

**Town of Greenwich
Zoning Board of Appeals
August 1, 2013**

The Town of Greenwich Zoning Board of Appeals held a meeting at the Town Office Building, 2 Academy Street, Greenwich, New York on Thursday, August 1, 2013 at 7:00 pm.

MEMBERS PRESENT:

John Farndell	ZBA Chairman
Gregory Smith	ZBA Member
Dawn Sharts	ZBA Member
Ralph Vecchio	ZBA Member
Tammara Van Ryn	ZBA Member
Roland Mann	ZBA Member (Alternate)

OTHERS PRESENT: Amanda Willetts – ZBA Clerk, Code Enforcement Officer Dan O'Connor, William S. LaPan and William P. Patenawda.

ZBA Clerk Amanda Willetts called roll.

CORRESPONDENCE:

The Board reviewed the monthly budgets for the months of May, June and July 2013 submitted by Budget Officer Kellie Blake.

MINUTES:

ZBA Chairman John Farndell asked the Board if they had reviewed the minutes from the May 2, 2013 meeting. They stated they had. The following decision was made.

RESOLUTION NO. 12-2013
App. of Minutes 05/02/2013

Motion by ZBA Member Dawn Sharts,
Seconded by ZBA Member Gregory Smith,

and passed unanimously by said Board,

RESOLVED, that the minutes of the May 2, 2013 meeting be approved and accepted as submitted.

RECORD OF VOTE:

Chairman John Farndell	AYE
Member Gregory Smith	AYE
Member Ralph Vecchio	AYE
Member Dawn Sharts	AYE
Member Tammara Van Ryn	AYE
Member Roland Mann (Alternate)	N/A

NEW BUSINESS:

Area Variance Application #2013-02 – Submitted by Alpine Construction, LLC., represented by John Conley. Property located at 2735 State Route 40, Greenwich. Applicant is looking to utilize an

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existing structure and property as office space and storage of equipment. The Zoning Ordinance required lot size for this use is 5 acres. The property is 3.72 acres. The existing structure is 66.33 ft from the front property line and the required set back is 75 ft. Applicant is seeking area variance to allow the 3.72 acres lot size and relief of 8.67 ft set back. Property located in a Rural Agricultural District. Parcel ID # 220.-2-16.2.

ZBA Chairman John Farndell said he felt what the applicant is looking to utilize the property for would be classified as a contractors yard. John continued that he also feels that the existing building does not need to seek an 8.67 ft area variance to relieve it from the required 75 ft setback due to the building being erected prior to the adoption of the Zoning Ordinance. ZBA Member Tammara Van Ryn asked if the setback applies to the parking area or if it is from the structure. ZBA Member Ralph Vecchio stated it was from the structure. ZBA Member Dawn Sharts read the Rural Agricultural Area Requirements from Table 2A of the Zoning Ordinance to the Board: *Contractors yard, Minimum Lot Size: 5 acres, Minimum Road Frontage 300 ft, Minimum Front Yard Setback: 75 ft, Minimum Side Yard Setback: 50 ft, Minimum Rear Yard Setback: 50 ft, Maximum Height: 50 ft, Maximum Lot Coverage: 20 %*. ZBA Chairman John Farndell then read from the Zoning Ordinance the definition of contractors yard to the Board: *CONTRACTORS YARD - A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily required in the building trade by a construction contractor*. John continued that the applicant can meet all the required setbacks from here forward the issue is the inability to meet the area requirements. ZBA Member Gregory Smith stated that the Board's very first area variance, AV#2007-01, was a similar case where a piece of commercial property was abandoned which, after the adoption of Zoning, caused the property to no longer be in conformance. ZBA Member Ralph Vecchio asked if the one year abandonment would apply. Mr. Patenawda, who was present to represent the applicant, stated that the property is not abandoned. ZBA John Farndell asked what the property is currently being utilized as. Mr. Patenawda stated that it is currently being utilized as a machine shop. ZBA Member Tammara Van Ryn stated that the use is not a nonconforming use, the use would be conforming it's the lot that is nonconforming. Tammara continued that the Board doesn't have to address the issue of a setback, due to the structure existing prior to the adoption of the Zoning Ordinance. Therefore, the Board only needs to address the issue of the 3.72 acres versus the 5 acre requirement, which she feels there is nowhere in the law that will allow the nonconformity other than obtaining an area variance. ZBA Member Ralph Vecchio asked what about Zoning Ordinance Section 190-74 and read it to the Board: *190-74, Continuation and prior approval. The use of land, buildings or structures lawful at the time of adoption or subsequent amendment of this chapter may continue although such use does not conform to the provisions of this chapter. Nothing herein contained shall require any change in the plans, construction or designated use of a building or parcel complying with previous laws or for which a final permit had been duly granted prior to the date of adoption of this chapter or any applicable amendment thereto*. ZBA Member Tammara Van Ryn said that she feels this is more of a use question than an area question and the applicant is looking to obtain an area variance not a use variance. ZBA Member Gregory Smith stated that the area applies to the use and he thinks that Section 190-74 goes on to state that the use is grandfathered. ZBA Member Ralph Vecchio stated that the use cannot be changed into another nonconforming use but you can change it to a conforming use. ZBA Chairman John Farndell said he would like to clarify that since there is no classification in the Zoning Ordinance for a machine shop he feels that the closest classification would be light industry and read the definition from the Zoning Ordinance to the Board: *INDUSTRY, LIGHT - The manufacture or assembly of any article, substance or commodity but which does not involve the exterior storage of raw materials and which does not involve the large-scale transformation of raw materials into finished products. Retail sales of finished products are allowed*. ZBA Member Ralph Vecchio stated that the property is a continued use of light industrial. ZBA Chairman John Farndell stated that if the application is looked at as a continuation of use then it will no longer be seeking an area variance it would then be an Interpretation Application of Section 190-74. ZBA Member

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Tammara Van Ryn said she's not sure if this would be covered by the Planning Board but the Zoning Ordinance states that *the use doesn't extend the area or volume of space occupied by the use*, and she feels that if there is a contractors yard then the property will change due to substantial clearing, traffic of heavy equipment and can take over the entire lot while the machine shop that is currently there is mainly just utilizing the structure. Mr. Patenawda stated that most of the time the equipment will be out on jobsites and the storage will mainly take place during the winter. ZBA Chairman John Fardell said that it's not so much what Mr. Patenawda will be doing it also concerns the future use of the property. ZBA Member Ralph Vecchio said that he doesn't think they should make a distinction between the actual activity that goes on oppose to the general description of the activity that goes on, which in this case is light industry. Ralph continued that he feels it is not warranted for the Board to get into the specific details of what goes on under the general classification. ZBA Chairman John Fardell stated that the applicant will have to obtain a special use permit from the Planning Board who will, at that time, look at all the details and grant it accordingly. ZBA Member Tammara Van Ryn asked if any member of the Board read Section 190-78. The Board responded no. ZBA Member Tammara Van Ryn said that she doesn't have a problem with the acreage being nonconforming her concern is finding a section of the Zoning Ordinance that allows the Board to make the interpretation that an area variance is not necessary. ZBA Member Ralph Vecchio read to Board: *Section 190-78. Nonconforming lots. A. Single unimproved lots. A single, unimproved, lawfully nonconforming lot held in single ownership as of the date of adoption of this chapter, which is not contiguous with another lot owned by the same party, may be used as if it were a conforming lot, provided that all of the following conditions are met: (1) The proposed use is permitted by current regulations of the particular district. (2) The use conforms spatially to all other requirements of the particular district, including all space and bulk requirements, except lot size, frontage and depth, or a variance has been obtained from the Zoning Board of Appeals. (3) The use conforms to all other applicable local and state land use regulations.* Ralph continued that this section of the Zoning Ordinance only applies if the lot is unimproved, which the lot in question currently is not. ZBA Member Ralph Vecchio made the following motion:

Motion by ZBA Member Ralph Vecchio,
Seconded by ZBA Member Gregory Smith,

THAT, In pursuant to the Town of Greenwich Zoning Ordinance Section 190-74, an area variance is not required for the acreage and the use may be continued as described in the application subject to a Special Use Permit and/or any other approval by Town of Greenwich Planning Board and/or Code Enforcement Officer. Also pursuant to the same section 190-74, the property need not obtain an area variance for the setbacks of the existing building due to the building being erected prior to the adoption of the Zoning Ordinance therefore it is grandfathered in, in its current state.

DISCUSSION:

ZBA Member Tammara Van Ryn asked the motion be amended to include that the decision was made based on the Board making a determination that a contractors yard is substantially equivalent to the current light industry use and they have the same impact as well as the same yard requirements in reference to Table 2A Area Requirements for the Rural Agricultural District. Tammara continued that she would like this added so that when a new owner purchases the property and would like to have a junkyard, kennel, hotel, motel, etc. that the same determination would be upheld.

RESOLUTION NO. 13-2013
AV#2013-02/Interpretation #2013-01

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Motion by ZBA Member Tammara Van Ryn,
Seconded by ZBA Member Ralph Vecchio,

and passed unanimously by said Board,

RESOLVED, that the decision was made by the Town of Greenwich Zoning Board of Appeals based on the determination that a contractors yard is substantially equivalent to the current light industrial use of the property, both having the same impact as well as the same yard requirements in reference to Table 2A Area Requirements for the Rural Agricultural District.

and be it further,

RESOLVED, that in pursuant to the Town of Greenwich Zoning Ordinance Section 190-74, an area variance is not required for the difference in acreage and the use may be continued as described in the application subject to a Special Use Permit and/or any other approval by Town of Greenwich Planning Board and/or Code Enforcement Officer,

and be it further,

RESOLVED, that pursuant to the same section 190-74 of the Zoning Ordinance, the property need not obtain an area variance for the setbacks of the existing building due to the building being erected prior to the adoption of the Zoning Ordinance, therefore, it is grandfathered in, in its current state/footprint.

RECORD OF VOTE:

Chairman John Farndell	AYE
Member Gregory Smith	AYE
Member Ralph Vecchio	AYE
Member Dawn Sharts	AYE
Member Tammara Van Ryn	AYE
Member Roland Mann (Alternate)	N/A

NEW BUSINESS:

Area Variance Application #2013-03 – Submitted by William LaPan representing Stephen and Kathleen Coffin. Property located at 379 Anthony Road, Greenwich. Applicant is seeking an area variance to allow for a minor subdivision. Lot 1 is seeking a 28.7 ft area variance and Lot 2 is seeking a 36.8 ft area variance. The Zoning Ordinance requires 50 ft setbacks. Property located in a Rural Agricultural District. Parcel ID # 212.-1-4.

ZBA Chairman John Farndell asked Mr. LaPan to explain the application. Mr. LaPan stated that the property currently has two farm houses, which were built in the 1900's, that are less than 100 ft apart. The current owner lives in one house and his daughter lives in the other house. The owner is looking to retire and would like to subdivide the property to have each house on one lot. The houses are required to be 50 ft from the property line. The applicant needs to obtain the area variance granting relief from the required setbacks in order to allow for the subdivision. ZBA Chairman John Farndell asked if there was a reason for not splitting the property line more evenly between the homes. Mr. LaPan stated that the owner wanted the new lot to be about an acre and they had to leave room for the septic system. ZBA Member Ralph Vecchio asked how close the nearest adjoining property owner's home is located. Mr. LaPan said he believes the nearest adjoining property owner's

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home would be about a quarter of a mile. ZBA Clerk Amanda Willetts stated that due to the property bordering an adjoining municipality, the Town of Fort Edward, the application needed to be referred to the Washington County Planning Board, which it was on August 1, 2013. ZBA Member Tammara Van Ryn asked if any Board Member could think of a reason why this application would not need a public hearing. The Board responded no, it will need to have a public hearing. The following decision was made.

RESOLUTION NO. 14-2013
Public Hearing for AV #2013-02

Motion by ZBA Member Tammara Van Ryn,
Seconded by ZBA Member Ralph Vecchio,

and passed unanimously by said Board,

RESOLVED, that Area Variance Application # 2013-03, submitted by William LaPan representing Stephen and Kathleen Coffin, concerning property located at 379 Anthony Road, be granted a Public Hearing that will take place on September 5, 2013 at 7:05 pm at the Town Office Building, 2 Academy Street, Greenwich.

RECORD OF VOTE:

Chairman John Farndell	AYE
Member Gregory Smith	AYE
Member Ralph Vecchio	AYE
Member Dawn Sharts	AYE
Member Tammara Van Ryn	AYE
Member Roland Mann (Alternate)	N/A

Area Variance Application fee of \$100.00 was received.

DISCUSSION:

ZBA Member Gregory Smith stated that he had noticed on several different occasions that Whalen's is still continuing to park cars that are for sale out in front of the new showroom. ZBA Member Tammara Van Ryn said that they also have not done the plantings that Mr. Whalen stated he would. ZBA Member Ralph Vecchio said that they could have Code Enforcement Officer Dan O'Connor running down there multiple times in one week. ZBA Member Tammara Van Ryn stated that maybe the Board should send Mr. Whalen a letter asking him to explain to the Board how he is planning to adhere to the condition in the area variance decision. CEO Dan O'Connor stated that he had previously visited Whalen's giving Tim Whalen a copy of the Area Variance Decision Form because George Whalen was out of Town at that time. ZBA Member Tammara Van Ryn said that she feels that he should have to write the Board back on how he is going to rectify the situation. Discussion ensued regarding the area variance application #2012-01. ZBA Member Gregory Smith said they have very little ability to enforce a condition. ZBA Chairman John Farndell stated that the ZBA is a judiciary Board therefore they do not enforce anything. It is the job of the Code Enforcement Officer to enforce the decisions made by the Board. ZBA Member Tammara Van Ryn said that she still feels that the Board should send a certified letter to George Whalen asking him to respond to the Board in writing on how he is planning to rectify the parking situation. ZBA Member Ralph Vecchio said that there is a process and it starts with CEO Dan O'Connor issuing a notice of violation and then if they

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continue to disregard the condition then the Town Board will then have to deal with the situation. ZBA Clerk Amanda Willetts stated that since the ZBA is a judiciary board the letter should not come from them but instead come from CEO Dan O'Connor, therefore, if the Board would like a letter sent they should request that CEO Dan O'Connor send a letter to Mr. Whalen. ZBA Member Tamara Van Ryn asked Dan to send a letter to Mr. Whalen stating that the Town is aware that he is noncompliant of the decision and let Mr. Whalen know that if he continues to be noncompliant then a formal notice of violation will be issued. The Board agreed and said they will start documenting times that they see a violation and e-mail Dan with any noted violations. CEO Dan O'Connor said that he will send a certified letter as well as revisit Mr. Whalen giving him another copy of the decision form.

DISCUSSION:

ZBA Member Dawn Sharts said that the Board was told that the new façade of Stewart's would be tan and it is currently white. ZBA Clerk Amanda Willetts stated that the first plans that the Board was presented with displayed a tan façade and then toward the end of the application they changed it to a gray façade. ZBA Member Dawn Sharts said it's not gray either it is white. Dawn continued that she doesn't have an issue with it since it looks much better than the previous one she just wanted to make the Board aware that the color was different. The façade would have been addressed before the Planning Board, which the applicant saw after the granting of the area variance. ZBA Chairman John Farndell reminded CEO Dan O'Connor that there was a condition of the plantings along the rear of the Stewart's property that needs to be checked to verify that it was completed.

ZBA Chairman John Farndell stated that when the Town adopted the revised Zoning Ordinance they placed a section that states all signs must be in compliance within 10 years of the adoption date. John continued asking CEO Dan O'Connor if he had notified the businesses that are not in compliance about the new law. CEO Dan O'Connor said that he has not yet notified the businesses but he does have a spreadsheet of all of the businesses that are not in compliance. ZBA Chairman John Farndell asked CEO Dan O'Connor if he was going to be notifying them and his reason for asking is that he doesn't want all the businesses coming before the ZBA for area variances instead of having to comply. CEO Dan O'Connor said that he will send a letter but what if the Zoning Ordinance is revised again and then the businesses will not have to conform. ZBA Chairman John Farndell stated that they should be informed now and not worry about what may happen, the current zoning law is what needs to be enforced.

Motion by ZBA Member Ralph Vecchio,
Seconded by ZBA Member Dawn Sharts,

and passed unanimously by said Board,

That the meeting be adjourned at 8:08 pm.

Respectfully Submitted

Amanda Willetts,
ZBA Clerk