

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

November 7, 2017

REGULAR MEETING

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Denise Eskoff, Chair, at 7:30 p.m. On roll call the following members are present: Denise Eskoff, Curt Kolakowski, Joe Szpak, Laura Sanda, and Neil Toussaint, Alternate. A. Wine is absent. D. Eskoff states that N. Toussaint will be a full voting member for the entirety of the meeting because A. Wine is absent.

Minutes

October 3, 2017

MOTION: J. Szpak
SECOND: L. Sanda

RESOLVED, The Zoning Board of Appeals waives the reading of and accepts the October 3, 2017 minutes as written with minor corrections.

VOTES: Ayes: D. Eskoff, L. Sanda, J. Szpak, C. Kolakowski, N. Toussaint
Noes: None
Absent: A. Wine

NEW BUSINESS

Denise Smith & Pat Fehling - Case #991
Area Variance, 383 Clinton Street
TM# 152.-2-10.31

Denise Smith & Pat Fehling are present. D. Eskoff states that the Applicant would like to build an in-law apartment. D. Eskoff states that the Applicants are in the MDR2 District on Clinton Street and they have 1.5 acres and a 40' rear set back and the Town requires 3 acres and a rear set back of 75'. D. Eskoff reviews the application. D. Eskoff states that the process for tonight is basically accepting the application. If it's complete the Board will set a Public Hearing date for our next meeting on December 5, 2017. D. Eskoff asks if the Applicants have lived in their home a long time, have they been considering this a long time, she assumes this is for an elderly parent situation. D. Smith states yes, it is for an elderly parent and that they have been in the home since 2001. D. Eskoff opens the application up to the Board for review. C. Kolakowski has a question regarding photo # 4 which is the photo submitted showing from the side looking toward the propane tank that is looking south towards the neighbor looking directly to the South. D. Smith states that is correct. C. Kolakowski asks that is the view that your neighbor has obviously there is a wood line/tree line between your properties? D. Smith states that those pine trees that you see provide a buffer between our house and the neighbor's

property. C. Kolakowski asks if the trees are on their property or the neighbors. D. Smith and Pat Fehling state that they are not sure. D. Eskoff asks if they have a survey. Is the map provided to the ZBA accurate? The Applicants state they are not sure how to measure the distance to the end of their property line. D. Eskoff suggests that one option is a rolling measurer at a low cost that would at least give them an idea. D. Eskoff states that we sometimes ask for buffers to be maintained because of encroachment issues with neighbors. Those buffers are there now so we will take that into consideration. D. Eskoff asks if there is a railroad behind them. P. Fehling states yes, those are the tracks that go up to North Creek. D. Eskoff asks if they are the Applicant's neighbors on their back side? D. Smith states left side. C. Kolakowski asks if they are the last house going toward Skidmore? P. Fehling states that is correct. D. Eskoff states that the in-law apartment will be going out the back toward the railroad. D. Eskoff asks if there is a house visible from the other side of the railroad tracks? D. Eskoff asks if it is Skidmore? D. Smith states that it is her understanding that Skidmore owns part of the land on the other side of the railroad but, doesn't know if it is directly behind them or not. D. Eskoff states that it is undeveloped so it's hard to determine. D. Smith states that the last photo that they included is from there. D. Eskoff states that it is pretty well buffered, that's positive it's in their favor. D. Eskoff asks the Board if they want anything different from the applicant? J. Szpak asks just to clarify everything is it or is it not a requirement if the current buffer of trees is on their property? D. Eskoff states that the Board can if the Board wants to. J. Szpak asks are we worried about the neighbor? C. Kolakowski states yes, if the trees are on the neighbor's property or the applicant's property and that's their buffer, the only buffer that is there now. J. Szpak states that he understands. C. Kolakowski states that he would to know if the buffer trees are on the neighbor's property or the applicants. The board discusses other ways to look at the property boundaries and measurements with the Applicants including Google and the County GIS system and requests documentation and additional photos regarding property lines.

RESOLUTION: D. Smith & P. Fehling, Area Variance Application

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts the application of Denise Smith and Pat Fehling for an area variance for property located at 383 Clinton Street, TM# 152.-2-10.31, contingent upon the receipt of the requested of documented property lines and photos to the ZBA/Building Department, to be submitted by November 21, 2017. A Public Hearing is set for December 5, 2017.

VOTES: Ayes: D. Eskoff, L. Sanda, J. Szpak, C. Kolakowski, and N. Toussaint

Noes: None

Absent: A. Wine

**Justin Goodson Case #992
Area Variance, TM# 124.-1-52.11
253 Plank Road**

Justin Goodson & Mariah Jones are present. D. Eskoff reviews the application and states that the Applicant wants to build a detached garage on an existing slab. D. Eskoff asks if the garage will be the same size as the slab? J. Goodson states yes. D. Eskoff states that it is a front setback variance, they have 39' and they need 75' requiring a variance of 36' on the preexisting slab. D. Eskoff states that there are some questions that are unanswered on the application and asks the Applicant to please answer them. L. Sanda asks if minimum lot size is 6 acres do

they need a variance for the house? D. Eskoff states that she questioned that as well and any need to determine by the Codes Enforcer would be added if it is needed it would be standard and part of the variance. N. Toussaint asks if the space above will be living space? J. Goodson states no, cold storage. L. Sanda asks that J. Goodson clearly state that on the application because, it does look like it could be. J. Szpak states that the Board is asking for a determination whether it requires an acreage variance and we are asking the application to be changed. D. Eskoff states that J. Goodson has now added the information that was needed on the application. L. Sanda requests that the Applicant submit additional photos prior to the next meeting.

RESOLUTION: J. Goodson, Area Variance Application

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts the application of Justin Goodson Case #992 for an area variance for property located at 253 Plank Road, TM# 124.-1-52.11, contingent upon the receipt of the requested of photos looking at the slab and the neighbor's homes across the street, and the Codes Enforcement Officer to determine to review the requirements to be submitted by November 21, 2017. A Public Hearing is set for December 5, 2017.

VOTES: Ayes: D. Eskoff, L. Sanda, J. Szpak, C. Kolakowski, N. Toussaint
Noes: None
Absent: A. Wine

**David Vanderzee Case #985
Area Variance, 30 Squashville Road
TM# 137.-2-49**

George Smith, Agent, is present for the Applicant. D. Eskoff reviews the application. D. Eskoff states that the ZBA referred the case in August to the Planning Board for the purpose of SEQRA review due to wetlands on the Applicant's 70+ acres rear lot as part of the ZBA's Resolution. D. Eskoff states that some confusion with the Planning Board resulted from that referral. This is not an Open Development case; it was only referred to the Planning Board to act as lead agency for SEQRA review. She states that the ZBA has not yet accepted this application. She wants the Agent/Applicant to know this is not an Open Development case, if it was the ZBA would have referred it to the Town Board for an ODA Determination, if accepted, which the ZBA did not do. The Planning Board, in determining SEQRA, asked the Applicant for a lot of information which the ZBA would have asked the applicant for too such as copies of the deeds that show whether or not the Applicant has the ability to cross National Grids (Niagara Mohawk) property to get from one property to the other. D. Eskoff states that the Applicant/Agent is here for a keyhole lot. The applicant is trying to find a way to get a variance through a front lot that is part of an old subdivision to get to a 70 acre rear lot which is what the SEQRA was done for and there is a very long strip of property that is owned by National Grid (Niagara Mohawk) that runs the entire length between the two adjoining properties owned by the Applicant. D. Eskoff states that G. Smith (D. Vanderzee) has a couple of hurdles not just getting the keyhole lot variance but, they also have to be able to cross that middle lot. D. Eskoff states that the ZBA has the deeds because the information was also provided to the ZBA. D.

Eskoff states that G. Smith has provided the ZBA with everything the ZBA has requested in their Resolution. At present, we have deeds that G. Smith provided to the Planning Board and those deeds were provided to Town Counsel to review them also. The Planning Board in their September 26, 2017 minutes states the applicant had provided documentation of easement access across National Grid property to the property in question - that was their determination based on what they received, but, that is not the determination of our Town Counsel. D. Eskoff states that we have a copy of two deeds that the Applicant has provided to the Planning Board, the Cheryl Willard deed in 2005 and the David Vanderzee to David Vanderzee and Over the Hedge Farms, LLC in 2015 the problem is the Cheryl Willard deed from 2005 contains a "Crossing Permit" that Town Counsel has stated is the important information. The Crossing Permit was given in 1922 to Mr. and Mrs. Valla. D. Eskoff reads this language from the Cheryl Willard deed.

The party of the second part shall hereafter enjoy such rights to pass over certain lands owned now or formerly by Niagara Mohawk Power Corporation, lying contiguous to the above parcels, as provided to the predecessors of the party of the first part by virtue of a certain Crossing Permit dated December 23, 1922, running from the Adirondack Power and Light Corporation to Simon Valla and Phillipina Valla, his wife, who are predecessors of the first part.

D. Eskoff states that there are also Planning Board minutes from 2005 when this was up for subdivision. In those minutes from 2005, Robert Demes was representing Morgan Greene, then the owner of the subdivision and what was said was "there is a 20' wide access for the Crossing Permit and that it was for recreational and logging purposes." D. Eskoff states that is the way it is described by that person at that time. D. Eskoff states that is the only other information on that Crossing Permit the ZBA has to go at this time. The problem is when we get to Mr. Vanderzee's 2015 deed. In that deed, Mr. Vanderzee deeded the 70+ acre land locked lot from himself back to himself and Over the Hedge Farms, LLC. The Crossing Permit language was not included in the deed. G. Smith states it was simply an oversight and D. Vanderzee will be working on that. D. Eskoff states what the ZBA, in consult with Town Counsel, is requesting from the Applicant at this time is for them to provide a copy of the original Crossing Permit and a copy of all deeds associated with the 70+ acres including missing deeds from Morgan Green to Capital Funding, LLC and Capital Funding, LLC to David Vanderzee and any other deed information not already provided to the ZBA/Building Department pertinent to this case so Town Counsel can review it all. G. Smith states he does not have a copy of the Crossing Permit and does not believe he can provide one. G. Smith is not amenable to pursue the requested information and states that he was up front from the beginning they are still working with National Grid, they are seeking something current. D. Eskoff states that she expected the Applicant was because they want something better. G. Smith states the situation it's quite an expensive venture to move forward and the Applicant didn't want to do so if they cannot get access to the property. D. Eskoff states it's backwards for us because, if it was just the Applicant's property making a keyhole lot and attaching two properties there would be no one else involved but here there is a third party involved and if we accept this application and set a public hearing then the ZBA will be discussing a third parties rights and the Applicant's rights to go through their property. We have to have some proof that you can access that property for the ZBA to give a variance that connects to it in this situation. G. Smith states that he submitted the Application to the ZBA with the understanding that the Applicant is asking for permission from National Grid. D. Eskoff states that the Board is aware of that but it is not enough for the ZBA to give a variance on. G. Smith asks if he needs to get permission from National Grid first to move forward? D. Eskoff states that the Town Counsel has asked for proof based on what information the applicant has already submitted because the most current deed does not state

the information the Board would need. What we really need is chain of title of those deeds. D. Eskoff states that the ZBA has the C. Willard deed and the most current deed held by the Applicant. D. Eskoff states that the ZBA does not have the two other deeds in-between those deeds and the property has changed hands at least twice in-between, and we need a copy of the Crossing Permit. G. Smith states that if they had written permission from National Grid and asks would that supersede the deed? D. Eskoff states that would be up to Town Counsel. G. Smith states that it really doesn't matter if National Grid denies that. D. Eskoff states that it matters to our Town Counsel who still has to approve it. D. Eskoff states a way to handle that is by having an attorney involved if there is one that could discuss the matter with our Town Counsel. G. Smith states that is not necessary no. D. Eskoff states that every time we consult Counsel over this it is costing money and in the long run they may want to consider counsel than to keep coming back to the Board. The Board wants the Applicant to be in a position to move forward with the application. D. Eskoff states we have to have some proof as a starting point. G. Smith asks the Board if they understand his position. D. Eskoff states the Board does. G. Smith states if they get National Grid to give them the legal right to cross the property why wouldn't that supersede this? D. Eskoff states that could but, the applicant doesn't have that. G. Smith states that he understands but, the Board is asking him to forgo the need. D. Eskoff states that no they are not the determination on proof is up to Town Counsel. D. Eskoff states that it would be lot better proof than what we have now, two deeds that don't match up and we need the missing information. D. Eskoff asks G. Smith if the Applicant is looking at an easement? G, Smith asks what easement? D. Eskoff asks G. Smith what he is looking for in a new Crossing Permit? G. Smith asks if he can look to see if he can find it. G. Smith states that he is unable to find it, but, says it is very straight forward and he has been speaking with people at National Grid, and they have to get a survey to show where they are crossing and other information regarding the height of the power lines, and then National Grid would review it and it will take several months and if it met all the criteria. G. Smith states that he shouldn't say this but the people at National Grid have said it is just filling out the correct forms and it will happen. D. Eskoff asks if National Grid will be giving the Applicant some kind of permit? D. Eskoff states that National Grid would have to give G. Smith something in writing and because the Applicant is asking to attach the two properties and get a lot line adjustment there will have to be something in the deed to review. The Town Counsel at some point going to want to see something in the deed(s) that permanently connects the properties and the deed will have to describe a way to cross over. D. Eskoff states that if that is not the route G. Smith wants to go and withdraw that Crossing Permit as proof then the best thing to do would be to table the application. If the Board gave the Applicant a variance and it took a year to produce proof of legal access then the Applicant would be back in front of the Board again for the variance and it's still up to the Planning Board to create the keyhole lot all the ZBA can do is give the variance, it's a series of steps and unfortunately it does take a while. G. Smith asks about the deeds and when to change or add the language? D. Eskoff states that she cannot answer that it is a question for counsel or whoever is doing their deeds. D. Eskoff states that the SEQRA was one hurdle and that will remain and stay in the file it's up to them what they want to do at this point we are trying to get this to move forward and the Board is still missing deeds. The Town Counsel has stated we need proof if you are going by that Crossing Permit then we need to see that in the deeds. D. Eskoff states the she is not sure if a 20' logging and recreational Crossing Permit will get them the driveway. D. Eskoff refers to the Crossing Permit. G. Smith asks when was that referenced in? D. Eskoff states in the Cheryl Willard deed in 1922 as given to Valla. D. Eskoff states that the Town Counsel is asking for that because the Applicant has predicated their crossing rights on that. G. Smith asks if the reference was 20' wide logging Crossing Permit? D. Eskoff states that the ZBA can give G. Smith a copy of the Minutes from 2005 if he would like. D. Eskoff states in 2005 when the Planning Board was discussing this when it was Morgan Greene they stated that it was a 20' access and it was undefined meaning

it could be anywhere but the purpose was recreation and logging. D. Eskoff asks G. Smith what would he like to do? G. Smith states that he is uncertain, if he gets the deed updated. D. Eskoff states that would help. D. Eskoff states that if the deed from D. Vanderzee to himself and Over the Hedge Farms had that language and it was legally acceptable to Counsel and legally filed the ZBA would not have needed the other deeds but the ZBA would still need a copy of the Crossing Permit because that permit is what you are resting your case on. J. Szpak asks what are G. Smith's options? D. Eskoff states the option the ZBA was given from Town Counsel was to show proof that the applicant have a Crossing Permit and in order to do that we need a copy of that Crossing Permit and the deeds with the chain of the Crossing Permit going from the Cheryl Willard deed through to the next two deeds up to D. Vanderzee's and then to D. Vanderzee to himself. When D. Vanderzee did that it was left off but we don't have the in-between deeds so we can't assume they were on there either. L. Sanda states that we have not accepted this application. D. Eskoff states no. L. Sanda states that we can table the application. G. Smith asks that it's a permit in the 1922 deed? D. Eskoff states it's in the C. Willard deed it just says Crossing Permit in 1922 it could mean logging and recreation it doesn't mean it is a crossing permit to put in a driveway. D. Eskoff states that G. Smith is seeking to get from front property to the rear property. G. Smith asks do I need this? D. Eskoff states yes, and he offered that Crossing Permit as proof. The Town Attorney is asking for proof. G. Smith asks if the Crossing Permit is in the deed. L. Sanda states in the deed it references a document called a Crossing Permit that is dated December 23, 1922 so the deed references that document but without the document you cannot tell what it actually is. D. Eskoff states that the deed G. Smith provided references the Crossing Permit and that's the language that was not put in the final deed that was provided. L. Sanda states it is a separate piece of paper that is the Crossing Permit. G. Smith questions why a variance to meet the needs of a keyhole lot cannot be granted without the missing documentation. J. Szpak is unsure with this situation. D. Eskoff states it would be a variance to nowhere if the Applicant's cannot secure proof of access through the National Grid lot to the rear land locked lot. C. Kolakowski states that hopefully it was recorded and he has done some work for National Grid sometimes those permits were recorded or attached to a deed at the end if not it sounds that G. Smith is trying to work with National Grid to get something that will supersede that. G. Smith states yes and it has to happen anyway from the conversations with National Grid. D. Eskoff states that it would be in everyone's best interest to table this application until that proof is received because we will not be able to move forward until the ZBA has something that shows that G. Smith can produce something from the past or the present, so the ZBA can rule on the variance request. The Board discusses the ZBA's role in approving a variance to meet required frontage for a keyhole lot and the role of the Planning Board in creating a keyhole lot once a variance is granted. The ZBA agrees they need more proof from the Agent/Applicant to proceed with the application. D. Eskoff asks G. Smith if he as Agent agrees to table the application while the Agent/Applicant pursues the necessary proof of legal access across the National Grid property and that any proof be submitted to the Building Department for review by Town Counsel. G. Smith agrees.

RESOLUTION—Vanderzee, D. – Area Variance

MOTION: J. Szpak
SECOND: L. Sanda

RESOLVED, with the Applicant's Agent's approval, the Zoning Board of Appeals hereby tables the application of David Vanderzee, Case #985, request for an Area Variance for 40' of frontage, for property located at 30 Squashville Road, TM# 137.-2-49, until further notice within

a reasonable time frame from the Applicant/Agent to the ZBA/Building Department while the Applicant/Agent pursues applicable rights/permission from National Grid (Niagara Mohawk) and secures the necessary written proof for legal access requirements of a key hole lot for access through the adjoining rear property, TM# 137.-2-15, owned by National Grid (Niagara Mohawk) to further access to TM# 137.-245.13 which is owned by the applicant.

VOTE: Ayes: D. Eskoff, C. Kolakowski, L. Sanda, J. Szpak, and N. Toussaint, Alternate
Noes: None
Absent: A. Wine

OTHER BUSINESS

Yarsevich, C.
Correspondence

Board members received copies of a letter and photos sent to Supervisor Pemrick and the Town Board by Christopher Yarsevich, Greene Road, regarding zoning concerns, and suggestions, for information purposes.

Meeting adjourned at 8:15 p.m. All members in favor.

Respectfully Submitted,

Kimberley McMahon