

**TOWN OF GILMANTON  
HISTORIC DISTRICT COMMISSION  
ACADEMY BUILDING  
TUESDAY FEBRUARY 6, 2007 7:00 P.M.**

**Meeting Minutes**

Chairman Perry Onion called the meeting to order at 7:00 P.M. In attendance were Board members Steve Latici, Don Guarino BOS Representative, Phil Eisenmann, George Roberts and Alternate Member Allen Everett. Chairman Onion appointed Allen Everett as a full voting member. George Roberts recused himself, as he is an abutter to the applicant.

This meeting was posted as a work session and as an informal discussion between the Board and applicants Tina and Mark Mirabella regarding their property at 541 Meetinghouse Road. Chairman Onion explained that because this is an informal discussion, no decisions or motions are allowed pending a public hearing with the notice of the abutters to present the additional information gathered at the site walk of the property.

On Saturday February 3, 2007, the Board met with the Mirabellas at their property on Meetinghouse Road to view the recently poured foundation. The Board questioned the placement of the foundation in relation to the site plan as submitted and approved by the HDC on January 2, 2007.

Chairman Onion stated the Mark Mirabella stated that he would like to clarify two issues within the approval of the application on January 2, 2007. First, is the foundation as presently sited the location in which the Board approved the barn to be erected and second what is the recourse of the Board to rectify the situation based on the findings of the discussion.

Mark Mirabella stated that it is his impression that he is in compliance with the approval of the HDC and building permit based on the application submitted and language of his testimony at the public hearing.

Chairman Onion stated that the tapes of the January meeting were reviewed and that the written application and verbal testimony appear to be the same. Chairman Onion further stated that the question of placement of the barn is questioned due to the actual site plan design submitted.

Allen Everett read the HDC Regulations Section A:1 Structures and Siting which states: All proposed structures shall be sited parallel or perpendicular to at least one of the public right of ways and/or parallel or perpendicular to the existing building. Period siting shall also be considered.

Phil Eisenmann stated that due to his absence from the January hearing, he is relying on the draft minutes from January as well as the submitted application, amended and

approved. Phil Eisenmann stated that per the unapproved minutes, neither the minutes nor the motion dictate any siting of the barn in question.

Steve Latici stated that the site plan clearly shows that the proposed location of the barn is parallel to the ell of the home. It also shows that it is parallel to the road. In just looking at the site plan and keeping in mind that it is not to scale, nor was it prepared by a professional engineer, it would be inferred from the site plan that the siting of the proposed barn would be parallel to the ell of the home. Steve Latici stated that the applicants proposed to reconstruct the barn on the existing foundation, as stated in the application and in testimony. Mr. Latici further stated that there is a lack of evidence as to the original location of the barn, other than what is shown on the plan. The only evidence, in his opinion, of the historic location of the barn is the site plan as submitted.

Don Guarino stated that it is not disputed that the applicant presented in the application and in testimony that his intent was to place the proposed barn on the original foundation. The question before the Board is whether the plans that are drawn reflect where the original barn was. Don Guarino stated that if you look at the property historically as a farmer may have utilized the property and in looking at the rear stonewall, the barn is parallel to the back stonewall. Don Guarino further stated that if thought were put into farming, the farmer would want an alley way for an English Entry Barn so that the barn were not tight to the stone wall on one corner and wide to the stone wall on the other corner. If you look at the stone wall on the back of the property, the foundation as it is now poured, runs parallel to that stone wall which is another feature to the land. So in looking for historical evidence of placement, the stonewall should also be taken into consideration.

Mark Mirabella stated that the site placement of the barn was based on field evidence. The plans which were submitted were not based on a survey, however, per the application and testimony at the previous meeting, it was stated by Mr. Mirabella that they intended to place the proposed barn on the original foundation as found by field evidence. Mr. Mirabella stated that he utilized the physical and archeological evidence from the site, such as corner stones and old foundation stones in order to delineate where the original structure had been located.

Don Guarino inquired if Mr. Mirabella had laid out any batter boards or lines that were off from the excavation site.

Justin Caldon, Contractor for the Mirabella's stated that he went to the site and assisted with the 20' offsets off the corners for relocation of the excavation.

George Roberts inquired what the recorded dimension of the old barn foundation was. Steve Latici stated that the plans do not reflect what the original barn foundation dimensions were. The only representation on the plans is for the proposed barn.

George Roberts stated that he had spoken with neighbors and people familiar with the site; and they remembered the peak of the barn facing the roadway. Mr. Roberts stated

that what was found at the site may have only been a partial foundation of the original barn.

Mark Mirabella stated that without photo documentation anything is possible, however the corner stones that were found are cut, quite large and dimensional. Conversation ensued in regard to the style of the barns of the era in relation to the age of the house. George Roberts stated that the barn, which the townspeople remember that the barn was parallel to the ell of the home and was not a long building.

Mark Mirabella inquired if there was any question of the Board as to his intent to place the proposed barn on the period site. Steve Latici stated that the Board is in agreement that the intent was to place the proposed barn on the period site of the original barn. However, what is in dispute is whether the site plan reflects the period siting and the fact that the Board had approved the application based on the site plan which was submitted showing the proposed barn in a location other than where the foundation has been poured. The plan as submitted shows a dimension of 45' to the front corner of the barn. The plan does not show a dimension from the ell to the rear corner and given that the plan is not drawn to scale and the fact that the plan does not show a dimension to the rear corner, makes it questionable whether the building as constructed is out of compliance with the plan. Because it shows, provided that the front corner of the building is 45', that the structure is parallel to the front of the ell. What is in question is the rear of the proposed barn, which is angled in toward the main house.

Chairman Onion stated that he has heard several different dimensions of the rear offset to the barn. Don Guarino stated that depending on where the tape is being pulled from on the foundation to where it is being measured to, different measurements could be achieved depending on the corners utilized.

Steve Latici stated that his observation is that the plan as drawn shows the distance to the front corner of the barn. The reasonable interpretation of the plan as drawn, is that the proposed barn is to be parallel to the ell at a distance of 45'.

Chairman Onion stated that he cannot understand how anyone, if looking at the plans as submitted, could come to any other conclusion other than the proposed barn would be parallel to the ell at the distance of 45'. Steve Latici stated that as built, the barn is not compliant with what the plans as drawn show.

Mark Mirabella read from Section II of the HDC Ordinance: Regulations for Architectural Detail and Use of Premise within the Historic Districts; 1) Siting: All proposed structures shall be sited parallel or perpendicular to at least one of the public right of ways and/or parallel or perpendicular to the existing buildings. Period siting shall also be considered.

Mark Mirabella stated that the fact that they applied for period siting and the fact that period siting is mentioned within the ordinance implies that deviations from parallel or perpendicular siting to a right of way or structure are considered by the Board. Phil

Eisenmann stated that siting is considered but not necessarily approved. The discrepancy lies in that there are two different statements within the application, which are contradictory.

In the applicants first statement he says “32’x29’ English Style re-erected post and beam barn of hewn structure, sheathed in wide board vertical pine (natural finish), fastened with Tremont restoration nails and oriented broadside (parallel) to the road.” The application further states: “Sited in location of original period barn site and orientation”. Phil Eisenmann state that in this situation, those two statements cannot be the same. So as it says in the ordinance, what is required is that it is parallel or perpendicular to either a right of way or a period building. Then there is the caveat in the Ordinance that states, period siting shall be considered. The siting was not expanded upon in the original hearing. The only mention of the siting is where the applicant essentially reads verbatim from the application.

Phil Eisenmann stated that because he was not at the original hearing, it would be his impression from looking solely at the application and site plan, that the proposed barn would sit parallel to the ell. It was the applicant’s responsibility to explicitly describe the location and siting of the proposed barn.

Don Guarino stated that Board is in agreement that the placement of the foundation on the site does not correlate to what the actual site plan represented. The issue before the Board is how this will be rectified.

Chairman Onion stated once again that this is an informal meeting and no decisions would be made of the Board as to what would rectify the problem. Because this is an informal meeting and abutters have not been notified to hear new evidence presented on the application. Therefore, the Board will reconvene at a later date, which will give allowance for proper notification of the abutters, published in the newspapers and public postings as per RSA 657:7.

Don Guarino stated that it is his impression that the applicant has acted in good faith and in no way intentionally misled or misinformed the Board. Don Guarino further stated that it is his personal opinion that to require the applicants to rip up and pour a new foundation would impose a hardship.

George Roberts inquired if the Building Inspector had inspected the foundation and if he is also the person to enforce HDC Regulations.

Steve Latici stated that Bob Flanders would inspect the structural integrity of the structure.

Wendy Keane, clerk, stated that when Bob Flanders was given the building application, he was also presented with the Notice of Decision (draft copy) which did not clarify the siting of the structure other than “original period barn site and orientation”, as stated in the motion to approve the application.

Phil Eisenmann stated that the Board does not only have an obligation to the homeowner/applicant but also to the abutters and town as a whole. He further stated that the Board has to be very careful when making exceptions to the Ordinance because it sets a precedent. In the past the Board has allowed property owners in the Historic District to do things to the rear of their properties that cannot be seen from the roadway. George Roberts, in the past has stated that what cannot be seen by neighbors or abutters now may be seen sometime down the road. Phil Eisenmann stated that unfortunately the foundation is where it is. However the Board does need to take into account the abutters and townspeople and not only the homeowner who is making the changes to the property.

Steve Latici stated that there is an apparent ambiguity in the application. The application proposes to construct the barn in the historic location. The site plan submitted shows a location for the barn. Clearly it is not constructed with compliance to the plan, however, it does not dispose of the issue as to whether the building is in fact historically located. Steve Latici stated that Don Guarino makes a good point in that the back wall of the barn is running perpendicular to the stonewall and that it is likely that the barn would have been laid out perpendicular to the stone wall. There is some evidence that despite the structure not being laid out in accordance with the site plan, it is constructed in compliance with the application. If the Board accepts the evidence that the structure is laid out in its historic location, then the application as stated, the barn would be located on the original period barn site is compliant. It is the task of the Board to make a decision on which evidence it is going to accept.

George Roberts inquired if every topic in regard to the application has not been addressed in a hearing (siting in this case), is the applicant exempt from adhering to the requirements as set forth in the HDC Regulations? Mr. Roberts stated that there are numerous residents in the Historic Districts who have gone about doing work on their properties and come to the Board after the fact.

Chairman Onion stated that the Board is bound by what exists in the Regulations. However, in this particular instance, it specifically states that period siting may be considered. A reasonable interpretation of the Regulations is that if it is not perpendicular or parallel to a structure or roadway, the Board based on the Regulations has the ability to take historic siting into consideration.

George Roberts stated that there is no hard evidence that the foundation as poured, is in the historic location. If applicants avoid the topic of perpendicular or parallel during a public hearing and then subsequently the Board finds that a structure is not perpendicular or parallel to a structure or roadway, then what is the Board supposed to do? There have been many who have had to come before the Board for not being in compliance. The applicant should state during the public hearing the exact proposed site of the structure and be made to produce evidence of historic siting if applicable.

Mark Mirabella stated the he felt that is what he did within his application in stating that the structure was proposed to be sited on the evidence of the original foundation. It was not his

intention to place the structure in any other place other than what he felt was the site of the original barn.

**MOTION: Steve Latici moved to close the informal hearing to any further public input. Seconded by Allen Everett. Motion carried 5-0.**

George Roberts, having recused himself from the Board as an abutter to the applicant, inquired if the last meeting, in regard to the applicant had been adjourned. He further asked if because this was a work session if the Board could close the meeting to public discussion. Steve Latici stated that the intent of closing the discussion to public input was so that the Board may discuss the issue. Chairman Onion stated that at any time the Board could enter into a closed session. George Roberts inquired if it was the intention of the Board to make a decision on the information as proposed to the Board. Chairman Onion stated that because this is an informal discussion with the applicant and no abutters have been noticed then the Board does not have the legal jurisdiction at this time to make a formal decision. He further stated that this is simply an informal discussion to weigh the opinions of the Board members in this matter.

The Board discussed their different views on the application and evidence as seen on the site walk on February 3, 2007.

The Board further discussed what enforcement, if any, would be administered should the Board determine that the structure is non compliant.

Don Guarino reiterated his previous statement that the evidence of the stonewall could contribute to the historic siting of the barn and therefore the applicant was true to the application in stating he wished to place it on the original foundation site. He does not feel that the applicant should have to undertake the expense of removing and replacing the foundation as laid based on site evidence.

Steve Latici stated that should the Board determine that the structure is compliant with the application then the issue of placement is moot. The issue to be determined by the Commission is what constitutes the overall application. There is clearly an ambiguity in the application. How does the Board resolve the ambiguity? Steve Latici stated that he believes that there is sufficient evidence for the Commission to find that the structure is laid out in it's historic location as evidenced by the fact that it runs parallel to the stone wall and based upon the evidence of the applicant as to where the existing foundation was.

Allen Everett stated that he agrees with Steve Latici that the applicant did state that he would place the barn in the historic siting and that the Board did not pin him down at that time as to what the historic siting was. It is further his opinion that the applicant has done what he intended as stated in the application.

Phil Eisenmann stated that he agrees that the application is ambiguous and because he was not at the public hearing, he is relying on testimony and the application to base a decision.

He does not feel that there is enough evidence to support the applicant having to tear out the foundation.

Chairman Onion stated that it is his opinion that it is not the place of the Board to compel applicants to spend enormous amounts of money. He further stated that he does not believe that the Board's procedures are wrong. He hopes that the Board would be able to accept the word of future applicants, their corresponding site plans and testimony, and not have to take it upon themselves to perform a site visit for every application or review tapes of the meeting. Chairman Onion stated that it is his opinion that the barn, no matter what style or how well constructed, will not be aesthetically pleasing in the present site. However, the foundation is laid. He further stated that had the applicant presented the site plan as the foundation is presently laid, he would have probably approved it in that site.

George Roberts inquired if the Board was still in closed session. Chairman Onion stated that they were.

Chairman Onion stated to the applicant that he has heard the opinions of the Board, however in no way are the opinions of the informal hearing an official declaration of approval.

Steve Latici stated that the building permit has not been rescinded; therefore the applicants are able to continue with the building should they choose to do so.

Discussion focused on whether the applicant needed to have a re-hearing based on the fact that the Board has not rescinded the building permit. Wendy Keane stated that because there was a site walk on the property and there is new evidence to be presented to the abutters in a future meeting, that the original approval would need to be amended to reflect the new information based on the site of the barn. The approval of the application will remain, however be clarified as to the site of the barn.

Steve Latici also stated that because this hearing has been posted as an informal meeting and there has not been any action taken, the abutters should be notified of the new information and a formal vote should be taken of the Board. The question posed in the vote would be whether the foundation is compliant with the application and whether action should be taken if necessary based on the findings of the Board. The abutters have the right to appeal any decision. Therefore a formal hearing should be held and a formal vote should be made. In deference to the abutters, the actual findings of the Board from the site walk, as well as the evidence presented in the informal hearing, need to be made part of the record.

Allen Everett inquired if the new hearing could be held in two weeks. Wendy Keane stated that it would depend on whether she was able to get the notice published in the newspaper to meet the 10 day noticing requirement as well as notice the abutters. Should she be able to get the posting into the papers, it is conceivable that a meeting could be held on Tuesday February 20, 2007. Wendy would check with the Laconia Citizen first thing in the morning to see if a posting could be put into the paper for February 10, 2007.

Mark Mirabella thanked the Board for their consideration and for any help in expediting the issue at hand.

Extensive discussion ensued between Board members in regards to the policies and procedures of the HDC.

Mark Mirabella stated that he and his wife had the best of intentions in their application and that they are excited to be in Gilmanston and bring a lot of experience in what they do. They are not so arrogant as to say they are always right and they do make mistakes as well. He hopes the Board understands that they appreciate their concern and attention in this matter. They further understand the concern of the Board and the affect it may have on the historical significance of the property. Mr. Mirabella inquired if there has been no change in the issuance of the permit, why there must be a rehearing of the case and the new evidence presented. He asked that the Board maybe see this as an exploratory discussion. Does the decision have to be revisited and the abutters re-noticed if there has not been a substantial change to the plans or to the project?

Steve Latici stated that the issue has to be properly addressed because the issue arose as to whether the building application was compliant to the application. Because the issue has been properly raised before the Board and because there has been discussion about it, in deference to the rights of the abutters, the abutters have the right to come in and challenge the consensus of the Board that the structure is in compliance or not in compliance with the application. If and until the approval is rescinded by order of this Commission, he (the applicant) has the lawful right to proceed with the building plans.

Chairman Onion stated that it is his impression that Mr. Mirabella is asking why if nothing has changed and his permit has not been revoked does he need to wait for a formal vote on the matter.

Wendy Keane stated that because there was a site walk conducted by the Board with new information gathered in regard to the project which could subsequently change the opinions of the Board's decision or the opinion of any abutters, this information needs to be publicly presented at a meeting which has been properly posted and the abutters have been noticed by Certified Mail.

George Roberts stated that the reference keeps being made to abutters however anyone in town has the right to speak in regards to the property at a public hearing

Phil Eisenmann stated that Mark Mirabella and Justin Caldon should be allowed to leave should they wish as the Board could not make any formal decision and the informal hearing was completed. Phil Eisenmann stated that the Board should make a formal decision on the matter as soon as is legally possible so that the applicants may continue with their project.

Wendy Keane again stated that it is conceivably possible that the formal hearing could be held on February 20, 2007. She further stated that she would let the Board and applicants know if the newspaper would be able to place the public notice within the legal timeframe.

Mark Mirabella thanked the Board for their time.

**WORKSESSION:**

Chairman Onion began speaking in regard to the newly drafted Ordinance.

Steve Latici stated that he would like the opportunity to review the changes and post the February 20, 2007 meeting as a Public Hearing and Work session and discuss the proposed changes at that time.

Chairman Onion directed Wendy Keane to add the Work Session to the agenda for the next meeting on February 20<sup>th</sup>.

Chairman Onion inquired of Don Guarino the status of a property that is in non-compliance. Don Guarino stated that the owner of the property had come before the Board of Selectmen in regards only to the water issue on the roadway. Chairman Onion stated that he sent a letter to the Board of Selectmen in regards to the non-compliance issues of the property in question. The Board discussed what has been done to date to try and rectify a number of concerns. Some of which are safety hazards and not related to the HDC issues.

The Board discussed an additional issue in regards to ongoing non-compliance within the Historic District.

**MOTION: Steve Latici moved to adjourn the meeting. Seconded by Phil Eisenmann. Motion carried 5-0.**

**Meeting adjourned at 9:07 P.M.**

Respectfully submitted,

Wendy L. Keane  
Recording Clerk

