

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS
NOVEMBER 3, 2009

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, Kevin Veitch, Michelle Granger and Stanley Weeks. Paul Lunde and Joseph Szpak, Alternate are absent. Gerry McKenna, Zoning Administrator is present.

SEPTEMBER 1, 2009 MINUTES

MOTION: S. Weeks

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of September 1, 2009 as submitted.

VOTE: Ayes: Conard, Veitch, Weeks

Noes: None

Absent: Lunde, Szpak

Abstain: Granger

OCTOBER 6, 2009 MINUTES

MOTION: M. Granger

SECOND: K. Veitch

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of October 6, 2009 as submitted.

VOTE: Ayes: Conard, Granger, Veitch, Weeks

Noes: None

Absent: Lunde, Szpak

NEW BUSINESS

MARY ANN FIORE – Case #833, Area Variance

Sand Hill Road

Cathy Fiore is present for her sister, Mary Ann Fiore. T. Conard reviews that this is an application for an area variance for height for a wind turbine. The application does not specify the exact height. T. Conard states that we definitely need to know some of the particulars: Height of the tower with the turbine; type of equipment and manufacturers specs; a better location – there are no dimensions on the drawing, the distance from the solar array and the house; the KW – output. M. Granger believes that the answer to question #8 on the SEQRA should be ‘no’. That correction is made. T. Conard states that there are new laws going into effect, probably within the next couple of months. C. Fiore asks if since the application is already in, would that have any affect if things change. T. Conard states probably not. S. Weeks states that the ZBA might look at what is proposed and say that in view of that, the Board would like some additional information. S. Weeks states that this is not absolutely approved in writing yet, we have some latitude in terms of what we would ask. K. Veitch states that we request additional information to be submitted two

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weeks prior to the next meeting. He states that he would like to see any information on noise generation, decibels.

RESOLUTION – M. A. Fiore, Area Variance

MOTION: K. Veitch

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals accepts the application of Mary Ann Fiore as complete for property located at 192 Sand Hill Road, TM# 150.-1-105 and sets a public hearing for December 1, 2009 at 7:30 p.m., contingent upon the receipt of the following information:

- **Height of the tower with the turbine**
- **Manufacturers specs for the equipment**
- **Distance from the solar array and the house, etc.**
- **The KW – output**
- **Information on noise generation**

VOTE: Ayes: Conard, Granger, Veitch, Weeks

Noes: None

Absent: Lunde, Szpak

OLD BUSINESS

TERI & WILLIAM CROWE – Case #814, Area Variance

Old Stone Ridge

No one is present for the application. T. Conard states that a letter was received from the applicant withdrawing the application.

DISCUSSION

The Board reviews the proposed Town Code changes. T. Conard states that he thinks that differentiating between a wind tower hooked to the grid vs. a non-grid tower is kind of an odd thing. He believes that they should all be treated the same and that they probably should all get special use permits. You are not going to get much for 35'; we are right back where we started from giving height variances to everyone. Once we give one we are going to be giving them all. Right now the way it is set up is that something that is not hooked to the grid merely goes to the building department and if it goes over the height requirements then it comes to the ZBA. With no site plan review or special use permit they can put it anywhere. G. McKenna states that there is still the fall zone. K. Veitch states that there are setbacks to take into consideration. T. Conard states that he is not sure what kind of wind generation one would get at 35'. K. Veitch states that what will end up happening is people putting these in at the minimum and then coming back later stating that they have a hardship because it doesn't generate the amount that they need and so they need to raise the height. Then is it a self-created hardship? T. Conard states that if they hook to the grid, they have 100' and to him that makes more sense for any kind of wind generation. K. Veitch asks what kind of minimum requirements are there to connect to the grid. G. McKenna states that there is actually a size that National Grid will take, below that they do not want it. It is not enough for their equipment, but G. McKenna does not know what that minimum is. T. Conard states that we should find that out too. He feels that the Town should look at that. M. Granger reads from the proposed change definitions that a small wind energy facility has 'nameplate capacity of not more than 100 kilowatts.' T. Conard states that we do not know what the cut off is on the low side where National Grid would not bother with it. G. McKenna states

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that it is probably more of a monetary minimum, that it just costs so much to do it that you do not do it because of the return on it. M. Granger states that it seems to her that if we have these regulations adopted, why are we going to go back down the trail again where someone comes in and wants a variance for 65' and it says 35'. Then you start down that slope again. T. Conard uses an example that in Cape Cod there was a height limit on houses of 35' but that they would go to 38', so everyone building a house came before the Zoning Board to get a 38' height limit. That is what he is looking at here when he sees this. We make it 40', 45' and everyone is going to want a 45' tower. S. Weeks asks why we are going to be inclined to do that. T. Conard states that his point is that would be a good way to force them to hook it to the grid. M. Granger states that she understands that the Zoning Board exists because there are people in situations who need exceptions to the rules as written. K. Veitch states that this is all new and you need to know what you are getting into before you do it. T. Conard states that he does not see a lot of them being below 35' frankly, so why don't they just send them all to the Planning Board and make them go through special use permits. He states that it is not really practical to put a wind generator lower than 35'. S. Weeks states that you may have one that is just charging a little battery for some use. K. Veitch states that there are farmers out there who want to put these things in. T. Conard states that if you have a field then leave it under 35' and let them put it in, but he would say that he personally would keep it at a fixed 35'. That would let the farmers do it if they have a wide-open field. K. Veitch states that he could see a situation where someone would have an open property but their neighbor has trees that are 40' high and they are blocking the wind so they need to get it up higher. M. Granger asks how we know that is the reality of the situation, where is the documentation. T. Conard states that is why he thinks that the whole thing should go to the Planning Board to sort through it. He thinks it is crazy to differentiate it that way because he thinks we are going to run into more problems. K. Veitch states that if you cannot do it within the 35' then why are you doing it at all. T. Conard states that he probably would not vote in favor of going above the 35' level, personally. S. Weeks states that was the intent when they wrote this. T. Conard states that if we stand firm that is one thing. There are other outlets too. They can apply for a small wind generation. M. Granger states that then according to the way the law is written, there are other means available to the applicant if that situation arises. T. Conard states that we can keep the law in, but he does not see the ZBA ruling for higher towers. K. Veitch states that it is going to be someone with a large piece of property, someone who has a horse farm, 100 acres; it's a commercial use, etc. T. Conard states that it is ok as it stands. M. Granger states that there are other means available to the applicant. K. Veitch states that then what we are looking at is that we are not going to exceed the 35', we are going to allow variances in side yards, etc., the same area type variances when it comes to location on the property. M. Granger states that comes back to the noise issues and things of that nature because you cannot let it sit right on top of someone else's property line. G. McKenna states that there are safety issues if it fell over. M. Granger states that she does not believe that we have the same freedom and flexibility. K. Veitch states that that would be the only place he sees where you could take into consideration any type of variance. If the tower is 35' it should be at least 35' from the sideline, so then if it does fall, it is not going to fall beyond the property line. K. Veitch states that this is not going to be easy as there is a big push in the government to want to start seeing more wind energy usage. S. Weeks states that there is a huge push. T. Conard states that includes tax credits. K. Veitch states that he would like to see tax credits for the communities that allow them instead of the property owners with no return to the community. S. Weeks states that if they were in the Town of Greenfield we would get payment in lieu of taxes. On the Right-to-Farm law, M. Granger states that as to resolution of disputes, what is the training for the people who will sit on the committee in terms of dispute resolution? She does feel that is an issue. G. McKenna states that a lot of this is taken from other towns' regulations. M. Granger states that it is a great way to go, but there has to be some kind of training, some parameters. S. Weeks states that was not spelled out. It was spelled out how people were to be appointed to that. M. Granger states that someone needs to have a skill set in order to be able to make sure that the disputes are arbitrated fairly and equitably. She states that the 'costs associated' needs to be clarified. She states that she assumes that it means 50/50 among the parties that are in dispute or equally divided among the participants. Each party should bear an equal portion of the responsibility for the cost or something to that nature. Outdoor wood burning furnace – M. Granger states that it seems to her that at one point there was a minimum lot size and restrictions during the time of the year when they could be used, which has been removed. So then one of the questions become, should there be more of a restriction in

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stack height. The other question she has is that it makes reference to the fact that due consideration be given to the prevailing wind direction. How is that determined and documented? How may that influence where that outdoor wood furnace can be placed and what the stack height should be? She states that she has some concerns, because now if it is going to be year round, different types of home structures may have a different influence in terms of how those things go. Discussion takes place that there is a map regarding prevailing winds. T. Conard feels that prevailing wind is a moot point anyway when you get to contours and trees, etc., because your wind can actually go in opposite directions. K. Veitch states that you put things in there that people are going to hang their hats on and dispute. T. Conard states that you can use generally prevailing winds. He thinks there are some general maps. M. Granger states that if it is going to stay in there, it would be helpful in terms of what is the resource. Then if you get the trees and contours, etc. in there that negate this, then what do you do to make sure that you are still a good neighbor? She recognizes that the code states what you are permitted to burn and not permitted. That is great in theory, but who is going to police that. K. Veitch states that it would be based on complaint and there is some common sense when you go to something that is burning. You can tell when you look at a wood stove and know if it is burning clean or not. R. Rowland refers the Board to the Planning Board minutes in which B. Duffney states that you will void your warrantee if you do not burn appropriate materials and that can be determined by looking at the inside of the chamber. S. Weeks states that some have language about measuring the emission smoke, etc. They felt that was unenforceable. K. Veitch states that if you are called on a complaint, you can tell from the scene and tell by what is around it what is being burned. If people know that they are being policed, if you have someone show up at your house, say that a complaint was received and remind them that there are penalties, etc. - they do not want that. T. Conard states that he is concerned because they are going by the eaves for the stack height and he finds that having had a colonial house with a very high roof and very low eave, putting it a couple of feet above the eave, it is not going to be very effective with that type of a structure, or if you have an A-frame, you could put the thing 5' off the ground if you wanted to. He would prefer to see it say 2 or 3 feet below the peak and go by the peak as opposed to the eave and change your distances. T. Conard asks if most towns use the eave or the peak. S. Weeks states that most use the eave and in fact the committee strengthened it some because they were talking about other residences and not their own residence. He thinks it is the roof pitch, which can get really high. T. Conard states that you would need a huge support system supporting something that got really, really high. K. Veitch states that if they get too high then there is a problem with the build-up. K. Veitch asks about commercial wood burning uses. S. Weeks states that they felt that the most important issue was getting the stack higher. They debated quite a bit about limiting the months and that got adjusted somewhere along the way. T. Conard states that some people heat their water with their wood stoves and wanted to be able to keep heating through the summer. S. Weeks states that it was water, pools, etc. K. Veitch states that they run theirs until about the end of June and then the lines that run through the house to connect to the water gets the house too hot. You are constantly heating the house. S. Weeks states that regarding the statement about due consideration, it all seems very sensible when you talk about it and write it down. Then when you begin to think, as an attorney might think, about what is that going to mean in the future, who decides that due consideration was and was not made, that is a little tough for S. Weeks to defend. He thinks it may need to be reworded. M. Granger states that we need to clarify if there is some industry standard out there or something, we have to find a better way to word it. If she were the neighbor who was opposed, she is going to argue that there was no due consideration and what was the basis for it. We need some guidelines for it. S. Weeks states especially when you say 'must be located'. If you say, 'should be located', he is more comfortable with that wording. K. Veitch states that he feels that there is a prejudice there because he has an outdoor furnace, you are making him have to have some kind of consideration to the prevailing wind and how it impacts the neighbors, but the guy next door who has a wood stove in his house or has a chimney or wood furnace in his house, doesn't have to meet any of those requirements. The indoor may burn more than the outdoor. S. Weeks states that this discussion really started with the person who wanted to have the outdoor furnace and we started talking about distances and where to locate it. M. Granger questions 'due consideration to prevailing wind direction' - what is 'due consideration'? How do we determine what the prevailing winds are? Who gives those determinations? K. Veitch states that then you have the situation where 5 years ago someone didn't have any neighbors and now the new neighbors don't want the outdoor furnace. M. Granger states that then our recommendation would

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be that we would like to see some kind of further clarification in terms of what 'due consideration' is; how you determine the prevailing wind direction; and who makes those judgment calls.

Meeting adjourned 8:08 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary