

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

September 6, 2016

REGULAR MEETING

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Denise Eskoff at 7:30 p.m. On roll call the following members are present: Denise Eskoff, Laura Sanda, Joseph Szpak, and Andrew Wine, Alternate. Curt Kolakowski and Kevin Veitch are absent.

August 2, 2016 MINUTES

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of August 2, 2016, as submitted.

VOTE: Ayes: Eskoff, Sanda, Szpak, Wine

Noes: None

Absent: Kolakowski, Veitch

NEW BUSINESS

PAUL & DIANE HLADIK – Area Variance

Case#968, Ormsbee Road

Dave Barrass, Surveyor, is present for the application. J. Szpak questions what the state of this is, the foundation is poured? D. Barrass states that the house is up and framed. He does not know how this occurred and if he knew how, it wouldn't have occurred. When the contractor laid out the house, apparently someone measured from the wrong point or did something inadvertently and got the house 12' too close to the road. The setback is 75' and it does not comply with that. He states that it was not discovered until he went in and did the "as built" survey. At that time the foundation was in, the house was framed and they discovered that the whole thing was 12' too close. D. Eskoff questions that the survey was from 2013. D. Barrass states that the original survey for the subdivision was in 2013. The house location survey was just recently. D. Eskoff reviews that the application is for a 12' variance. J. Szpak asks if they need more than 12' or 12'. D. Barrass states that it is already built – 12' comes to the concrete step, so 12' is good.

RESOLUTION – P. & D. Hladik, Area Variance

MOTION: J. Szpak

SECOND: A. Wine

RESOLVED, that the Zoning Board of Appeals accepts the application of Paul and Diane Hladik for an area variance for property located at 255 Ormsbee Road, TM#111.-1-21.14 and sets a public hearing for October 4, 2016 at 7:30 p.m..

VOTE: Ayes: Eskoff, Sanda, Szpak, Wine

Noes: None

Absent: Kolakowski, Veitch

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DAVID KWIAT – Area Variance

Case#969, Hovey Road

Bill Thompson, Thompson and Fleming Land Surveyors, is present for the application. D. Eskoff reviews that this is for the subdivision of two lots; there is information in the Planning Board minutes on this case. One lot does not meet frontage. B. Thompson states that this is 16 acres at 19 Hovey Road and the owner is looking to subdivide this into two parcels. Lot 1 is going to be 7-plus acres with 174.22' of road frontage and 250' is no required. The second lot is going to be 9-plus acres and is a keyhole lot with 50' of frontage. J. Szpak questions what is across the street from here. B. Thompson states that there is an existing house. J. Szpak states that that residence will not see the house on this property. A. Wine questions that there is an existing structure on either of these lots right now. B. Thompson states that they are vacant with a gravel driveway going in.

RESOLUTION – D. Kwiat, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts the application of David Kwiat for an area variance for property located at 19 Hovey Road, TM#125.-2-56 and sets a public hearing for October 4, 2016 at 7:30 p.m.

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

ERIK RODRIGUEZ – Area Variance

Case#970, Daniels Road

Erik Rodriguez is present. D. Eskoff reviews that this is a very small land locked parcel behind another parcel and they want to put in a residence for his in-laws. E. Rodriguez reviews that he purchased 331 Daniels Road about 2 ½ to 3 years ago; he has since married. This was 2 separately deed lots and he had no plans to do anything with it. It was apparently part of an inheritance for the previous owner. They are now considering bringing his in-laws down from Montreal. He states that it made sense to him to at least try to see if they could try to get approved to build a 2-bedroom home. D. Eskoff states that they want a small house – not a garage apartment or in-law apartment - a separate building on this land locked parcel. J. Szpak states that this is normally zoned to have 3 acres and 200' of frontage. D. Eskoff states that the front lot, which would have to have the driveway going through it is a pre-existing, non-conforming lot already. She refers to the plans provided that this would become a keyhole lot. A. Wine asks how large the barn is on the back parcel. E. Rodriguez states that it is roughly 20 x 22 and the shed would be removed, it was a little chicken coop.

RESOLUTION – E. Rodriguez, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts the application of Erik Rodriguez for an area variance for property located at 329 Daniels Road, TM#151.-3-67 and sets a public hearing for October 4, 2016 at 7:30 p.m..

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

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ANDREW SHANNON – Area Variance

Case#971, Old State Road

Andrew Shannon is present. D. Eskoff states that this is a small lot and the applicant is looking to enlarge the back porch on the mobile home. He would need a 37' variance. This is a pre-existing, non-conforming lot of .57 acres and the mobile home is also pre-existing, non-conforming. Discussion takes place as to what is behind this lot. Pictures are requested of the area.

RESOLUTION – A. Shannon, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals accepts the application of Andrew Shannon for an area variance for property located at 12 Old State Road, TM#164.8-2-8 and sets a public hearing for October 4, 2016 at 7:30 p.m., contingent upon:

- **Photos of surrounding area**

VOTE: Ayes: Eskoff, Sanda, Szpak, Wine

Noes: None

Absent: Kolakowski, Veitch

OLD BUSINESS

EDWARD & MARY ESPOSITO – Area Variance, Extension

Case#919, Greene Road

Edward Esposito is present. D. Eskoff states that this is a previously approved application and this is a request for an extension of that approval. E. Esposito states that his current home is for sale and he is hoping to sell it and begin building so that he does not have to come back for another extension.

RESOLUTION – E. & M. Esposito, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals approves the application of Edward and Mary Esposito for an extension of an area variance for property located at 485 Greene Road, TM#126.-1-112, as follows:

- **25' rear yard setback variance**

This approval is based on the following criteria:

- **The limitations of the 100' wetland buffer that currently exists there, the information presented to the Board and the fact that the applicant can be in compliance with the right side yard setbacks**
- **The benefit cannot be achieved by other means**
- **There is no undesirable change in the neighborhood character or to nearby properties**
- **The request is not substantial**
- **There will be no adverse physical or environmental effects as the applicant is staying out of the wetlands buffer**

VOTE: Ayes: Eskoff, Sanda, Szpak, Wine

Noes: None

Absent: Kolakowski, Veitch

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GALARNEAU BUILDERS – Area Variance

Case # 966, Copperfield Road

Dave Barrass, Surveyor, and Dennis Perpetua, owner, are present.

A public hearing is opened at 7:52 p.m. Annette Quarrier, Copperfield Road, reads from a letter written by her husband which expresses both their feelings. A copy of the letter is provided for the record. They are opposed to the granting of this variance based on the property not meeting the current zoning requirements; their wish to continue to maintain the rural beauty; concern for setting precedence for other property owners that would dramatically impact the rural beauty of the area; concern for wetlands; concern that the intent is for an in-law residence and possible future rental of the property or subdivision. A. Quarrier states that when the house was supposed to be built, it was going to be built in another area and when they started doing something they realized there were wetlands there and it had to be moved, much closer to her property. She is concerned that that would happen again. She states that the house does not have a garage and she does not know why they just didn't make the house bigger. A. Wine asks what the buffer is between the two properties now, are there any trees, etc.? A. Quarrier states that there are some trees, they took a lot down because of moving the house location and in the winter it is pretty visible, much more so than they would like. D. Eskoff asks how long they have lived there. A. Quarrier states 14 years ago. She states that their other concern is what happens if we all start doing this and it becomes rental property? It is impacting the quietness and beauty of the area. Theresa Ellsworth, Braim Road, states that she has lived on Braim Road since 1975 and gives the history of this subdivision. She states that during that process the developer used as a selling point that the development would be in compliance with the Comprehensive Land Use Plan as far as density; location of the homes which would be away from the road; there would be a minimal amount of vegetative and tree cutting; also the wetlands would be protected. All of that was done. The zoning changed about 10 years ago and the residents of the town wanted the zoning to be more restrictive and this zone was changed to 6 acre zoning. She states that her concern is that if this variance is allowed that this will result in a greater impact on natural resources. She requests that the Board not grant the variance. There is also the concern with what will happen with the apartment when it is no longer used by family members. She feels that has the potential of impacting the whole zone. There being no further public comments, this public hearing is closed at 8:00 p.m.

D. Eskoff reviews G. McKenna's notes that this is a 3.011 acre lot and 6 acres is required; the variance is only for lot size. The proposed left side yard variance is no longer required as they have moved the garage away from the left property line. She explains that this is a garage apartment, not an in-law apartment, and reads from the definition. She states that there is no requirement for it to be for a family member, although often times it is. Zoning runs with the land and often ownership changes, so the Board does take that into account. D. Barrass indicates that they have provided some photographs as requested showing the tree coverage between the proposed garage apartment and the closest lot. A. Wine asks if the applicant is drilling a new well for the garage. D. Perpetua states that he was not planning to as he has 25 gallons per minute and would like to pull off of that. D. Barrass states that this also has to go to the Planning Board for Site Plan Review. D. Eskoff states that her concern is that they are building this garage apartment and his intention is to use it as an in-law apartment. D. Perpetua states that his mother-in-law is widowed in the last 4 or 5 years and lives in down-state New York; she is 64 and wants to move up here. They built a small house and chose to have a separate space for her. He prefers it to be very rural and not see his neighbors either so his intention is to do everything he can to minimize that impact. D. Eskoff states she is curious why he didn't go with an in-law or larger house if it is an in-law situation rather than an apartment in a garage. Usually if you are looking to the future you don't put older people on the second floor. D. Perpetua states that at the time he did not have the money to build a larger house and they have a very small footprint because of the wetlands. The reason they had to move the house is because the ACOE told them to. The location where they are looking to put the garage would not have supported the house footprint. L. Sanda asks if there is a buffer for ACOE wetlands. D. Barrass states that DEC has a buffer. D. Perpetua states that he appreciates the neighbors coming out and voicing their opinions. It is his intention to minimize this. He is just looking at a solution to have his mother-in-law move in and give her a place of her own. He is amenable to doing whatever he can. D. Eskoff states that the Board appreciates that and it sounds like the

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neighbors understand that. The problem with zoning is that it does run with the land, the applicant won't be there forever, anything can happen with the property but we do allow garage apartments in Greenfield. It just does not fit on this particular lot which is pre-existing, non-conforming. A. Wine asks if there is anything between the proposed septic area and the property line, such as trees for a buffer. D. Perpetua states that there are trees and his intention is not to take down any vegetation he does not have to. L. Sanda asks if there is any possibility to consider an in law apartment. D. Perpetua states that they are pretty well surrounded by those wetlands. D. Eskoff states that where the house was moved to, they are restricted in size and did that go into his thinking for not putting on an attached garage on the house. D. Perpetua concurs. He states that part of his consideration was to stay as far off from the Quarrier's border as much as possible and they wanted to keep the footprint of the house small to be able to provide enough buffer. A. Wine states that then building the apartment/garage at the top of the existing driveway in between the leach field and the other wetlands would not have been a viable option. D. Perpetua states that the area is small and would not work. J. Szpak asks if there is a topo issue here. D. Barrass states that it is closer to the neighbor and they would be looking at a side setback variance on that side, plus it has to have its own septic system which they would need room for and he does not believe they have that in that area. J. Szpak asks if it has to have its own septic if it is an attached apartment. L. Sanda states that the septic system would have to be designed for the number of bedrooms. A. Wine states that if they pull from the same well, how is that going to be done? D. Perpetua states that he does not know how that would be done. J. Szpak states that this is a tough one so he would like to go through the criteria. The one we were just trying to tease out is whether the benefit can be achieved by other feasible means to the applicant. D. Eskoff states that she thinks that we just looked at all the options that are possible. J. Szpak states that they all have pluses and minuses and brings it closer to the property line of concern. D. Eskoff states that then we are adding to the variance from the Zoning Board perspective. J. Szpak states that we can consider mitigating actions, too, with plantings for a line of sight and it would maintain the beauty. D. Eskoff states that we have definitely given other garage apartments on lots that are substandard to our current requirements. J. Szpak states that we take them case by case anyway. This one is not cut and dry, but we have considered other feasible means. Undesirable change in the neighborhood or character to the nearby properties – J. Szpak states that again we can use mitigation. It sits back quite a way already; it is 195' away from the front. There is a concern that it is an undesirable change. A. Wine states that he thinks it is more undesirable to the people who surround them than driving by on the road. D. Eskoff states the character of the LDR and the 6 acre zoning, although many, many homes in the LDR do not have 6 acres. It is a standard which came in after this subdivision was done. It is difficult with the wetlands, with the restrictions – even if the garage could go nearer the house, it would then be closer to the other neighbor. A. Wine questions that there is anything to be said for flipping it to another area. L. Sanda states that was discussed as grading down towards the wetland and would require fill, etc. D. Barrass concurs. L. Sanda questions that the location of the well and septic are known for the property of Guditus. S. Guditus is present and comes forward to indicate the locations on the map. Whether or not the request is substantial – D. Eskoff states that it is substantial but it is a pre-existing, non-conforming lot. The subdivision was approved in 1999, so the size of the lot is totally out of the applicant's control. Whether the request will have an adverse physical or environmental effect – J. Szpak states that we have the ACOE wetlands which we are staying out of, there will be site plan review by the Planning Board. D. Eskoff questions that we have buffer concerns. A. Wine states that the photos show a lot of trees. J. Szpak states that he has concerns about some of the criteria but what might alleviate some of those concerns would be if there was something that was appealing to the neighbors from a buffering perspective that would alleviate some of the concerns about the visual appearance. Whether the alleged difficulty is self-created – J. Szpak states that the part that they create is the need for the apartment and the part they didn't create was the change in zoning since the property was subdivided. D. Eskoff states that they should have known the parameters when they bought the property as the wetlands were pretty much all mapped out at the time of the subdivision so that information was there. A. Wine states that we would be penalizing him for not having the means to accommodate another member of the family when in reality it might have been something out of his control. J. Szpak states that the ZBA has to do a weighted balance of the different criteria so there are a lot of things that are not a clear yes or no. He states that he can get over the benefit being achieved by other feasible means based on the physical set up of the property. He can get over undesirable change to the neighborhood with considerations to mitigation. The request he thinks is substantial and he is struggling with that. Whether it will have an adverse physical or environmental effect – he does not have concerns with

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that. Is it self-created – yes. D. Eskoff states that to her, substantial is offset by the fact that it is a pre-existing, non-conforming lot. It is a 3 acre lot and you cannot make it a 6 acre lot. They are requesting a 3 acre variance which is a given on most lots. She explains that this often happens with removing an older mobile home and putting in a newer, larger one. J. Szpak states that he agrees and disagrees. We would consider it; it probably would not be an issue because they were replacing a single residence with another single residence. In this case they are actually creating a new residence. D. Eskoff states it is an allowed use in LDR. A garage apartment is a by-right, allowed use in LDR. The only thing stopping them is the 3 acres. If they had a 6 acre lot, they wouldn't be here. Something that is self-created can be very detrimental to a use variance. In an area variance, self-creation is not really detrimental nor do all the factors have to pass. It is just a matter of whether it weighs more to something you want to pursue as passing perhaps with certain requirements, suggestions to the Planning Board, or something that one is highly opposed to. A. Wine questions that we can attach stipulations. D. Eskoff states to some extent, if it is regarding a buffer or keeping it more rural in nature. It certainly looks like a more rural lot; there are some very high trees. She asks on A. Quarrier's side of the property, how buffered is it. A. Quarrier states that it is not buffered at all. J. Szpak asks of the garage in the proposed location, does A. Quarrier think that additional buffer between her and it would be beneficial. A. Quarrier states that it couldn't hurt. She has a fear that it is not going to end up where they say. D. Eskoff states that is up to the Planning Board. She explains the process. D. Perpetua states that he did not move the house; this is in the original footprint from the subdivision. They could not move it away because of the wetlands. A. Quarrier states that her concern is how do we know that where he wants to put it is going to be ok. D. Eskoff states that you don't. You can go to the Planning Board and express your concerns to them. J. Szpak states that you would know that he can't put it closer to the sides, front or back of the property than what the setbacks are. They were originally asking for a side variance, we requested they move it in and they did. D. Eskoff states that it is not going where the wetlands are. J. Szpak states that you would know that it is not going to have an environmental impact. They are not going to let it be by the wetlands. If you want to know more, then you would go to the Planning Board. A. Quarrier states that she does not understand why in Greenfield we change the zoning to 6 acres. D. Eskoff states that not everyone needs change. Some people's needs change. They buy a house, it is not big enough – they have another child, they have a mother that comes in, etc. The idea is to move forward from that point with those 6 acre lots, but not to penalize the people who have them. If they come for the right reasons, they have the right parameters and a lot of thought process does go into it. That is why we have site plan review; it is another layer of authority that gets to look at it. She states that if the neighbors were next to a 6 acre lot, he would not be here. If you look at it that way, it is not going to stop garage apartments, so if that is the underlying concern, the only real correlation is that it is on a 3 acre lot. Garage apartments will exist on 6 acre lots; they come in for a building permit, but not necessarily to the ZBA for a variance. A. Quarrier states that from her perspective, if we are always going to say your lot is smaller, including hers, then why do we have the 6 acres. J. Szpak states that we don't always do that. That is why we are going through the standard criteria in which we weigh against our decision. No two cases are alike, so we don't always do it, it is not a precedent. D. Eskoff states that the criteria is based on NYS Law for zoning. There are things you can do and things you can't do. There is a lot of legal precedent out there as far as court cases. The criteria gets derived from those court cases. Zoning is always an evolving thing. We have rejected things, we have had neighbors work together to do things, we have made adjustments, etc. The Board does not take these things lightly. We listen to everyone's information and go through the criteria. A. Quarrier states that she appreciates that and this has given her more questions regarding septic, water, etc. D. Eskoff states that the site plan review will protect her from that. The Planning Board will look at the wells and septic on each adjoining lot. The Town Engineer is involved in that process. J. Szpak states that he was considering if there is any potential mitigating ways to minimize the view between the new garage and A. Quarrier's home. A. Quarrier states that it sounds like the garage is going to be more on the other side. J. Szpak states that is why he is not proposing buffers on her side. He is not hearing anything from the public that a few trees are going to help. A. Quarrier states that there are trees there and in the summer there is foliage. D. Eskoff asks if it is the type of structure that is more of an issue or is it any structure. A. Quarrier states it is pretty much any large structure. L. Sanda questions the location of the leach field and states that she is getting that the concern is that if the garage apartment got moved over by A. Quarrier's side where the house is, more trees would get taken down to build that and if it was within the setback, she might not be made aware that that is actually happening. Based on the location of the septic, the setback in that area, the location of the home and

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the location of the wetlands, she would find that to be very unlikely. He cannot build within a certain number of feet of the septic and that area is already set. She states that the neighbor's should follow the Planning Board, but she feels that based on what is going on there, she would say that would be unlikely with the 50' setback that is there. This applicant would wind up back here if that happened, or there would be a big Planning Board to-do because all of a sudden there would be something going in right next to the septic.

RESOLUTION – Galarneau Builders, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals approves the application of Galarneau Builders for an area variance for a garage apartment for property located at 16 Copperfield Road, TM#152.-1-9.11, as follows:

- **2.989 acre area variance**

This is based on the following criteria:

- **With the pre-existing, non-conforming 3 acre lot, the benefit cannot be achieved by other physical means due to the wetland locations on the lot**
- **There is no significant undesirable change in the neighborhood character or to nearby properties**
- **The request will not have adverse physical or environmental effects**
- **The location was already moved to eliminate the need for a side yard variance to minimize how substantial the request is**
- **Even though there is no stipulation to any mitigating conditions, the Board would like the applicant to work with the neighbors because maybe there is something that can be done to make the situation visibly more appealing.**
- **This variance is only valid for this location and should the location change, the applicant needs to come back to the Zoning Board**

D. Perpetua asks if the garage could move forward a few feet. J. Szpak states that the dimension given is the actual 50'. D. Eskoff states that she would leave that to the Planning Board for site plan review. J. Szpak states that would be within the Planning Board's tolerance.

VOTE: Ayes: Eskoff, Sanda, Szpak, Wine

Noes: None

Absent: Kolakowski, Veitch

A resident states that she would like to go off the record and say that she does not agree, this is not in keeping with Braim Road and the neighborhood. This is why people do not build their family homes and then expect to have an apartment attached to that home. We do not have family homes and apartments on the same piece of property and the fact that they are doing that on a piece of property that is new and separate from the original piece of property and just because they are contiguous that an exception has been made for that and it doesn't even meet today's standard of 6 acres. It is really not in keeping with and representative of what is going on or what the neighbors want on Braim Road. If it was we would not be here. D. Eskoff thanks her for her comments and suggests to next time come forward and speak during the public hearing so it can be on record.

ROBERT FRASER – Area Variance

Case # 967, Locust Grove Road

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Robert Fraser is present. A public hearing is opened at 8:38 p.m. As there is no one present for public comments, this public hearing is closed.

D. Eskoff reviews that the applicant is proposing an addition to his home within the required front yard setback; this is a very old, historical type home. The photos that were requested have been provided. This is a beautiful home and D. Eskoff states that she can see very well from the pictures what the applicant is trying to accomplish and to keep the character of the home. The homes in that area are all very close to the road. D. Eskoff reviews that the variance would be for 27.50'. J. Szpak states that he would like to discuss the criteria. Whether the benefit can be achieved by other feasible means – the house is already there; the applicant is adding on to it to make it look like the existing dwelling. Based on the pre-existing setting he does not have concerns. D. Eskoff states that it is pre-existing, non-conforming, it is historical. J. Szpak states that regarding undesirable change in the neighborhood. It seems that he is improving the property with an upgrade. Whether the request is substantial – it is 27.5 feet roughly, it is not largely substantial. L. Sanda states that it is in line with the existing house. J. Szpak concurs and states that it is pretty much scaled to the existing house. D. Eskoff states that they have just done something to the porch in the back and some of that would have to be undone to move the addition back, which would be a hardship. J. Szpak states no adverse effects to the environment; did not self-create where the house was put.

RESOLUTION – R. Fraser, Area Variance

MOTION: J. Szpak

SECOND: L. Sanda

RESOLVED, that the Zoning Board of Appeals approves the application of Robert Fraser for an area variance for an addition for property located at 266 Locust Grove Road, TM#151.-3-11.1 as follows:

- **27.5' front yard setback variance**

This is based on the following criteria:

- **Benefit cannot be achieved by other feasible means to the applicant**
- **It is a desirable change to the neighborhood, the applicant is improving and upgrading the home**
- **The request is not substantial**
- **No adverse physical or environmental impacts**
- **It is not self-created**
- **It is consistent with the setbacks of the neighborhood and the type of homes that are there**

VOTE: Ayes: Eskoff, Sanda, Szpak, Wine

Noes: None

Absent: Kolakowski, Veitch

Meeting adjourned at 8:43 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland
Secretary

