variance for an in-law apartment. D. Eskoff asks why keep it as an in-law apartment? Why not remove the stove and the refrigerator and have a finished space over the garage? J. Hover states that the stuff is already built in so removing it is reducing the value of the property. D. Eskoff states not to the future owner because they are not going to use it that way. J. Hover states that the prospective buyer has stated that he wants it the way it is, he does not want a cook-top removed and have a hole in the counter. He reiterates that he does not see a great impact by granting this variance. To him the property has been this way for at least 4 years now and there haven't been any issues. D. Eskoff states that it has been illegally this way. J. Szpak states that what they are asking for is a variance. J. Hover states they are asking to have this done the right way. J. Szpak states that it can't be done the right way. The right way is you need 3 acres. You can't do it the right way, they are asking for a variance from the right way to do it. J. Hover states that they are asking to have the property meet the standards. They are asking for a variance from those standards so that the property would then become compliant. He states that his client bought the property innocently without knowing that it was not property permitted. He knows it is not the Board's problem, but if you weigh the burden to the community vs. the burden to his client by not

getting the variance – he just does not see the burden to the community. K. Veitch states that he does; first of all the applicant is asking for a very large variance, double the size is an excessive request for a variance. J. Hover asks what the impact is on the community. D. Eskoff states that it is an after the fact situation, so what would preclude someone else from putting one in and then coming to the Board and saying you already gave them a variance, now you have to give us a variance. J. Hover states that again in that situation, what would be the impact, where is the negative impact to the community? M. Granger states that the Board has to go back to the balancing test and when you begin to look at some of the criteria here – can the benefit be achieved by other means feasible to the applicant. The representation to the Board was that they need a CO. The Board has brought up the fact that there is an alternative way to get that. When you go thru the criteria – undesirable change to neighborhood character or to nearby properties – there is the potential for that in this 3 acre, more residential area where the house is located. Whether the request is substantial – K. Veitch has addressed that. In terms of adverse physical or environmental effects – she would say no. Is it self-created – you could make an argument that it is self-created because the purchase was made and it clearly was there whether or not you knew that it was property permitted or not. Those are part of the factors that the Board has to look at in terms of granting or denying a variance. J. Hover states that the initial point that M. Granger made was that the statement was made that the only thing they needed was the CO for the sale. That is not the case. The purchaser's attorney has said that they want the property the way it is and they are requiring everything in place to bring it into compliance. If they just get the CO for that area, they would not be in compliance zoning wise, so without the zoning variance there isn't an alternative means to keep this sale together. K. Veitch states that J. Hover is talking about this sale. A CO in that area does not keep them from making a sale down the road. J. Hover states that is correct, assuming that a prospective purchaser is ok with now buying the property with those facilities removed – the cooktop and the refrigerator – which would then incur a cost on his clients to make the area aesthetically pleasing. K. Veitch states that that could also be a negotiating factor. D. Eskoff states that it is a space over the garage, it would still allow someone who had a parent/visitor coming to stay having their own private area, it just wouldn't be a rentable legal apartment. J. Hover states that the entire structure is rentable. D. Eskoff states that those are still single family units, now if you keep the apartment it is two family units. J. Hover states that if they take the cooking facility out and get the CO and rent it to 10 Skidmore kids, is that worse than if there is one additional unit, the property is occupied by the owner and the one additional unit would be rented. Having it owner occupied is going to drastically reduce the likelihood that there are going to be issues from a potential tenant. J. Szpak states that you also opened up the opportunity to rent the house and to rent the apartment above it, which is a scenario which is more likely than renting out one piece of it. The issues could be substantially larger because you have two rental units. He states that you are changing a one family home into a two family. J. Hover questions that the Board is arguing that the risk of there being issues from the tenants is going to drastically increase by having a studio apartment above the garage vs having the entire house rented in a 5 bedroom house. K. Veitch states no, he is not concerned about how it is rented or how many people are in there or how they use the inside of the house. He is bothered by the fact that the applicant is asking for a huge variance, making the assumption that the person who buys it is going to operate it in the way that J. Hover is saying and you can't do that, you can't say that. You can say that it is going to be him and his family, that's great, but we all know that a year from now that could turn around and anybody else could own it and it could be done any other way. K. Veitch states that the thing is that we are setting a precedent here. The applicant is asking the Board to set a precedent. Once we do this then we have the whole neighborhood that is going to start doing that, and now we are changing the character of the neighborhood. Maybe this one doesn't make the change, but setting the precedent changes it and that is what K. Veitch is concerned about. J. Hover states that he understands setting a precedent, he can completely appreciate that. In his opinion, and he knows that the Board can have a different opinion; this particular situation does not create a hardship to the community. He does not see the impact of having this one unit above the garage and how it impacts the neighborhood vs. the way the property currently exists. J. Szpak states that he thinks he understands that that is J. Hover's perspective and some of us have a different perspective. K. Veitch states that the applicant does have another option. We do not have a full Board here tonight, and he wants to give the applicant every opportunity to feel that they have been treated fairly and have a full Board listening to their concerns. He is offering the applicant to table the application and bring it back next month. It will allow the full Board to discuss this with the applicant; maybe the applicant can make some inroads with the additional Board members. There would be one more voting member. He states

that it gives the applicant the opportunity to build their defense. M. Granger states that when she goes back to look at the basic definition for what a garage apartment is, she reads that and asks why we are calling this an in-law apartment vs. a garage apartment, which requires a special use permit. R. Rowland states that a garage apartment is intended to be free-standing and an in-law apartment is attached to the main house. She states that the requirements give more information. M. Granger reads from the in-law apartment and questions that it states 'single family detached structure'. R. Rowland states that in that case 'single family detached' means it is not a row house, not a duplex. This is not a separate garage. D. Eskoff states that the definitions don't say that. Further discussion takes place regarding the definitions. D. Eskoff asks how big the apartment is because there is a square footage requirement. M. Granger asks how large the house is. K. Harris states it is about 3200 square feet. D. Eskoff questions that no one ever asked if there was a CO for the apartment or if it was a legal apartment when they purchased the home. K. Harris states no. J. Hover states that he would ask the Board to consider that his clients are truly the victims of this situation to that extent. They relied on their attorney's advice, the attorney did not pick up on it and they are now in a situation where they are trying to right an unknown wrong in order to sell the property. They are also at the mercy of the Board. D. Eskoff states that the Board does understand that, and there can be more than one way to right the wrong. K. Veitch states that the applicant wants to make this sale, they have a contract that would make this all happen for them, but they need these things. J. Hover states that it is so that they don't have to make renovations to it at an expense. M. Granger states that there is another way to achieve the benefit, so it comes back to the applicant as to whether or not they want to table this. D. Eskoff states that the Board has approved other in-law and garage apartments. They have come to the Board beforehand; they don't come after the fact. Those are situations where we get to look at the specific unit and get the option to say yes or no, etc. In this situation everyone is at a disadvantage. Trying to find a happy medium, it makes it very difficult so that someone else literally down the road in all of the Town of Greenfield, not just this neighborhood, doesn't come in and say I just put in a stove and refrigerator and need a variance so I can make it an in-law apartment. J. Hover states that he could understand holding resentment towards his client if they had actually been the ones to construct the apartment. The Board states that there is no resentment. J. Hover states that his clients are coming to the Board now that they acknowledge that this is an issue and saying that they want to make this right. D. Eskoff states that the Board understands that. J. Hover asks that in light of previous in-law apartments for which the Board has granted variances, what differentiates those applicants from this application. D. Eskoff states the fact that they weren't built before the person came for a variance and the Board had the opportunity to look at the size of the variance and all the criteria that the Board needs to look at to determine whether or not it fits that particular piece of property because a variance will run with the property. It is not going to run to just the next person who owns it. J. Hover states that accepting the fact that his clients unfortunately weren't counseled properly and are now before the ZBA, the first opportunity that they have to correct this, they are the victims here. They are coming to the Board as those victims just as if they were going to build it and saying to the Board, instead of saying here is what our plan is, they are saying here is what was previously done. K. Veitch states that the Board's hands are tied; the Board is not being allowed any of that. The applicant is asking for forgiveness and not permission. When an applicant comes in and asks for permission we work together and work out a solution that makes it work for the applicant and for the community. Now we are being asked for amnesty and we have nothing to work with. We have no way of controlling this situation in any way to keep the neighbors happy, to keep the Town happy, etc. J. Hover asks, other than the fact that the Board doesn't have authority over telling them what they can construct because it is already constructed, taking that element out of it, now that it is there, what part of it doesn't the Board like that they were ok with on other in-law apartments that were granted. D. Eskoff states that is not the issue. J. Hover states that has to be the issue. K. Veitch states that you can't take that out because that is the factor. J. Hover states that it sounds like the Board is saying that it was done without permission, so now "F-you". The only factor he has is that the Board cannot control the design and the implementation. J. Szpak states that he is not there at all; he is just looking at the balancing criteria. He states that he appreciates what the applicant is doing; he would probably do the exact same thing. They have a buyer who wants it brought into compliance as is, why wouldn't you come and ask the ZBA. As a Zoning Board member, J. Szpak states he has to balance this and there is criteria to balance it on. Whether the benefit can be achieved by other feasible means – getting a CO it can be, to have that exact same arrangement, no, but you can get pretty close to it. Undesirable change to the character of the neighborhood – J. Szpak states to him you are going from single family to two family and that is a big deal to him. Is the

request substantial – yes it is, it is about double the size of the lot that is required. Will it have adverse physical or environmental effects – no, not at all. J. Szpak states that from his balancing perspective, he is balancing towards the change to the character and the size of the variance, to him he is weighing on the side that no, it is not placing an undue hardship, they will probably lose the sale, maybe not. D. Eskoff states that you have to look at the self-create question also. J. Hover asks to the point of the undesirable change to the community going from a single family to a two family, is that not by definition what happens every time you have a variance. J. Szpak states no, because it is a different type of neighborhood, different size lot, there are different mitigating factors, etc. J. Hover questions that then the Board has never granted an in-law apartment to a house that sits in a single family community. J. Szpak states that we probably have but that it was balanced with these other things and the balance in that case, if he voted yes for it, we must have weighed in and balanced it to the favorable side. You cannot compare this to the other scenarios unless you compare all of those things. J. Hover states that he is trying to understand what impact this 3400 square foot house with a garage attached and now this finished apartment above sitting on 1.66 acres, he does not know how having another 1.3 acres of vacant land would really impact the neighborhood. J. Szpak states that the neighborhood was built as a single family neighborhood, if this gets approved, then we would have no justification not to approve a similar one that is the next door neighbor, and then the next door neighbor to them, etc. Now you are changing the character of the neighborhood to what it is not zoned for. It is zoned for a minimum of 3 acres, if you are going to do those kinds of things. J. Hover states that he would guarantee if he put a FOIL request in for whether there was an in-law apartment granted in a neighborhood of mostly single family homes. J. Szpak states that J. Hover is not listening to what is being said. J. Hover states that what was said is that the nature of the community was built of single family homes and that this would be changing the nature of the community by adding a 2-family. He guarantees that if he puts in a FOIL request that there would be an in-law apartment granted in a neighborhood built as single family houses. K. Veitch states not in an MDR-1 district. J. Szpak states that an example is that if you have a 2.9 acre lot and all the surrounding lots are 10 acres and they can build. Maybe that is a scenario that you would say, it doesn't change the character of the neighborhood at all. This just happens to be the small lot in a large group, and all the other neighbors already have in-law apartments. J. Hover states that the area that is in question is wholly contained within the structure, it is already there, so it is not like they are adding structures and chewing up land size. It's already built within the structure so he does not know how the difference between 1.66 acres and 3 acres would be impacted by what is inside the structure that is already there. J. Szpak questions that you couldn't tell if your neighbor of a single family home turned it into a 2 family home that it wouldn't have any impact on you as your direct neighbors. J. Hover states that he thinks it would have no impact. J. Szpak states that it does have impact and we are weighing in on that. J. Hover states that it is being overstated. K. Veitch again asks if the applicant would like to table this for a month to give them the opportunity to do the FOIL. He states he would rather have the applicant come in and convince him. J. Szpak asks if J. Hover sees where the Board is at. J. Hover states very clearly. J. Szpak states that is to J. Hover's advantage, because he knows what the Board is thinking. There is another Board member who is not here today. D. Eskoff states that regarding the self-creation, not that the Harris' created it, but by their attorney not doing his job or the realtor not doing their job, the fact of the matter is you come to us with a self-created problem or created problem that can in some way be un-created by getting rid of some things. J. Hover states that he gets the sense that the biggest issue is that this is already constructed and the Board didn't get to approve it. D. Eskoff states that that is what distinguishes it from the other "in-law apartments" that have come before us. Not in this type of district though. She asks where the entrance to the apartment is. K. Harris states that it is in the back of the garage. When you walk into the garage there is a door to the main house and a door into the apartment, and there is also a door on the back of the garage that goes up into the apartment. D. Eskoff asks if any of those entrances are actually in the house or just the garage. K. Harris states in the garage. D. Eskoff states that then it is a garage apartment. She states that she sees this as more of a garage apartment than an in-law apartment that would have been part of the house. J. Szpak states that we could have that interpreted. It makes a big difference if it is a garage apartment. M. Granger states that it makes a huge difference, that is another set of factors. D. Eskoff states that they are difficult facts and that the Board is usually quite amenable to whatever the Board can do to go out of their way to help rectify these situations, but this is a very difficult situation. K. Veitch states that this is one that is going to come back to us and he wants to make sure that we have done all the right things and it doesn't come back in a negative way. He states that if the applicant can come up with information that convinces us that we are doing it the

right way, then by all means let's do that. M. Granger states that she would like to know from G. McKenna his basis for determining that this is an in-law apartment vs a garage apartment as it is not entirely clear to her.

RESOLUTION – S. & K. Harris, Area Variance

MOTION: M. Granger
SECOND: D. Eskoff

RESOLVED, that the Zoning Board of Appeals tables the application of Shawn and Katherine Harris for an area variance for property located at 3 Liberty Drive, TM# 151.20-1-30 to the April 7, 2015 meeting.

VOTE: Ayes: Eskoff, Granger, Sanda, Szpak, Veitch
Noes: None
Absent: Conard

K. Veitch states that the applicant can certainly use G. McKenna as a reference. J. Szpak questions that we could also ask the Town Attorney. D. Eskoff states especially given the way that this is constructed.

Meeting adjourned 8:17 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary