

TOWN OF GREENFIELD
ZONING BOARD OF APPEALS

September 5, 2024

REGULAR MEETING

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by D. Eskoff, Chair, at 8:00 p.m. On roll call the following members are present: D. Eskoff, T. Flynn, B. Etson and J. Pollard, Alternate. K. Taub and S. MacDonald are absent. J. Reckner is present. M. Schachner, Town Council is present by 8:10 p.m.

Minutes

August 6, 2024

MOTION: T. Flynn
SECOND: B. Etson

RESOLVED, that the Zoning Board of Appeals waives the reading of, and accept the corrected Minutes.

VOTE: Ayes: D. Eskoff, T. Flynn, B. Etson and J. Pollard.
Noes: Noes
Absent: K. Taub and S. MacDonald
Abstain: None

New Business

Horse Race Capital, Corp. Case #1077
TM# 139.-1-50.1

Area Variance
39 Bump Hill Road

Alison Yovine is present for the Applicant. D. Eskoff states that this project is for a single-family residence on a lot that is pre-existing non-conforming in MDR-2 District. A. Yovine states that they are proposing a new single-family residence on a 1.94-acre lot that is pre-existing non-conforming lot with 130' of frontage. They will need an area variance for the frontage and the lot size. In MDR-2 the acreage that is required is 3 acres and frontage is 200'. There are six other lots on the road with single-family residences. D. Eskoff asks if they applied for a Building Permit that has been denied. A. Yovine states yes. T. Flynn states that he would like to see the floor plan of the proposed single-family residence. B. Etson states that it appears that the house meets the setbacks he questions why they are in front of the Board. D. Eskoff asks if this was part of a subdivision. J. Reckner states no. T. Flynn states that it appears that the neighbor's fence is on their property. The board also requests photos of the property. D. Eskoff states that if they can provide two copies of the floor plan and elevations and 7 copies of the photos prior to September 17, 2024.

MOTION: T. Flynn
SECOND: B. Etson

RESOLVED, that the Zoning Board of Appeals hereby accepts the Application for Area Variance by Horse Race Capital, Corp. for property located at 38 Bump Hill Road (LDR), TM# 138.-1-63, Case #1077, and sets a Public Hearing for October 1, 2024 at 7 p.m. contingent upon receipt of the following information by September 17, 2024.

- Two (2) copies of Floor Plans and Elevations
- Seven (7) copies of photos of the property from the road

VOTE: Ayes: D. Eskoff, T. Flynn, B. Etson and J. Pollard

Noes: None

Abstain: None

Absent: S. MacDonald, K. Taub

Old Business & Public Hearing

Richards, C. Case #1074
TM# 139.-1-50.1

Area Variance
195 Wilton Road

Chad Richards is present. K. McMahon presents proof of publication. D. Eskoff states that this project is in the LDR District and it is for an above ground pool. T. Flynn states that they need a 35' Area Variance for relief. D. Eskoff opens the Public Hearing at 8:10 p.m. One neighbor states that she is in favor of this project. D. Eskoff reads correspondence from neighbors, Michelle and Charlie May, in favor of this project. There is no one else present to speak regarding this project. D. Eskoff closes the Public Hearing at 8:11 p.m.

MOTION: T. Flynn
SECOND: B. Etson

RESOLVED, the Zoning Board of Appeals hereby approves the Application of Chad Richards and grants a Rear-Yard Setback Area Variance of 35' for an above ground pool at property located at 195 Wilton Road, Tax Map # 139.-1-50.1 (LDR), Case #1074.

This approval is based on the following criteria:

- The benefit cannot be achieved by other means feasible to the Applicant due to the location of the existing septic in the front yard. The existing well casing to the north of the house and dense vegetation at the north-east of the property indicate that the location of the pool at the north-west of the property is the best suitable location. The well casing prohibits the pool from being located further to the south away from the rear lot line of the property.
- There are no undesirable changes to the neighborhood character or detriment to the nearby properties. The small lot is in keeping with the character of the neighborhood. The neighbors have showed support and a letter was submitted to the board in favor of the project.
- The request is substantial but is offset by the undersized existing nonconforming lot. There is a small parcel located to the north (located adjacent to the pool) which is unbuildable and part of a larger conforming lot. This small parcel cannot be purchased as it will create a non-conforming lot for the other owner.

- There are no detrimental or adverse environmental effects. The pool was located in a clearing of the lot; limiting additional clearing of vegetation.
- The alleged difficulty is self-created (which is relevant but not determinative) but reasonable given the other aspects of the property.

VOTE: Ayes: D. Eskoff, T. Flynn, B. Etson and J. Pollard

Noes: None

Abstain: None

Absent: K. Taub and S. MacDonald

Patrick, D. Case #1073

TM# 126.-1-31.22

Area Variance
2 Brookstone Drive

Daniel Patrick is present. D. Eskoff states that this Application is to remedy the violation that D. Patrick has. He is looking to keep 12 chickens and up to 6 ducks and up to 4 turkeys and/or geese under Hobby Farming. K. McMahon presents proof of publication. D. Eskoff opens the Public Hearing at 8:15 p.m. D. Patrick states that his neighbor's Arnold and Bonnie Toivonen who were not able to attend the meeting wrote a letter in favor of this project that he reads. This project was in front of the ZBA for an Interpretation in which the ZBA agreed with J. Reckner, the Zoning Administrator. He realizes that he needs a 5-acre Area Variance which is substantial. Andrew McKelvey, 35 Brookstone Drive, states that he is directly behind D. Patrick. He states that he is glad that the ZBA explained the Right to Farm Law the last time (this project) so that the neighbors understand it and how it does not apply to anyone if not in an Agriculture District. He has no clarity on the fines. To keep the Guinea Hens could be up to \$1,000.00 per day. The fowl are gone however, the roosters remain with the same amount of noise. Brian Sharpe, 33 Brookstone Drive, thanks the Town for addressing the noise from the Guinea Hens. He states that their neighborhood is small. He provides a recording from his phone of the roosters. He states that they cannot sleep with their windows open due to the noise from the roosters. He states this is devaluing their property. Jamie McKelvey, 35 Brookstone Drive, states that from her kitchen she can see into the Patrick's kitchen and from her bedroom she can see into the Patrick's bedroom that is how close their lots are to one another. She states that she works from home and her clients can hear the chickens. It is so bad that their 10-year old daughter can't sleep in her bed because of the noise she brings her pillow and blanket and sleeps in her closet. This is impacting her growth. She states that she has no problem with 6 chickens, but no roosters. This affects their quality of life. She states it is annoying because that is all they hear from 4:00 a.m. and on and it is constant. Joseph Ruhmle, Wilton Road, states that the lots range from 1-2 acres each. This variance request is substantial. In the LDR District 6 acres is required. This is a 5-acre Area Variance. This has been in violation for over a year. The proper lot size is at the core of the issue. The ZBA decision will have lasting impacts. Stephanie Vetter, 385 Wilton Road, states that she has two ponds on her property and with all the run off from that neighborhood goes onto her property. She is concerned about her well and it being contaminated and the health of her ponds. If you take away the house, all the structures and the pool off the property the property there still isn't enough room for the chickens. She reads from Code. This is a huge nuisance. This is a high-end neighborhood and it is inappropriate use for this neighborhood. If you have rooster and chicken, they multiply. She is opposed to this area variance. It is excessive. Gene Vetter, Wilton Road, states that he was fine the area variance for the pool, but not this he feels there is no basis to grant this variance. Joseph McMillan, 325 Wilton, Road, states that he has chickens and he feels that a truck is louder than roosters. He states that he is sympathetic to the noise

for the neighborhood. D. Patrick states he installed the coop in 2010 and explains how the chickens are kept and that he disposes the waste in his garage. There being no one else present to speak and no further correspondence, D. Eskoff closes the Public Hearing at 8:53 p.m. T. Flynn states that the Board can go through the balancing test and see all the effects of them. He states that we heard from the neighbors with the social and economic issues. He states that the negative impacts on sleep and environmental. Acreage plays a big factor in an area variance. The Board looks at the minimum size of the parcel and the minimum size of room for the animals to roam. D. Eskoff states that this parcel is a 1-acre parcel. The new Code may have changes, the Town Board is reviewing this and is considering 12 chickens, no roosters, on 1-acre, information is available online on the website. This is a traditional subdivision. The geese, ducks, and turkey can be loud, waste odors can be strong. J. Pollard agrees and states that he would be open to granting hens. D. Eskoff states that this parcel was in front of the Board for an Interpretation, in which the Board agreed with the Zoning Administrator. T. Flynn states that roosters are noisy. He states maybe 6 chickens. D. Eskoff states chicks are sold in lots of 6 that is regulated by NYS Agriculture and Markets. The ZBA has granted an area variance in LDR for 6 chickens fairly recently no roosters. In that case, the applicants only requested 6 chickens. B. Etson states that that he is pro chicken. He has chickens and his wife went in front of the ZBA and received an area variance for the chickens. He would never grant approval for roosters. He grew up on a farm and they can be heard from far away. He feels that the housing is not adequate for geese and turkeys. J. Pollard states that he would approve 12 chickens. D. Patrick states that some of the birds have gotten out of his yard because his fence fell down at one point. M. Schachner asks the Board if they will discuss the significance of the 5 acres requested. M. Schachner states the Town Code states 12 chickens with 6 acres and no sewer. Noise can be somewhat subjective. D. Eskoff states yes, and the Board will discuss the 5 acre relief sought in reviewing. She also states that the Board can make draft resolutions, the Board 62 days to make-a-decision. M. Schachner agrees with a drawing up a draft resolution with the five elements and focus on the minimum lot size. T. Flynn states that the coop is falling outside of the setbacks. D. Eskoff asks if the coop is movable? D. Patrick states it is the best place for the coop especially for the neighbors. T. Flynn states that D. Patrick needs 22' of relief. M. Schachner asks J. Reckner if he provided a report. J. Reckner states yes, and now they need additional Variances. M. Schachner states the ZBA has to give the minimum variances. The public is entitled to know and he feels this is making it uncomfortable. He thinks if the ZBA prepares a simple table to explain. M. Schachner asks about the 4 acres stated in the violation. D. Eskoff states that the ZBA agreed with J. Reckner's Interpretation but determined it is 6 acres not 4 acres. D. Patrick reads his application. T. Flynn states that he feels that the ZBA should table the resolution. M. Schachner states the only obligation the ZBA has closing the Public Hearing is making a decision within 62 days. D. Eskoff asks the ZBA if they want to go on through the five factors. T. Flynn states that there are smaller lots closer to the neighbors. He states that this is a substantial request of 5 acres plus the setbacks. The neighbors states social, economic and neighbors sleep is being affected, the waste, and the run off. D. Eskoff states that could be contained with proper mitigation. M. Schachner asks if T. Flynn is making a motion. T. Flynn states no, just having a discussion. He does not want to set a precedent. He feels that this is self-created. J. Pollard feels that the ZBA should wait to make a decision. B. Etson agrees with T. Flynn. D. Eskoff agrees. T. Flynn states that he is in favor of hens and livestock he feels that needs more room than 1 acre. D. Eskoff states that the Board tables their decision.

Kim Faiola is present. K. McMahon presents proof of publication. D. Eskoff opens the Public Hearing at 9:31 p.m. D. Eskoff states that the ZBA received letters from two neighbors, Joseph Nailor and Teresa DeLong, in favor of this project. John Maxum is present and states that he owns property 100' away from this property and he does not have a problem with this moving forward as long as the septic system and wells meets Code. There being no one else present to speak and no further correspondence, D. Eskoff closes the Public Hearing at 9:34 p.m. She states that this is a violation and she explains the letter from the Code Enforcement Officer. This is a small cottage and they did get a Certificate of Compliance for workshop/office. There is no garage attached to it and it is not allowed under the Town Code. T. Flynn asks how many bedrooms are in the second dwelling. K. Faiola states two. B. Etson asks if it has always been two bedrooms and asks for clarification. K. Faiola states yes, there is a loft if that is considered a bedroom. D. Eskoff asks if it was ever a garage. K. Faiola states no. It is a 524 square-foot dwelling. K. Faiola states that they were given verbal agreement 18 years ago. J. Pollard states this is not an allowed use. T. Flynn reads G. McKenna's letter from 2006. D. Eskoff states that they received a Certificate of Occupancy for a garage and it's not. It is written as an office/workshop. She wants her mother to live in it and rent it out. T. Flynn states there is a kitchenette, an office and it has cooking appliances in it. J. Reckner states that for a single-family residence you need sleeping quarters, eating quarters, and a bathroom. D. Eskoff states that the ZBA has not had this situation in front of them before that she knows of. K. Faiola states that is how G. McKenna instructed them and he told them that cottages would be allowed in Town soon. D. Eskoff states the Applicant never followed up. K. Faiola states that G. McKenna told them to do what they wanted to do. D. Eskoff asks if they rent it out. K. Faiola states that she didn't think that they couldn't. D. Eskoff asks M. Schachner if he is familiar with dimensional relief in this situation. M. Schachner explains the same standards for area variance. J. Pollard states that he does not feel this is the right application for this project. M. Schachner asks if the Applicant provided an application for a Use Variance. He is not following how this got this far. D. Eskoff states that originally, she applied for Use Variance but after speaking to counsel she withdrew that application. Then she went in front of the Planning Board for a Minor Subdivision and the Planning Board told her that they would not approve that because there was not enough acreage. Now she is back in front of the ZBA for an Area Variance for a 2-family structure with dimensional relief. K. Faiola states that she went and spoke with an attorney and he told her not to go for the Use Variance apply for a Minor Subdivision on a 1-acre lot. She states that they have two dwellings on a 1-acre lot. M. Schachner asks K. Faiola if a representative told her that she won't get approval for a Use Variance. K. Faiola states that she is going by what she is told to do. She states that they would never have done this if it wasn't allowed. D. Eskoff states that she is questioning dimensional relief. T. Flynn states that this is an accessory structure. Is this habitable space. M. Schachner states yes, you need all three - a bedroom, kitchen, and a bathroom. T. Flynn states that the kitchen could be removed. K. Faiola states that she was in contact with Elise Stefanik's office and spoke to a representative that helps with laws. D. Eskoff states this goes against the Town's Comprehensive Plan. T. Flynn states this is an accessory structure. J. Pollard states he feels that a Use Variance is the only way the ZBA should be looking at this. D. Eskoff agrees. B. Etson states the kitchen is not on the plans. D. Eskoff states that there have been other types of cases where the kitchenette was removed. J. Pollard states that in 2006 an Violation was issued. T. Flynn states Certificate of Occupancy for a garage/workshop. J. Pollard states that is not what the Applicant wants to use it for. J. Reckner agrees and states that is not what it is intended for. T. Flynn states the decision stands with the land. K. Faiola asks how does she get approval for this it has been there for this nothing has changed. D. Eskoff states that the newspaper article about the cottage triggered the violation. J. Pollard states use it as it was approved for. M. Schachner asks what Code Enforcement determined. D. Eskoff states a Use

Variance, J. Reckner agrees. M. Schachner states that the ZBA should not be hearing this case. He feels this is not an Area Variance. It is a Use Variance as determined and has to be considered by law. J. Pollard states apply for the appropriate Application. K. Faiola asks if there is a way to reconsider, the Planning Board wrote a letter in favor of this project. D. Eskoff states that it is not up to the Planning Board to tell the ZBA how they should proceed here. D. Eskoff states that the Board is not looking in favor of approving and that K. Faiola may wish to withdraw her application. K. Faiola states that she might submit a Use Variance Application and contact E. Stefanik's office. She asks how does she move forward. D. Eskoff states that at this time the Board is not in favor of this project and this is a violation. It is up to K. Faiolo how to proceed. M. Schachner states the ZBA has 62 days after the Public Hearing is closed. K. Faiola asks if she has 62 days to withdraw or make a decision. D. Eskoff states the board has 62 days, until November, to make a decision. T. Flynn suggests reach out to an Attorney. D. Eskoff states the ZBA will wait and put the case on the October 1, 2024 Agenda. The Board tables their decision.

Meeting adjourned at 10:10 p.m. All members in favor

Respectfully submitted by,

Kimberley McMahon
Executive Secretary
Zoning Board of Appeals

DRAFT