

**Town of Greenwich
Zoning Board of Appeals
November 7, 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, November 7, 2013 at 7:00 pm.

MEMBERS PRESENT:

John Fardell	ZBA Chairman
Gregory Smith	ZBA Member
Dawn Sharts	ZBA Member
Ralph Vecchio	ZBA Member
Roland Mann	ZBA Member (Alternate)

MEMBERS ABSENT:

Tammara Van Ryn	ZBA Member
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OTHERS PRESENT: ZBA Clerk Amanda Willetts, Tim Whalen, Code Enforcement Officer, CEO, Dan O'Connor, Monica Driver and Maggie Stein.

ZBA Clerk Amanda Willetts called roll.

CORRESPONDENCE:

The Board reviewed the monthly budget for the month of October 2013 submitted by Budget Officer Kellie Blake.

Washington County will hold a training class at the county building, 383 Broadway in Fort Edward, on Thursday, November 21, 2013 at 5:30 pm. There is no fee for the class. All members that wish to attend must inform ZBA Clerk Amanda Willetts. ZBA Chairman John Fardell and ZBA Members Dawn Sharts, Gregory Smith, Ralph Vecchio and Roland Mann all stated that they wish to attend and asked that ZBA Clerk Amanda Willetts attend.

There will be a training class held by Meyer and Fuller Law Firm at the Fort Edward Fire Department, located off Broadway, on Wednesday, December 4, 2013 at 5:30 pm. The cost is \$20 per participant and the proceeds will go to the Fort Edward Fire Department. All members that wish to attend must inform ZBA Clerk Amanda Willetts. ZBA Chairman John Fardell and ZBA Members Gregory Smith, Ralph Vecchio and Roland Mann stated that they wish to attend and asked that ZBA Clerk Amanda Willetts attend.

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MINUTES:

ZBA Chairman John Farndell asked the Board if they had reviewed the minutes from the October 3, 2013 meeting. They stated they did and had no changes. The following decision was made.

RESOLUTION NO. 22-2013
App. of Minutes 10/03/2013

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

and passed unanimously by said Board,

RESOLVED, that the minutes of the October 3, 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	ABSENT
Member Roland Mann (Alternate)	AYE

PUBLIC HEARING:

AV#2012-01 – George Whalen, of Whalen Chevrolet, has requested that the condition placed on AV#2012-01, that no cars are to be parked in front of the new showroom, either be removed or altered to allow the parking of two cars in front of the new showroom.

ZBA Chairman John Farndell opened the public hearing at 7:05 pm at which time he asked if any member of the public would like to speak. There was no response. The public hearing was closed at 7:08 pm. Tim Whalen was present representing Whalen Chevrolet. ZBA Member Ralph Vecchio stated that the condition is difficult to enforce and it would have to be monitored almost daily. Ralph continued that he feels it's a burden on the owner because the owner has to deal with multiple employees who may or may not know there is such a condition and inadvertently violate it. ZBA Member Ralph Vecchio said, for the previously stated reasons, he feels the condition should be withdrawn. ZBA Chairman John Farndell stated that he agreed and also felt that the showroom looked better with cars parked on either side. ZBA Member Ralph Vecchio stated that he thinks the condition should be removed but all other aspects of the area variance remain the same. The following decision was made.

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RESOLUTION NO. 23-2013
Removal of Condition on Area Variance #2012-01

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

and passed unanimously by said Board,

WHEREAS, due to the difficulty of enforcement by the Town of Greenwich as well as that of the business owner and,

WHEREAS, the showroom looks more esthetically pleasing with cars parked on either side,

therefore be it,

RESOLVED, that the Zoning Board of Appeals finds that the condition placed on Area Variance #2012-01, that no display vehicles are to be parked in front of the new expansion of the showroom toward State Route 29, be removed.

RECORD OF VOTE:

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

NEW BUSINESS:

Interpretation Application 2013-02 – Submitted by Andrew Allison representing Monica Driver, regarding property located at 5131 County Route 113, Greenwich. Applicant would like to renovate an existing single family house that does not meet the required 100 ft setback from the Hudson River. House was built around 1961 and structures were added around 1980. Code Enforcement Officer Dan O'Connor denied the building permit due to the setback requirement not being met. Applicant is appealing Code Enforcement Officer Dan O'Connor's decision based on Zoning Ordinance Article X Nonconforming Uses, Structures and Lots, Section 190-75 Change of use; repairs, maintenance, and structural additions. (B.) Repairs, maintenance and structural additions. Parcel is located in a Residential District. Parcel ID # 219.-1-19.12.

ZBA Chairman John Farndell asked the applicant Monica Driver if she would like to explain her request for the interpretation. Ms. Driver stated that she was going to have Maggie Stein from AJA Architecture, owned by Andrew Allison, speak about the application. Ms. Stein reviewed with the Board the plans that were previously submitted. She stated that

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they are purposing to build a deck and covered porch that will be in line with the existing foundation, which is where the previous porch was. The existing foundation is 84 ft from the high water mark. Ms. Stein stated that the reason they are asking that the construction be allowed under an interpretation rather than having to obtain an area variance is because they will be building the new deck within the same foundation that the previous deck was on. ZBA Member Ralph Vecchio asked what happened to the previous deck. Ms. Driver stated that the previous deck was removed due to it being unstable and she was afraid that someone would fall. She continued that the inside of the house is being completely renovated. ZBA Chairman John Farndell asked how long ago the deck was removed. Ms. Driver stated that the deck was removed about 8 or 9 months ago and she tried to find pictures of what the deck looked like but she was unable to locate any. ZBA Chairman John Farndell stated that Section 190-77 of the Zoning Ordinance states that the Town of Greenwich Code Enforcement Officer needed to be contacted prior to the demolition of the deck, that is why CEO Dan O'Connor told Ms. Driver she would need to obtain an area variance in order to build the deck. Section 190-77 Damage or Destruction, B. reads as follows: *B. Substantial damage or destruction. In the event that any nonconforming structure or use is substantially damaged or destroyed, by any means other than demolition, to the extent of more than 50% of the cost of replacement of such structure new, proof should be supplied by the applicant in written estimate form of replacement value and work to be done by a minimum of two reputable agencies. Such structure shall not be restored unless, if within 30 days after the substantial damage, the owner of said nonconforming use notifies the Code Enforcement Officer, in writing, of his intent to restore said nonconforming use substantially to the conditions existing prior to the disaster. It is the owner's responsibility to provide documentation of existing nonconforming conditions prior to the disaster to satisfy the Code Enforcement Officer. In that instance, the Code Enforcement Officer shall permit the issuance of a building permit within 30 days of receipt of the written notice of intent for such substantial restoration without further action. Restoration under this section shall be commenced within six months of the date of issuance of a building permit, and restoration shall be completed within one year of the issuance of the building permit. In the event that the Code Enforcement Officer is not notified of the intent to restore the nonconforming use within the time limit stated, such structure shall not be restored unless the structure and use thereof shall conform to all current regulations of this chapter. C. Demolition. Except as provided in § 190-77B, where any nonconforming structure or use is partially or substantially damaged or destroyed by demolition, repairs may not be made to reconstruct the nonconforming use as it existed prior to the damage. Any and all restoration shall conform to all current regulations of this chapter.* Ms. Driver stated that she apologizes for taking the deck down because she was unaware of the regulation that the Code Enforcement Officer needed to be notified prior to the demolition. She continued that so much of the interior of the house was currently being replaced and she was worried that someone might get hurt on the deck. ZBA Chairman John Farndell stated that the contractor shouldn't have started with any of the demolition or reconstruction without first obtaining a demolition or building permit. Ms. Driver stated that she apologizes for that as well. ZBA Chairman John Farndell told Ms. Driver that she does not need to apologize because her contractor should have known that a permit needed to be obtained before any demolition or reconstruction was done. ZBA Member Ralph Vecchio said that in the interpretation application, the section of the Zoning Ordinance that the applicant

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referred to was Section 190-75, 2, b. which reads as follows: *Section 190-75. Change of use; repairs, maintenance, and structural additions. Except as provided herein, no nonconforming uses or structure may be enlarged, extended, reconstructed, substituted or structurally altered. B. Repairs, maintenance and structural additions. (2) Nonconforming structures. (b) A nonconforming structure which houses a conforming or nonconforming use which has deteriorated (through the normal use or age of that structure) to a point where the structure needs to be replaced in order to ensure that the health, safety and general welfare of the occupants is safeguarded, or if the cost of maintenance and repair of the structure is not cost effective, may be replaced after a site plan review by the Planning Board. This review shall be conducted prior to when any demolition or removal of the structure begins. If the nonconforming structure is demolished or removed prior to review, it shall constitute an abandonment as regulated under 190-76 and shall not be replaced/reestablished.* Ralph continued that he doesn't see how this section applies due to the fact that the deck has been demolished and the section clearly states that it only applies prior to demolition. Ms. Driver said that it was her understanding that as long as they stayed within the existing footprint then there was no issue. The setback for the proposed porch is 73 ½ ft from the high water mark and the required setback is 100ft.

RESOLUTION NO. 24-2013
Interpretation Application #2013-02

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

and passed unanimously by said Board,

WHEREAS, Interpretation Application #2013-02 applicant Monica Driver requests that it be determined that she need not obtain an area variance for the construction of a nonconforming porch that is proposed to be built within the footprint of a preexisting nonconforming deck, that has been demolished for approximately 9 months, based on the Town of Greenwich Zoning Ordinance Section 190-75, 2, b. which states: *Section 190-75. Change of use; repairs, maintenance, and structural additions. Except as provided herein, no nonconforming uses or structure may be enlarged, extended, reconstructed, substituted or structurally altered. B. Repairs, maintenance and structural additions. (2) Nonconforming structures. (b) A nonconforming structure which houses a conforming or nonconforming use which has deteriorated (through the normal use or age of that structure) to a point where the structure needs to be replaced in order to ensure that the health, safety and general welfare of the occupants is safeguarded, or if the cost of maintenance and repair of the structure is not cost effective, may be replaced after a site plan review by the Planning Board. **This review shall be conducted prior to when any demolition or removal of the structure begins. If the nonconforming structure is demolished or removed prior to review, it shall constitute an abandonment as regulated under 190-76 and shall not be replaced/reestablished,*** and

WHEREAS, the section clearly states that once the nonconforming structure is demolished it

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cannot be replaced/reestablished under such law and the deck has already been demolished,
therefore be it,

RESOLVED, that the Zoning Board of Appeals finds that Section 190-75, B, 2, b. clearly states that the Town must be notified prior to the demolition of a nonconforming structure in order for that nonconforming structure to be altered or replaced and,

therefore be it,

RESOLVED, that Interpretation Application #2013-02 Applicant, Monica Driver, will need to obtain an area variance in order to allow for the construction of the proposed porch.

RECORD OF VOTE:

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

Ms. Driver asked what the process was to obtain an area variance. ZBA Chairman John Farndell stated that there is an application and certified mailing fee, the application will have to go to the Washington County Planning Board as well as the application needs to have a public hearing. The Washington County referral will not come back to the ZBA until after their scheduled December meeting, therefore the public hearing would not be set until the January 2014 meeting date. Ms. Stein asked if they could continue the renovations and just postpone the porch plans until after the area variance process was completed. CEO Dan O'Connor stated that he could sign off on the plans as long as they exclude the porch. Ms. Driver stated that she is not sure if she wants to go through with completing the renovations if the area variance does not get granted. ZBA Member Ralph Vecchio stated that Ms. Driver or her representative would have to come before the Board and plea her case. Ms. Driver was then given a copy of the area variance five criteria questions. ZBA Clerk Amanda Willetts reviewed the area variance application with Ms. Driver and Ms. Stein at which time Ms. Driver submitted the \$100.00 area variance application fee as well as the \$67.21 certified letter fee. ZBA Chairman John Farndell asked that a survey be submitted showing the measurements from the proposed porch and the existing foundation in regards to the high water mark. The Board needs to see the structures in relation to the river.

Area Variance #2013-04 – Submitted by Monica Driver represented by Andrew Allison of AJA Architecture concerning property located at 5131 County Route 113,

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Greenwich. The rear of the property borders the Hudson River. Applicant is seeking a 26 ½ ft area variance in order to allow for the construction of a covered porch along the rear portion of her home. Parcel is located in a Residential District. Parcel ID # 219.-1-19.12.

ZBA Chairman John Farndell stated that the area variance referral will be sent to the Washington County Planning Board for review. John continued that the Board can set the public hearing for the January 2, 2014 meeting because the County referral would be received back by that time.

RESOLUTION NO. 25-2013
Public Hearing on Area Variance #2013-04

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

and passed unanimously by said Board,

RESOLVED, that the Zoning Board of Appeals will hold a public hearing on Area Variance #2013-04, submitted by Monica Driver represented by Andrew Allison, concerning property located at 5131 County Route 113, Greenwich, that will take place on Thursday, January 2, 2014 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	ABSENT
Member Roland Mann (Alternate)	AYE

DISCUSSION:

ZBA Member Ralph Vecchio stated that he has done some research regarding statutes that allow for the ZBA to review a previous application and he found that the Board can do whatever it pleases. There is a section of the Town of Greenwich Zoning Ordinance that states that the applicant must wait one year before the Board can rehear the application. That is Zoning Ordinance Section 190-86 and reads *Subsequent hearings. After hearing all evidence presented upon an application or appeal under the provisions of this chapter, the ZBA shall refuse to hold further hearings on said or a substantially similar application or appeal by the same applicant, its successors or assigns for a period of one year, except and unless the ZBA shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified.* ZBA Member Ralph Vecchio stated that this doesn't change

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anything, however, it is informational. Ralph said that maybe next time we could save the applicant the certified mailing fees. ZBA Chairman John Farndell stated that the applicant came before the Board and requested that the area variance be revisited therefore it is his responsibility to endure the cost. John continued that if the this happens another time and the Board wanted to revisit the application on their own, not the applicant, then at that time the cost should be endured by the Board. ZBA Member Ralph Vecchio agreed.

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

and passed unanimously by said Board,

That the meeting be adjourned at 7:59 pm.

Respectfully Submitted

Amanda Willetts,
ZBA Clerk