

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

May 3, 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, and Andrew Wine, Alternate. Joseph Szpak is absent.

April 4, 2016 MINUTES

MOTION: D. Eskoff

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of April 4, 2016, with minor corrections.

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

Noes: None

Absent: Szpak

NEW BUSINESS

MICHAEL RAYBURN – Area Variance

Case#960, NYS Route 9N

Michael Rayburn is present. K. Veitch states that this is in the MDR1 district and the application is seeking to construct a garage apartment which requires 300' of frontage and 3 acres. The applicant has 2.3 acres and sufficient frontage. This is a project where the house is currently still under construction but due to legal issues is on hold. The applicant will also need a special use permit. D. Eskoff states that the property was part of a previous Zoning Board action to keep the mobile home on the property while building the new home. She assumes that both are still there because he is still constructing. M. Rayburn states that he fired the contractor and is involved in a law suit. Once the garage apartment is complete the mobile home will be removed; he wants it out of there. D. Eskoff asks if the applicant can submit a couple of photos of the area, that would be helpful to the Board.

RESOLUTION – M. Rayburn, Area Variance

MOTION: D. Eskoff

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals accepts the application of Michael Rayburn for an area variance for property located at 965 NYS Route 9N, TM#151.-2-22 as complete and schedules a public hearing on June 7, 2016 at 7:30 p.m., contingent upon:

- **Photos to be submitted of the surrounding area**

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

Noes: None

Absent: Szpak

464 MAPLE AVENUE LLC (BALLSTON MOURNINGKILL) – Area Variance

Case#961, Maple Avenue

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Eric Carlson is present and states that this project was before the Board and was approved 3 or 4 years ago and then was granted an extension the following year. It has sat idle since as he was building 350 apartments in Albany. D. Eskoff asks if there was a reason that the applicant didn't come back in 2015 to simply extend the variance. E. Carlson states just that he was too busy, no other reason, an unfortunate oversight. He states that the plans proceeded on and are fully designed. They also had gotten to the final comments from the Planning Board. K. Veitch questions that anything in the plan has changed. D. Eskoff states that the request is exactly the same and the variance would stay exactly the same. E. Carlson states that the Planning Board had requested some design changes, but for the purposes of the variance, nothing changed. L. Sanda questions that the applicant's name changed. E. Carlson states that it should now be 464 Maple Avenue LLC instead of Ballston Mourningkill. D. Eskoff states that the application appears to be in order. She thinks that the Planning Board has progressed from what the ZBA had suggested, she does not have a copy of the minutes but we can get them.

RESOLUTION – 464 Maple Avenue LLC, Area Variance

MOTION: D. Eskoff

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts the application of 464 Maple Avenue LLC (formerly Ballston Mourningkill) 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 complete and schedules a public hearing on June 7, 2016 at 7:30 p.m., as submitted.

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

Noes: None

Absent: Szpak

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 states that this property is located in the OR District and it does not allow self-storage. The applicant is requesting a Use and Area Variance. D. Eskoff asks if the existing structure will be torn down, self-storage units constructed, take out the curb cut and come in from the side. T. Roohan states that he spoke with Mr. Stevens next door before they made their application to make sure that he liked the idea, which he did because it would give them privacy from all the traffic. They bought the property, finished the fence and made the turn giving the property in the back more privacy. When you have commercial property they come and inspect for insurance purposes. The insurance company had a long list of items that they wanted fixed, so the applicant felt that it would be better to eliminate the curb cut and reduce the traffic with these storage units, and it would be better for the neighborhood. D. Eskoff states that we have a pre-existing, non-conforming lot for the area variance and then a change from residential to commercial. D. Carr concurs and states that is to allow that use in the OR zone. He states that the reason they laid it out the way they did is that dimensionally it fits the setbacks. The lot is only .3 acres and even with that size, they made the units so that they would fit.

RESOLUTION – T. Roohan, 519 Broadway LLC

MOTION: K. Veitch

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts 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 as complete and schedules a public hearing on June 7, 2016 at 7:30 p.m.,

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

Noes: None

Absent: Szpak

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OLD BUSINESS

G. DAVID EVANS – Area Variances/

Case #955, Plank Road

G. David Evans is present. K. Veitch states that the applicant has gone to the Town Board and requested Open Development approval which he received on April 14, 2016 with the condition that the shared driveway permits and any other agreements that were approved at the 2015 subdivision approval stay in place and that basically the Town Board will not honor their approval if anything changes from that. K. Veitch states that the public hearing was left open and he reopens it at this time.

Greg Chandler, states that he is working with Mr. Evans to purchase Lot 5 with the new dimensions so he and his wife would like to see this approved. K. Veitch asks if there is any other correspondence that we know of. There being no further public comments, this public hearing is closed.

D. Eskoff asks the applicant if he is no longer represented by D. Engel. D. Evans states that the attorney gave him some talking points to present tonight and would come back if necessary. D. Evans presents copies of maps showing natural barriers with the individual roads and lots. K. Veitch questions that the applicant is showing on this map the original driveways. D. Evans states that is correct. K. Veitch states that he does not see any changes in the driveway locations from the approved and the proposed. L. Sanda states that there are changes in how the homes would be situated on the lots and she assumes that change is due to the reconfiguration. D. Evans states that the contractor felt they might be better locations and the house sites are 'proposed'. L. Sanda states that the way that the language reads is that the shared driveways need to remain. K. Veitch questions which lot G. Chandler is buying, he believes that to be lot 5. D. Evans read his attorney's comments at this time. "An area variance is one in which the applicant seeks to use land that otherwise would not be allowed in terms of dimensional requirements imposed by Town Code. In this instance he is seeking to satisfy by waiver the dimensional requirements of frontage on a public road. Under NY law there is no simple, magic formula for determining whether a requested area variance is so substantial that the application should be denied. The issue of substantiality depends on the overall or totality of the circumstances that apply to the project. In this case the requested change in the variance is ultimately insignificant for the following reasons: A. The size of the foot print for the subdivision would be unchanged. B. The infrastructure required for the subdivision would be unchanged by the requested variance. Specifically the driveways and roadways are already in place. Further, the driveways will be subject to the same shared driveway agreements regardless of the lot sizes and shapes. C. The requested change for lot sizes and shapes will have no effect on the neighboring or nearby properties. D. The elimination of the keyhole configurations will affect nothing and in any event the purpose served by the keyhole lots can be just as well served by common driveway agreements that require easements. This is especially true where the keyhole portions cover terrain that cannot be developed for access purposes. Finally, the applicant needs the change in order to market the lots and no harm or adverse impacts will follow from the requested change.' A. Wine questions that the shared driveway agreement is a legal document that binds people that can be challenged in any way. L. Sanda states that it is usually a part of your deed. D. Eskoff asks if there is any change to the easement language in the deeds because of what is being requested. Should this be approved, would the deeds for these 7 parcels require any changes to the easement language? D. Evans states that the deeds for these lots haven't been conveyed or recorded yet. He has a proposed shared driveway agreement that was approved by the Town Attorney approximately a year ago. The properties over which the driveways go, those change in some cases, but the agreement is still the same. D. Eskoff states that in 2014 when the applicant had a similar situation and needed 250' for one of the lots, it was TM#123.-2-33, we had easement language in the proposed deed that went to our Town Attorney before we voted on the approval. We also had correspondence with Mike Chandler from the fire department regarding that lot. She states that all the Zoning Board can do is follow in the footsteps of the Town Board who looked at the open development area portion, is to look at the safety concerns and to make sure that all the pieces are in place – whether those be easements, whether they do it here, whether it is done before this goes back to the Planning Board – those are the biggest concerns. K. Veitch states that we want to make sure that any deeds that need to be filed will be filed and any easements that need to be filed will be filed. He

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states that the Board was strongly concerned about the construction of the shared driveways which have to be approved by the local fire department and the NYS Building and Fire codes. He states that he believes that is going to happen when construction happens on any of these sites, but he wants to make sure that it is in our minutes that we state that because the Planning Board is probably going to state the same thing. D. Eskoff states that she is not sure where the other lot is in reference to these maps. D. Evans states that he split lot 3 into 3A and 3B. He submitted the shared driveway agreement for that subdivision of lot 3 and it was the same agreement for lots 6, 7 and 8. All the lots were referenced in that agreement. A. Wine states that the applicant has stated that all the driveways are already constructed and asks how wide they are. D. Evans states that for lots 6, 7 and 8 it is 20' wide. The one going to lots 3A, 3B and 4, the stream crossings are 20' wide and there are sections between those that may be a little narrower but he does have the 40 x 20 area for fire equipment to pass as required. A. Wine questions how it is surfaced right now. D. Evans states gravel. A. Wine asks if it is the intent for it to remain that way. D. Evans states that he plans to use asphalt millings but hasn't done that yet. K. Veitch states that is something that the Planning Board will bring up because it is some of the components to the sites. Although the applicant is saying millings, and K. Veitch is not challenging the applicant on that, he does not know what the State Code or Fire code states about roadways. They have standards. Those things will be addressed by the Planning Board and the Building inspector as things progress. The shared driveways will have to meet whatever standards are required. D. Evans states that the Town Engineer looked at both of them and they reported favorably on that. D. Eskoff states that the biggest concern has been that they went through the subdivision process and approval, and now there is a change from the Planning Board aspect. She states that the Planning Board had major concerns with that as per their minutes. She states that she has some similar concerns. She finds it to be a substantial request and somewhat self-inflicted when you make the change but there are offset circumstances here, economic wise, that balance that out and that is not detrimental to an area variance. Everything else is a matter of making sure that everything is covered. K. Veitch states that personally he felt the same way, that the applicant is asking for no frontage whatsoever and that is a significant request for zoning, but he feels more comfortable now that the Town Board has reviewed what the ZBA has been looking at, they understand and have given their blessing. That takes weight off of his shoulders. D. Eskoff states that the Town Board feels that it is a worthwhile project and is something that should proceed and that is something that we follow on if we can formulate a motion that covers everything. A. Wine states that it is a year-long thing and something that would expire if he doesn't take any action. D. Evans questions that he has to come back annually to renew these. D. Eskoff states that if the applicant hasn't sold the lots he will have to come back.

RESOLUTION – G. David Evans, Area Variance

MOTION: D. Eskoff

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals approves the application of G. David Evans for area variances for property located on Plank Road; TM#123.-2-58.11; TM#123.-2-66; TM#123.-2-58.121; TM#123.-2-67; TM#123.-2-28.12; TM#123.-2-28.11; and TM#123.-2-28.31, as follows:

- **Lot 2, TM#123.-2-28.31 – 250' frontage variance**
- **Lot 3A, TM#123.-2-28.11 – 250' frontage variance**
- **Lot 3B, TM#123.-2-28.12 - 250' frontage variance**
- **Lot 4, TM#123.-2-67 - 250' frontage variance**
- **Lot 6, TM#123.-2-58.121 - 250' frontage variance**
- **Lot 7, TM#123.-2-66 - 250' frontage variance**
- **Lot 8, TM#123.-2-58.11 - 250' frontage variance**

Approval is based on the following criteria:

- **Benefit cannot be achieved by any other means feasible to the applicant**
- **The applicant has restructured his subdivision as approved as an open development area by the Town Board's meeting of April 14, 2016**

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- **No undesirable change to the neighborhood character or detriment to nearby properties**
- **The request is substantial but it can be offset by the economic feasibility of the way the lots were previously designed vs. how they have been redesigned and the open development area approved by the Town Board reduces that substantiability greatly**
- **The request should not have any adverse physical or environmental effect**
- **Although the request for the area variance is somewhat self-created in the aspect that the applicant changed his initial plan to the current plan, it was done for economic reasons which seem to offset it and it is not detrimental to the granting of an area variance**

As such, the area variance is given with the conditions:

- **That the granting of these area variances is predicated on the prior granting of authorization for Open Development to G. David Evans for these lots on Plank Road by the Town Board on April 14, 2016 with the condition that the shared driveway agreements and any other agreements that were approved with the 2015 subdivision approval by the Planning Board stay in place and that failure to do so will negate the approval of the Open Development Area by the Town Board and therefore, failure to do so will also negate the area variances hereby granted for these lots by the Zoning Board of Appeals**
- **Any and all easements that need to be recorded with these deeds should be approved by our Town Counsel through the process of the Planning Board.**
- **The approval of this area variance must also meet the approval of the Fire Department and any safety code requirements that should be in place. We do not have correspondence from the Fire Department so this approval is pending their approval**
- **This reconfiguration constitutes a substantial modification of the subdivision and therefore does require Planning Board review, therefore, this case must go to the Planning Board for subdivision review**

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

D. Evans reiterates that his next step would be to go to the Planning Board and they would tell him what he needs in terms of approvals, etc. He asks if there is anything he can do to get a head start on getting those approvals such as submitting the shared driveway agreements. K. Veitch states that the best thing to do would be to contact the building department tomorrow. D. Eskoff states that whatever the applicant can do ahead of time will have him that much further along in the process. D. Evans asks if the Planning Board will have a copy of these minutes by the next meeting.

Meeting adjourned at 8:07 p.m., all members in favor.

Respectfully submitted,

Kirsten Kern