

**TOWN OF GREENFIELD**  
**ZONING BOARD OF APPEALS**

**AUGUST 5, 2008**

**REGULAR MEETING**

A regular meeting of the Town of Greenfield Zoning Board of Appeals is called to order by Taylor Conard at 7:30 p.m. On roll call the following members are present: Taylor Conard, Michelle Granger, Paul Lunde, and Stanley Weeks. Kevin Veitch and Stefan Strakos, Alternate, are absent. Gerry McKenna, Zoning Administrator is absent.

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**JULY 1, 2008 MINUTES:**

MOTION: P. Lunde

SECOND: M. Granger

RESOLVED, that the Zoning Board of Appeals waives the reading of and accepts the minutes of July 1, 2008 as submitted.

VOTE: Ayes: Conard, Granger, Lunde, Weeks

Noes: None

Absent: Veitch

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**NEW BUSINESS**

**TERI & WILLIAM CROWE – Area Variance, Case #814**

Old Stone Ridge

William Crowe is present. T. Conard reviews that the applicants are seeking an area variance for acreage in order to install an outdoor wood-burning furnace. The parcel is 1.49 acres and 5 acres are required. Clarification is requested on the location of the state lands and the diagram with measurements.

**RESOLUTION – T. & W. Crowe, Area Variance**

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals accepts the application of Teri and William Crowe for an area variance for property located at 10 Old Stone Ridge Road, TM#164.6-1-7 and sets a public hearing for September 2, 2008 at 7:30 p.m.

VOTE: Ayes: Conard, Granger, Lunde, Weeks

Noes: None

Absent: Veitch

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**OLD BUSINESS**

**ANTHONY VACCARIELLI – Case #809, Area Variance**

Route 9N (Triple J Way)

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Anthony Vaccarielli and attorney Michael Toohey are present. T. Conard reviews that this is a proposed subdivision and they would like to subdivide into four 3+-acre lots. The zoning was originally 3 acres and has changed to 6-acre minimum lot size. In addition, they would need 250' of frontage because the lots are on a private road. A public hearing is opened at 7:38 p.m. Nancy Kmen states that she was on the Comprehensive Plan committee and on the Zoning Update committee, she states that it is not necessary to remind the Board that this would set a precedent as these are large variances and she is opposed. Andrew Fischer states that he is a resident of this development and he supports approving this under the old zoning. He would like to see the neighborhood move forward. He strongly supports this, as it was one of the major attractions in purchasing and moving in here. He was looking forward to the development of the neighborhood. Tony Kasowski, also a resident of this development, states that this is a major setback because this is holding up A. Vaccarielli with the process of putting in the road. He states that right now the road is gravel and it is tough to get into that development without having a paved road. He states that as residents they do not have any problem with the 3-acre lots that were already proposed. He states that it would be nicer if there were more neighbors in there than less if they have to go to 6-acre lots. A. Fischer states that one of the reasons why he liked the 3 acre lot size, was there would potentially be 7 or 8 houses in that neighborhood. He states that it would feel a little empty with only a couple more houses there. There being no further public comment, this case is closed at 7:42 p.m.

M. Toohey, representing the applicant, states that A. Vaccarielli has owned the property for some time and the Town has records that there has always been a discussion of having a 4 lot subdivision in here. The purpose for that would be to accommodate the cost of building a public road. This is a plan that has been before the Town boards on multiple occasions. It has been reviewed extensively by the Town Engineer and they have gotten to the point through a design of road, design of cul-de-sac, design of a storm water drainage system, incorporation of the new standards for the storm water drainage system – that the road is designed and is acceptable. They have had traffic studies done, and this is over the course of many years that this has gone on. The problem that you have with a road that is 1500' long, that has to be built to town specs, is cost. The cost is prohibitive for what would go on here. He states that the applicant purchased the land for \$300,000. That meant the three lots on the south side of the road plus the 14+ acres. There are three very nice homes that are located on the south side of the road that are serviced by a gravel road that runs up a pretty steep grade, and as the neighbors have alluded to, in the winter it can be hard, it presents a safety problem for them, a public welfare problem for them and a concern. The lots themselves were sold for \$135,000; this becomes part of the proof that exists in this project. To build the road, and there is an estimate that has been submitted to the Town Engineer, and increasing it for the obvious cost of materials, it would cost about \$165,000 to build. That would mean that at that time they would have about \$330,000 in this project that is not recouped from any other source. The carrying cost for this project is about \$67,000 and even adding that in at \$60,000 so that it doesn't sound like they are attempting to inflate any costs, that puts them at \$390,000. The four lots that they are proposing, even in this depressed time, they are worth more than the lots that were sold in the last 2 years by \$10,000 per lot. That would give you 4 lots, \$300,000. We are still \$90,000 short on our ability to build this public road, which is what everybody has talked about since 2005. If you look at the Planning Board meeting minutes for March 8, 2005, Gary Dake states that he would love to see the road be able to be built to town specs, and that is where they are right now, town specs for this particular road, but it cannot be built if we only build 1, 2 or 3 lots in that back property. There is not enough money that is associated with this project. M. Toohey states that in looking at the standards that the Zoning Code gives with regard to area variances, it is a pretty interesting standard. The balance between the benefit to the applicant and the detriment to the health, safety and welfare of the neighborhood or the community, so the word "or" means you can pick either one. He states that their ability to build these four lots resulting in the building of a public road up that hill, presents not only no detriment to the neighbors, it in fact helps the health, safety and welfare of this particular neighborhood. It allows school buses, ambulances, fire trucks, etc. to get up and down the road. There is no detriment so that benefit/detriment balancing that the Board is asked to maintain with regard to area variances, clearly falls on the side of allowing that which has historically been in place before the Town changed their zoning code to say this. The next part of the test is whether there would be anything to the detriment of the neighborhood; an undesirable change will be

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produced in the character of the neighborhood. M. Toohey states that the character of the neighborhood, if you look on the south side of the street, is that there are three homes in there, all of which are at 3 acre lots. This is the only neighborhood that is out there, it cannot be expanded, the neighborhood is this road and it is single family on 3+ acre sites. Another test is whether the proposed variance will have an adverse impact on the physical and environmental condition in the neighborhood. It goes back to the argument of whether there is any detriment to the neighborhood and in fact there is not a detriment. There is a positive outcome to this discussion. The area where it becomes interesting is the two middle tiers of the area variance tests - the question of whether this is a substantial variance or if what is being sought can be achieved by another goal. M. Toohey states that this is not substantial in the sense of what has historically been discussed for this particular lot. This is not an applicant who is coming in and saying they have 14 acres that they just bought and knew or should have known what the standard was going to be when they acquired the property and as a result they want the Town to give them a break. This property has been being worked through the system for a time period well before the change existed in the Zoning code. The map indicates that it was designed for the R-3 zone; it fits perfectly into that R-3 zone. M. Toohey states that what he is asking the Board to do is take the primary rule with regard to area variances – benefit to applicant vs. detriment to the neighborhood – and he does not think there is any question. He does not believe there is any detriment to the neighborhood by allowing these four lots to be developed. One of the things that the applicant will assure the Town and it can be a condition of approval, is that a public road will be built and will be built to Town standards and Town specs just as it has been designed already. M. Toohey states that Paul Male is the engineer for this project and is present, and he can describe how this road will be put into place and how, in fact, that can be done. If it is of any benefit to the Board in trying to balance this test, they are prepared to offer a situation in which a public road would be built up to the hill up to a point just before the cul-de-sac begins. That would be done in 2009 so that the residents have relief from the problems that they have already. The Planning Board process would require that we bond the rest of this so that the town is not stuck with a half built road. That would be in place and would show the applicant's good faith in saying that this problem that has existed for these neighbors in this area is being corrected by the applicant. They think that is a reasonable condition and that it gets them to a point where they are not harming the neighborhood and on balance and that their request is not unreasonable. P. Male states that he has been working with Charlie Baker and there is correspondence as late as the end of last July 2007 indicating that the Town Engineer was still working with the applicant to get this project approved. He believes that was after the Zoning changed and it was not pointed out. M. Toohey states that it appears from the way he read the code that this change took place on July 21, 2007. The applicant was so intent on moving forward with this, they have correspondence from the Town Engineer, this project was vigorously being moved forward and he provides correspondence from the Town Engineer dated two days after this was passed July 23, 2007. Based on this letter of credit estimates were being worked on and submitted to the Town dated July 18, 2007 and there is further correspondence where this finally came to light which is after the turn of the year 2008. It is not that they haven't been attempting to move this forward. That also allows for the Board to not be tied by the idea of a precedent. They are not asking the Board to ignore the change that exists in the law, they are asking the Board to understand that there are projects that are significantly underway with significant costs incurred based on ongoing give and take between municipalities and an applicant coming up with a design. T. Conard asks if there was any formal application submitted prior to the change in zoning. He states that the zoning Board did grant variances on these lots. M. Toohey states that there have been a whole series of applicants that have come in. This has been before the Planning and Zoning Boards, and he has all the minutes, and there has always been the idea that what this was going to be was a 4-lot subdivision in this exact configuration. They do not have a new configuration. T. Conard asks if there was a formal proposal and if so that would have been grandfathered. P. Male states that he does not know off the top of his head. M. Granger asks if they had an application that was deemed complete and accepted by the Planning Board. P. Male states that it was his understanding that they had been working with the Town engineer and it was his understanding that they were fine-tuning the project to get the final approval. M. Toohey states that they have minutes with regard to presentations to the Planning Board. M. Granger states that the issue that T. Conard is raising is that if the applicant had an application before the Planning Board and if that was deemed complete, because the records the ZBA has do not show that there was a complete application. M. Toohey states that if the

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Board is asking about a formal application, he does not see that, but the idea is were they before the Planning Board with regard to exactly this situation – yes they were. They were there for years in advance of the change. It is not a situation where there had been no notice to the Town and he provides copies of all the correspondence between the engineer and the Town. Half way through this there were new storm water specifications and that had to be redone. He states that if there had been a formal application, they wouldn't be here – there would be no need for there to be a Zoning Board application. They are saying that although it is not part of the standard, this is a unique situation in which a neighborhood will be significantly adversely affected by not allowing this project to move forward as it had been planned for several years. T. Conard questions that the south side is already subdivided and then the applicant came before the Zoning Board for frontage variances because they were not on a Town road. The other side was not subdivided, so this has been done in little bits and pieces and that is why we are in this situation. M. Toohey states that it is not a situation that they would choose to be in, and they are trying to figure out what the balance is that would be to the greatest benefit to the neighbors that exist. S. Weeks states that he thought that nothing was built on the south side and he is disappointed that this map does not show those houses and that is a fairly big omission. P. Male states that everything that the Town Engineer asked for was put on the map and this was for the cul-de-sac design. He does not believe that there were three houses there when they submitted the plans. T. Conard asks if this cul-de-sac is the correct size for the Town. P. Male states that they had gotten three different options from C. Baker and this is the one that C. Baker liked the best and was satisfied with. The last submission that they made was really just following up on what he assumed were the miscellaneous details to finalize the whole subdivision. T. Conard asks if anyone on the Planning Board warned the applicant that the zoning laws were being changed. He states that is was common knowledge in Town, it was a three-year process. P. Male states that he found out a lot of that after the fact but nowhere did anyone say that this was in the process. M. Toohey states that the date on the letter is demonstrative of what was going on. The letter is dated three days after the process that T. Conard indicated took months. He states that there is other correspondence in which this process was going on a go forward basis and he reiterates that the first time that P. Male got notification was in January/February 2008 that said that the Town agreed with what was discussed in July and the code had changed. He states that the connector that P. Male had who was the closest person, the answer to the question is no. P. Male states that his assumption, which was probably wrong at the time, was that since they were involved in this process, that they were grandfathered. T. Conard states that it does help to know that they were in the process. He states that he would like to see more of the records and be able to peruse them. He is not comfortable doing it tonight and would like a little more detail before he makes a decision. He would like copies of the correspondence that they have and he would like to table this, if it is agreeable to the applicant, to the next meeting. A map with revisions would be helpful also. M. Toohey states that he is supposed to be at the Town of Ballston on September 2<sup>nd</sup> and asks if this could be tabled to the October meeting. The date on the map is discussed along with the dates of revision.

**RESOLUTION – A. Vaccarielli, Area Variance**

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals tables the application of Anthony Vaccarielli for property located at 4440 Route 9N, TM#99.-1-2.11 to the October 7, 2008 meeting at 7:30 p.m. with the consent of the applicant.

VOTE: Ayes: Conard, Granger, Lunde, Weeks

Noes: None

Absent: Veitch

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**DAVID HURD & JOANN YAKUSH – Area Variance, Case #812**

Sand Hill Road

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David Hurd is present. T. Conard reviews that the applicant would like to install an outdoor boiler on 3.29 acres and 5 acres is required. The applicant is also requesting a 5' variance on the left side. A public hearing is opened at 8:10 p.m. There being no public comments, this public hearing is closed at 8:11 p.m.

P. Lunde asks if the applicant has considered a wood stove in the basement. D. Hurd states that he is a fireman and would rather not have a wood stove indoors. P. Lunde questions the need for the 5' variance. D. Hurd states that he can move it closer and not need the 5' variance. T. Conard comments on the proximity of the neighbors' residences. S. Weeks questions that the boiler is not 40' from the house by any code. P. Lunde states that they can put this boiler in the cellar if they want to but are doing this for safety reasons. M. Granger states that her concern is that the code has just changed purposely to address this issue so that when there was excessive smoke that was created it is not a negative impact to the neighborhood and that is the primary concern she has. She reiterates that the code was changed for a reason and her concern is for setting a precedent. If the Board gives the applicant a variance for 1.71 acres, then does it become 1.8 for the next applicant, 2 for another, etc? That is the primary concern that she has. She appreciates the fact that for safety reasons the applicant wants to supplement what he has and that is not the concern that she has. She has the broader concern for the community at large. There is another new application and at what point do you draw the line to not allow someone to have it. P. Lunde states that is a concern but the question is what is substantial? If you have a 1.5-acre lot and require 5, that is substantial, but over 3 acres to 5 is that substantial. It is all up to interpretation. T. Conard states that it also depends on the amount of neighbors, the density of the neighborhood, etc. There is a trailer right next to the subject property. He asks what is on the other side. D. Hurd states that the neighbor is right on the corner of Coy Road about 200' from the property line. P. Lunde states that the Board should keep in mind that if the applicant is not allowed to do this, he can put a wood burner in the house and can do whatever he wants - if it is an air quality issue that the Board is concerned about. T. Conard states that puts it 40' further from the nearest neighbor who is right on the line and there is discussion of the prevailing winds. S. Weeks states that his concern is more the location and prevailing winds than anything. He would be fairly comfortable if the applicant had this tucked behind the house. T. Conard states that he does not want to set a precedent right after a law has been put into place that is too large. He states that the law is in place for a reason. P. Lunde states that our whole purpose as a Board is to give variances. T. Conard states not to give a variance but to give the least amount of variance possible if we feel that it is not going to be detrimental to the neighbors and the Town. He states that if we set too much of a precedent then we are going to be setting that across the Town. He states that he does not know that he feels that he wants to have the authority of changing that law to make the minimum because once we set it to 1.7 acres, we are making it about 3.5 acres. He discusses other boilers in Town. S. Weeks states that there are two things we talk about, lot size and the clearance from the lot lines. His discussion point would be that if we tuck this behind the house so there is over 200' to the lot line and the prevailing wind would, in general, bring any smoke issues to the existing house and not the neighbor's house, that is a consideration. We do all of these on a case-by-case basis. T. Conard states that he is still concerned and asks what is across the street. He states that we also do this on a case-by-case basis to the amount of variance to the land, and to him it is still a very large variance for the acreage size considering that after a lot of debate, after a year's worth of work, in excess of a year's worth of work, the Zoning committee came up with this and it went into law after public hearings. He states that unless we can find a good reason to reduce the area of this land that is specific to this case and is not going to be able to be spread across the Town, then he has very strong reservations about going ahead with this. S. Weeks states that there are really two things that were specific - one was the acreage and one was the distance from the property lines. He thinks those two were put together saying if we have a 5-acre lot, well surely you are going to be more than 100' from the lot line. Consider if this were moved 200' away from the lot line, that to him balances out to some extent the reduced acreage. M. Granger states that the purpose for the 5 acres was so that if there was excessive smoke there would be more room for dissipation prior to an impact on the surrounding property. So even though you move it behind the house, because you have a decreased amount of acreage, she is not convinced that that actually addresses it and what is to say that the prevailing wind is always going to be to the back of the house? S. Weeks states that if you have 5 acres of land, but it can be within 100' of the lot line, he still thinks that with prevailing winds you run the risk of offending neighbors. T. Conard states that he does not

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think that is totally untrue, however if you are in a 5-acre area normally other lots are 5 acres and there is a good chance houses are not going to be quite as close together. He asks what houses are on the other side. D. Hurd indicates where they are and that there is open field across from him. P. Lunde asks if any of the neighbors burn wood. D. Hurd states that they all do so smoke isn't an issue. T. Conard states that he has neighbors who burn wood also and the one that makes the most smoke is the outdoor boiler. P. Lunde states that can be because of what they burn and if the applicant were to put this in his garage, he would not be here. He states that the issue of air quality with this law is not being addressed. S. Weeks states that if it is put in the garage, he will need a higher chimney. M. Granger states that she drove by and someone was burning and the smell was pretty strong. D. Hurd states that there is a neighbor who burns papers, etc. The Board would like copies of the entire pamphlet provided by the applicant. Discussion takes place about tabling this application and the applicant thinking about options and presenting information on what the neighbors do.

**RESOLUTION – D. Hurd & J. Yakush, Area Variance**

MOTION: P. Lunde

SECOND: S. Weeks

RESOLVED, that the Zoning Board of Appeals tables the application of David Hurd and JoAnn Yakush for area variances for property located at 642 Sand Hill Road, TM#136.-1-24.1 to the September 2, 2008 meeting at 7:30 p.m.

VOTE: Ayes: Conard, Granger, Lunde, Weeks

Noes: None

Absent: Veitch

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**JEFF PFEIL – Area Variance Discussion**

J. Pfeil is present and states that after the last visit to the Zoning Board at which some recommendations were made, they went back and looked at Old Stone Ridge. They have reconfigured their proposed subdivision and he presents a map for the Board to review. This would be a Home Owner's Association road with variances for frontage. The Board consensus is that they like this plan. M. Granger states that she would give favorable feed back in terms of this, they seem to have accomplished their goal of maintaining the aesthetics, etc. P. Lunde asks about the surrounding lots. J. Pfeil states that the zoning changed from 5 acres to 3 acres. He explains that the wetlands maps they used were old and they are going to have to re-map this.

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**DISCUSSION**

The Board discusses the possibility of having Mike Hill from the Town Attorney's office present for the October 2, 2008 meeting. All information will be copied and sent to M. Hill for an advisory opinion. The ZBA would like another copy of the Planning Board referral to the ZBA.

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Meeting adjourned 9:00 p.m., all members in favor.

Respectfully submitted,

Rosamaria Rowland  
Secretary