

**TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, JUNE 19, 2008**

Chairman Hackett called the meeting to order at 7:00 p.m. In attendance were Carolyn Baldwin, Israel Willard, Paul Levesque, Ron Labelle and Alternate Wayne Gray.

Chairman Hackett explained the processes of the Zoning Board of Adjustment to the applicants and public in attendance.

Re-hearing/Public Hearing Case #8-2008 J. Walenda applicant: Rehearing of case #05-2008 for a Special Exception granted on 4/17/08 from Article VII.C.3 to construct a 24'X28' single-family dwelling which does not meet setbacks per Article IV Table 2. Property located at 13 Wood Ave, a .18-acre lot in the Residential Lake District. Map 118 Lot 24.

Catherine Broderick spoke on behalf of the applicant John Walenda. Attorney Broderick requested that all previous information submitted to the Zoning Board of Adjustment be submitted to the record for this hearing. She reminded the Board that the burden of persuasion in this case and the motion for rehearing rests on the parties who filed the motion and they must offer sufficient evidence to support the appeal of the Boards decision on April 17, 2008. Atty. Broderick then requested that Carolyn Baldwin recuse herself from the hearing based on bias. RSA's 673:14 and 500A:12 were referenced in the request. Also referred were Winslow v. Town of Holderness, 1984 and the April 21, 2008 Selectmen's Meeting Minutes, "*Carolyn explained that the purpose of the ordinance change was to have clarified the ordinance, but what happened was it changed the ordinance in a way that would allow many nonconforming lots in the Sawyer Lake and Shellcamp areas, which should not be allowed to be developed, to be built on.*"

Paul Levesque inquired if that was just a statement and not necessarily being biased.

Attorney Broderick stated that she is offering it as evidence as bias. She continued by stating that on May 1, 2008 C. Baldwin also attended the joint meeting with the Planning and Zoning Board and at that time Carolyn Baldwin explained that the ZBA had not idea of the wording or changes that were on the ballot and that the change opened up all the tiny lots in town, particularly in the lakes regions for development as long as they can get a septic system on the lot, without any oversight at all. Many of these are substandard lots with extremely steep slopes. And finally the minutes of the Zoning Board of Adjustments meeting on May 15, 2008, when the motion for a rehearing was granted based on a motion from Carolyn Baldwin. Atty. Broderick summed up by saying that it is all of this information, which she has documented, which causes her client to ask for a recusal for bias.

Carolyn Baldwin stated that she is astonished and that a general statement that the impact of the ordinance does not, in her opinion, indicate bias against a particular applicant. She was referring to the impact to tiny lots and not this particular lot that happens to be a flat lot than the many undeveloped lots without frontage and on steep slopes. Carolyn Baldwin further stated that there has been confusion and counsel has been contacted about the ordinance change and the conflict between the new ordinance and our standards for a Special Exception. Carolyn Baldwin stated that it was her uncertainty over the direct conflict between the ordinance change and Article IX that based her decision to vote in the negative on the case. She further stated that it was because of the language uncertainty that she also made the motion to grant the rehearing.

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C. Baldwin asked for direction from the Board on her recusal. She reminded Atty. Broderick that if she were to recuse herself it would leave her applicant with a four person Board to deliberate, but that she will accede to a decision of the Board.

Erica Randmere, resides at 18 Mallard Ave in Gilmanon, stated that she believes the record will show that the Board member expressed surprise and that it would be irresponsible for the Board member to not bring the conflict to the attention of the Selectmen. E. Randmere further stated that there is an RSA that allows for an error in an ordinance to be addressed within certain time frames. Ms. Randmere, in her opinion, does not feel that there would be a bias by C. Baldwin in this case.

Chairman Hackett addressed a letter from Mr. Walenda giving Rodney Dyer permission to co-represent him for this hearing.

Rodney Dyer, co-council for Mr. Walenda, stated that the concern is not personal in regards to C. Baldwin, the concern is because of her concerns about the ordinance, whether she would be able to meet the standards of an impartial, dispassionate juror. R. Dyer further stated that C. Baldwin is intimately involved in the community and wanted to bring to attention their clients concerns. .

Carolyn Baldwin stated that she is not the only person on the Board who has some confusion about the standards are. Chairman Hackett stated for clarification that she was also in attendance at the meeting with the Selectmen with other Board members with concerns, however all members did not speak, it does not lessen their concern over the confusion within the ordinance. Subsequently the ordinance will go back to a special Town Meeting for changes to be voted on. Chairman Hackett further stated that at that meeting, C. Baldwin was filling in for her because she had a prior commitment. She continued to state that had she been at the meeting earlier, she would have mentioned the same issues as Mrs. Baldwin. Chairman Hackett stated that she does not have any problems with Carolyn Baldwin remaining on this case.

Rodney Dyer stated that it is strictly a decision of the Board and would not question the Boards decision. R. Dyer queried that the issue in this case is statutory interpretation. Atty. Dyer inquired if the matter has already been referred to town counsel. R. Dyer further stated that the residents in Gilmanon have voted in the ordinance and that it is his recommendation that with any ordinance conflict that town counsel be consulted instead of trying to rehash the case with no clear method of implementation.

Israel Willard stated that Gilmanon is a small town and Board Members were to recuse themselves because of whom they know or other issues related to living in the town, there would not be too many members sitting on the Board. I. Willard further stated that Carolyn Baldwin has been a member of various boards in town for many years and he respects her opinion on issues. She does not give her opinions as an attorney but as a town resident.

Rod Dyer reiterated that it is his opinion that before the case goes any further; the Board confers with town counsel. Chairman Hackett stated that Town Counsel has been consulted via Wendy Keane who is the Land Use Clerk. Town Counsel advised that because the wording for the ordinance has been posted the Board falls back on the June 6, 2008 language for decision purposes.

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Chairman Hackett then asked the remaining members of the Board if they felt there would be any concerns with Carolyn Baldwin hearing the case. Being no concerns, it was decided that Carolyn Baldwin would remain on this case.

Atty. Catherine Broderick thanked the Board for their consideration of the recusal issue.

Chairman Hackett brought forth the letter from abutters and concerned residents requesting a re-hearing on the Walenda case.

Dale Carr presented a letter from Shirley St. Hillaire, 19 Wood Dr., regarding her concerns on the property. See attachment.

Dale Carr, William Morrison and Erica Randmere spoke in regards to their opposition to the land being developed with a single-family dwelling. They each expressed concerns over the saturation of the land, erosion control and well radius.

Ron Labelle inquired if there had been previous issues with erosion or wells when the previous house existed.

Mr. Morrison stated that the house was not occupied much before the previous owners took possession and it was a short time after they took possession that the structure burnt down.

Dale Carr inquired if the property was still a grandfathered property. Chairman Hackett stated that the property has missed the allowed time of one year to rebuild under the ordinance that is why the applicant is appealing to the Zoning Board of Adjustment. Chairman Hackett further stated that although it is not an absolute approval, the fact that there was a previous dwelling on the property gives the site a little more consideration during the deliberation process. However the fact that there was previously a house on the site does not automatically mean that the site will be approved. Mr. Carr further inquired why, if the proposed structure will not meet all regulations, would the applicants have been given permission to build at the April meeting. Chairman Hackett explained that the reason for the Zoning Boards existence is to make exceptions to the rules based on the merits of each lot.

Conversation continued in regard to the possible saturation of the land and erosion. Dale Carr also expressed concern over adding a well to the lot and what consequences that would have on abutting properties and their water pressure. Israel Willard stated that the water pressure should never be an issue for abutters based on where their wells are hitting the water table and the size of their personal water pump.

For clarification of well, septic and house placement on the lot, Attorney Broderick displayed the original site plan for everyone in attendance to view.

Wayne Gray inquired what damage the abutters anticipate from the development of the property. Erica Randmere stated that they are unsure what kind of damage will occur but are fearful of the unknown damage that could occur. The concern is the harm after the spring with snow runoff in a watershed area and the effect on septic systems and the lake. There was discussion on the radius of the applicants well and septic as compared to the abutters well and septic systems.

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Israel Willard explained that the septic design has already been state approved and that the Department of Environmental Services takes into account slope, potential runoff, neighboring well and septic systems and numerous other factors. The Zoning Board of Adjustment requires a state approved septic design be submitted with the application so that the Board Members can make an educated decision based on the information provided within the state approved septic design.

Erica Randmere stated that she was not aware that there was a state approved septic design. It was her thought that a variance or special exception had to be granted previous to the submittal of design to the state. Israel Willard clarified that the state approved septic design is a condition of application upon submission.

Erica Randmere stated that she would like to clarify a few issues brought before the Board: First the mention of the fire ruined building and that RSA 674:28 which indicates any and all non conforming properties destroyed by reasons of fire and acts of God may be restored, remodeled and operated within two years. She would like to bring it to the attention of the Board that the Gilmanton ordinance is more restrictive and that it would have to be done within one year.

Secondly, E. Randmere brought attention to **RSA 676:14 - Determination of Which Local Ordinance Takes Precedence.** – *Whenever a local land use ordinance is enacted or a regulation is adopted which differs from the authority of an existing ordinance or other regulation, the provision which imposes the greater restriction or higher standard shall be controlling. Determination that local ordinance takes precedence when local land.* She also requested that Board take in the appeal dated on May 14, 2008 into record (see attached). As a final consideration E. Randmere stated that the task is a difficult task before the Board and one looks at public interest but also at the injustice. At the prior hearings there was no argument made by counsel on behalf of the applicant that the applicant would be substantially damaged if the Board declined the Special Exception.

Dale Carr inquired how are the smaller lots being approved when they are so small. Israel Willard stated that the ordinance allows for property owners to apply for a special exception or a variance under the current regulations. He further stated that taken into account is the prior structure which was on the lot and that the lot had previously been developed. Because the property is not grandfathered and the allotted time for rebuilding under the current ordinance has expired, the applicant at this time must appeal to the Zoning Board of Adjustment to be able to develop the lot.

William Morrison stated that if this were the original landowner replacing in kind what had previously been there then this would be different, however this applicant is coming in and developing the lot without much interest to build and sell the property.

Ron Labelle stated that the assumption that the applicant was going to sell the property when developed should not change the concerns of the well and septic based on whether the applicant lived there originally or not.

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Attorney Broderick stated that she is speaking about the Board's reasonable and lawful decision made on April 17, 2008 to grant her client a Special Exception to build a 24' x 28' house with a state approved septic design on the lot being discussed at this hearing. She would like to answer a few questions that were brought forward in the request for rehearing.

Atty. Broderick would like to remind all in attendance that the burden of persuasion is on the persons bringing forth the motion. Attorney Broderick also responded to MS. Randmere's citing of RSA 674:28,III, which is similar to the town's rebuilding within a year clause, which means that as Mr. Gray stated, if you have the right to rebuild within one year and if you do not meet that time frame then you must come before the Board to apply for relief. Second, 676:14 speaks to the same issue meaning that even though state law allows two years to rebuild in cases of fire or acts of God, the Town of Gilmanon only allows one year. Attorney Broderick further stated for clarification that the intent of the applicant is to utilize the property for his use for seasonal purposes. Finally she stated that the question was raised as to whether the applicant would be substantially damaged by the denial of the special exception and that this is a request for a special exception under which that question is not a basis of criteria.

Attorney Broderick addressed the letter for the request for rehearing and read the request aloud, "a request for rehearing is based on the erroneous interpretation of the ordinance by the Gilmanon Zoning Board on April 17, 2008", she continued to quote from further down in the request: "the ZBA offers no valid reasoning or explanation for their findings and has ruled contradictory to the intent of the ordinance". Attorney Broderick stated that she would limit her remarks to those items because it is the reason why the rehearing has been allowed.

Attorney Broderick reiterated Attorney Dyer's point to suggest that because of the issues that have been raised by this application in regards to this article of the ordinance, the Board consult with Town Counsel. Attorney Broderick further stated that her client would not be adverse to tabling the application until Board speaks with counsel.

Attorney Broderick submitted photographs of the lot and other related materials to the rehearing. There was some disagreement by abutters that the photos as submitted were of the lot in question. Attorney Broderick assured that they were in fact photos of the lot in question taken the previous day.

Carolyn Baldwin stated for clarification that the Board has consulted with town counsel. She stated that what town counsel has told the Board is that in tonight's hearing "The ZBA should apply the version of the ordinance posted on June 6, 2008 to the rehearing on the Walenda application. Although this is different from the version of the ordinance that was applied to the original special exception application, there is no statutory protection for zoning applications that do not become final before new zoning language is posted (as there is for planning board applications). Therefore, unless the applicant expended a substantial sum of money in good faith reliance on a final decision of the zoning board (which could not have occurred here because the zoning board decision is not final until after the appeal period has expired), the applicant is not protected from posted changes to the ordinance."

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She further read into record Article VII.C.2. as it existed at time of the approval of the special exception on April 17, 2008, “*A non-conforming lot (after merger if applicable) may be used for building purposes only if the setback requirements of Article IV, Table 2 are met, and the owner obtains a New Hampshire State approved septic system design together with any encroachment waivers, any well setback waivers, and any other approvals required under all applicable Town and State laws and regulations.*”

C. Baldwin continued that on June 6, 2008 the Planning Board posted language, which she wanted to clarify that she had no part in writing or drafting, for a special meeting to be held in July 2008. These are the regulations that are supposed to be followed tonight, Article VII.C.5 states “*Except as provided in Section B.2, a non-conforming lot (after merger if applicable) which does not meet the requirements of Sections C.2., 3 & 4, may be used for building purposes only if a variance is granted, and the owner complies with all other requirements of applicable Town and State laws and regulations.*”

Attorney Broderick stated that as she understands it, her client will need to bring forth an application for a Variance tonight without being noticed. Carolyn Baldwin stated that it has only been within a day or two that Town Counsel has given us interpretation.

Attorney Dyer stated that he has been out of state and was unaware of these chain of events and inquired if the June 17, 2008 Planning Board hearing had taken place. Carolyn Baldwin stated that it had. Attorney Dyer inquired when the special town meeting was scheduled to take place. Wendy Keane stated that the Planning Board is aiming for a July 22, 2008 election date. Attorney Dyer stated that because of these circumstances he would propose that the hearing be tabled until after the special town meeting has taken place. Attorney Broderick reiterated that her client would be amenable to tabling the application until the August meeting.

Attorney Dyer further stated that there is no sense in proceeding forwarding at this time until the town has clarified the ordinance at the Special Town Meeting scheduled for July 22, 2008.

Wayne Gray inquired if the decision of town meeting will force the applicants to return filing a variance application. Carolyn Baldwin explained that it would depend on the outcome of the special town meeting.

Discussion followed on tabling the hearing for 60 days until the August meeting that will take place after the special town meeting.

Erica Randmere asked that the photos not be allowed into record because she is not sure they are actually photos of the property. Attorney Broderick assured the Board that they are photos of the property and will have her client go and stake out the site.

MOTION: Israel Willard moved to continue the hearing to the regularly scheduled meeting in August. Wendy Keane clarified that meeting would be on August 21, 2008. Seconded by Ron Labelle. Motion carried 5-0.

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Public Hearing Case #9-2008 K. & A. Hook applicants: Request for a Variance from Article VII.C.3 to construct a 16'X16' screen house on a lot which does not have minimum 2 acres nor frontage on a class V or better road. Property is located on Malecite Lane, a private road in the Rural District. Map 132 Lot 17.

Andrew Hook stated to the Board that he and his wife would like to construct a screen house on their property. Mr. Hook explained that the proposed structure would meet all setbacks per Article IV Table 2.

Carolyn Baldwin inquired if the Hooks owned the property across the road. A. Hook stated that they do own the house across the road. Carolyn Baldwin inquired if there would be electric hookup to the structure. Mr. Hook stated there would not be.

Israel Willard inquired if there were future plans to fully enclose the structure. A. Hook stated that it would just be a screen house and never fully enclosed other than the screens as proposed on the application.

MOTION: Carolyn Baldwin moved to close the public hearing. Seconded by Paul Levesque, motion carried 5-0.

Public Hearing Case #10-2008 Paul Deforest: Request for a Special Exception from Article IV Table 1, to establish a Contractors Yard. Property is located at 8 Grant Hill Road in the Rural District. Map 405 Lot 4.

Chairman Hackett read a letter into record signed by several of Paul Deforests abutters that states that they do not have any adversity to the proposed contractors yard. See attached.

Mr. Deforest stated to the Board that he is a carpenter ad restores homes and barns. He also takes them down from one site and erects them on other sites. Mr. Deforest further stated that periodically he will bring materials home and work on them out of one of his barns. He explained that he does have three barns on the property. One is a barn, which is primarily used as a garage that was brought in from Meredith and is dated circa 1840. His second barn is a horse barn that he also uses for projects. He explained how with both projects the Harris' called the town and complained causing the code enforcement officer at the time to come out to the property. Mr. Deforest stated that he has had building permits for the barns. He stated that when he put in a flagpole the Harris's again called the town to complain and inquired if he needed a permit. P. Deforest went on to state that this past fall he took the Twigg auction barn off of the property Doug Towle purchased on Frisky Hill and was issued a permit to reconstruct it at the back of his property. Mr. Deforest stated that there were a couple times this past winter, when he took home some projects to work on. Mr. Deforest explained that for 20 years he has taken projects home, primarily during bad weather to work on them. He estimates that he will work from his barn 2 to 3 days approximately every two to three months, so it is not often.

Wayne Gray inquired who owns the barn across the street from his property. Mr. Deforest stated that the Harris' own that barn. Mr. Deforest stated that he works hard to keep his property up and looking nice. He specifically moved the last barn to the far end of his property because it is a brown metal siding and did not match the wooden barns and house.

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Carolyn Baldwin stated that she did see the Twigg Auction Barn and was curious about the two storage trailers on the property. Mr. Deforest stated that the trailers hold his personal property, such as furniture from his previous residence because he does not have enough room in his present house.

Ron Labelle stated that he was shown the site by Eva, who also resides at Mr. Deforests. He inquired what Mr. Deforest was planning to do with the pile of rocks and debris at the site. Mr. Deforest stated that it is left over rocks and debris from his personal site work and that they will sometimes take from the pile and use the rock at sites they are working on.

Israel Willard inquired what the hours of operation would be for the proposed Contractors Yard. Mr. Deforest stated that he usually only does work in that barn a few days every couple of months and it would be from 8:00am until 3:00pm. Israel Willard inquired what materials would be stored on site. Mr. Deforest stated that he brings in old timber frames to keep them out of the bad weather, works on them and takes them back to the site.

Wayne Gray stated that part of the complaint that came to Mr. Flanders was that Mr. Deforest was effectively blocking access to the back of the Harris's property. W. Gray asked where that access being blocked is. Mr. Deforest stated that it is the end of the dirt road. Mr. Deforest explained that he had broken his leg this past winter and he had a trailer with some timbers to work on. The gentlemen he works with brought the trailer to his house and parked it at the end of the roadway not knowing that it was in someone's way. Mr. Deforest stated that he could not drive at that time and his truck and trailer were parked there for 2 days. He further stated that the men from work who brought down the truck told him that his neighbors had come down and taken photos of the truck and the property. Wayne Gray stated that he could not locate the access (driveway) to the Harris' property.

Eric Harper explained that the road was discontinued 100' past his driveway that is the last driveway on the left. Mr. Harper further explained that the discontinued road affects his property and the Harris' lower property on the left and Paul Deforests property runs the full distance of Grant Hill Road on the right side and the road runs into Arthur Tash's property and runs back out to Middle Route. Wayne Gray clarified his question by stating that he went all the way down to the Twigg barn and nowhere along the way could he find access to the abutting properties because there was no number. Mr. Gray reiterated that the complaint stated that Mr. Deforest blocked access to their property and he could not find an access point to their property.

Chairman Hackett inquired of Mr. Harper if he lived across from Mr. Deforest. Mr. Harper stated that he did. Mr. Harper drew a map of where Mr. Deforests property is as well as the abutter's properties. Mr. Harper then explained that the end of the discontinued road there is a turn around used by persons who drive down the road.

Attorney Phil Broulliard spoke on behalf of the Harris' who were also present. He stated that as a matter of housekeeping and consideration, he would like to offer a few reasons why this application should be tabled.

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He stated that first of all the Zoning Ordinance requires that a plan for proposed development of the site shall be submitted with an application and such plans shall show the location of the buildings, parking area, traffic access, circulation drives, open spaces, landscaping, lighting, and other pertinent information which may necessary to determine if the proposed use meets the requirement or spirit of the intent of the ordinance of the towns site plan review requirements. Attorney Broulliard further stated that the plan submitted by Mr. Deforest does not meet the requirements of the Zoning Board of Adjustment for Special Exceptions. He continued to state that the second item is if the Board was to look at the building permit for the Twigg barn they would see that it was constructed for storage purposes only. He stated that Mr. Deforest is in violation of the building permit because he admittedly stated that he has been utilizing the structure for work purposes.

Attorney Broulliard stated that it is in his opinion that based on the Zoning Ordinance that if he wants to use the property as a workshop based on the information submitted it is actually light manufacturing because he is working on products and taking them offsite, which is not allowed in the Conservation Zone and a variance would have to be applied for to have a workshop. Mr. Broulliard continued to state that Mr. Deforest has applied for a Contractors Yard because he has a workshop. Mr. Broulliard continued to state that Mr. Deforest does not have a workshop but a storage building with no electricity, no water or sewer only a porta-potty, no utilities of any kind to the building. There would not be access for the fire department or ambulance and the application does not meet the criteria. Attorney Broulliard reiterated that the application is not complete with a site plan so therefore the application should be tabled until that criteria is met for proper evaluation. Attorney Broulliard made the Board aware that if they should determine that the application before them is sufficient , he has the arguments based on the five criteria as mentioned before. He continued to say that if the Board has read the application they will see that Mr. Deforest has stated that he is milling beams and working on beams and he would need to apply for a variance to use the structure as a workshop and use the property as a contractors yard. Attorney Broulliard declared that Mr. Deforest already has a contractors yard with piles of materials, box trailers filled with furniture, and no permission to do so. Attorney Broulliard affirmed his position that the site would be a light manufacturing operation and not a contractors yard as the applicant has applied for which is not allowed in the Conservation Zone. He again stated that the building proposed to be utilized was only granted a building permit for use as storage.

Atty. Broulliard continued with his presentation that reiterated again that the property would be a light manufacturing operation and that Mr. Deforest would require a variance because his building permit only allows for him to utilize the building proposed as storage. Attorney Broulliard concluded by saying that the Board cannot adequately deliberate on this case because there is not a sufficient plan, the property is located in a conservation zone, there are wetlands nearby and the building permit only allows for the structure to be utilized as storage. He has stated that his clients would contest the use of the property vigorously.

Carolyn Baldwin inquired if Attorney Broulliard had considered Article X that the use would be a cottage industry. Atty. Broulliard stated that he does not feel that milling timber is a cottage industry. Carolyn Baldwin stated that it would be a matter of interpretation.

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Attorney Broulliard stated that the application submitted is fatal and instead of filing an appeal in Superior Court, the applicant should come back with the proper site plan. He further stated that since there is no permission for a workshop then the Zoning Board of Adjustment would thereby be allowing a contractors yard where the use of the building other than for storage is not even allowed. Attorney Broulliard stated that a contractors yard is not a cottage industry and the only thing that could be considered a cottage industry is Mr. Deforest working on his wood in his workshop if the Board grants him permission for a woodshop and consider whether that is a cottage industry. However storing two box trailers and storage of granite block and timbers is not a cottage industry, it is a contractors yard. The point Mr. Broulliard wanted to make is that he needs to apply for a variance to work in the structure or appeal to the board that this is a cottage industry, which Atty. Broulliard reiterated that it is his clients' opinion that this is a light manufacturing business.

Paul Levesque inquired if the property is for sale as it was stated in the letter of complaint to Mr. Flanders. Paul Deforest stated that the property had been for sale, however his daughter is in college and has expressed interest in buying the property so it has been taken off of the open market. Wayne Gray asked if the fact that the property was for sale is even relevant to this case. Chairman Hackett stated that her concern was that if the house were to be sold then there would be no bathroom facilities for Mr. Deforest to use if he is on site at the proposed contractors yard. Mr. Deforest stated that if his daughter were to buy the house then he would still have access to use the facilities in the house. Chairman Hackett stated that in the letter they received from the Harris's, they cited that there were two helpers with their own trucks and they were milling beams with a generator.

Chairman Hackett asked for clarification if the workers had brought the materials back to his house for him because he had broken his foot. Mr. Deforest stated that is correct. Mr. Deforest stated that he personally does not feel that he has a contractors yard because there are no employees, no equipment stored and the box trailers are not even close to this area of his property. He further stated that what he is doing is no different from what he has been doing on his property for twenty or more years. He could use any barn on his property for his woodworking but put this barn the furthest away that he could from his abutters so that he would not cause any problems or be of any disturbance. He stated that this is obviously not the case since the Harris' are so adamantly against this. Paul Deforest inquired if he should be applying for a cottage industry instead.

Israel Willard stated that Attorney Broulliard indicated that there were wetlands and because he did not notice any he asked Mr. Deforest to indicate where they were. Mr. Deforest stated that he has wetland all over his property but this building in particular the structure is well within the setbacks by about 150'.

Carolyn Baldwin stated that had she not driven all the way down the road she never would have seen the building. She stated that she is unclear of what is being proposed and where things are proposed to be stored, and questioned why the barn was not indicated on the plan. Wayne Gray indicated to Carolyn Baldwin where on the map and plan it indicates the location of the barn. Mr. Deforest stated that it is not a business but only bringing a few beams home every few months depending on weather.

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Wayne Gray inquired if the work would fall under a sawmill. Mr. Deforest stated he utilizes skill saws and other tools which are all portable. Mr. Deforest further stated that he primarily does all work on site however if it is inclement weather such as we had this past winter it is more conducive to work on the beams in a closed dry area.

Carolyn Baldwin gave the definition of a Contractors Yard per the ordinance. She then read the definition of a Cottage Industry. Carolyn Baldwin further continued to give the requirements for a cottage industry, which is a permitted use in the Rural Zone and therefore would not require review and approval by the ZBA. Carolyn Baldwin made Mr. Deforest aware that even should this be classified as a Cottage Industry, he would still need to submit a site plan and suggested that Mr. Deforest do this.

Wayne Gray stated that one of the items that he is finding troubling is the complaint of blocking access for the Harris' to get to their property. He again inquired where the access that was being blocked was located. Atty. Broulliard stated that in 1964 the town discontinued Grant Hill Road and that the Harris' own to the centerline of the road.

One of the big problems with the proposal is that the Harris's own half the road and Mr. Deforest owns the other half and the road is not wide enough to pass on only half a road and Mr. Deforest does not have an easement to pass on their portion of the road. He continued to state that legally speaking, Mr. Deforest has no legal access to the property. Wayne Gray stated that if this is the case then the Harris' do not have a legal access to their property if they should have to use the portion of the road. Attorney Broulliard stated that the Harris' only use that portion of the road for horses. The Harris' do not have trucks running up and down the road and are not asking for a workshop or to use the other side of the road where someone can be injured. Attorney Broulliard continued to state that there is no power down there and the workshop does not have electricity or furthermore if there is somewhere to put in a septic system and what would happen to it if he were to sell his house.

Wayne Gray stated that the question presented was what access was Mr. Deforest blocking from the Harris's? Wayne Gray inquired if what Attorney Broulliard was saying is that the Harris' own half of the road and Mr. Deforest owns half the road, so that any point when Mr. Deforest is parked in the road he is blocking the Harris's?

Attorney Broulliard indicated on a map where Mr. Deforest was blocking the roadway thereby preventing the Harris's from going down the road. He further stated that his clients have another driveway to get up to their house and that what he is blocking is the back of his land. Wayne Gray for further clarification stated that the complaint was that Mr. Deforest was blocking the access to the back of the property and he further inquired how he was blocking the access. Attorney Broulliard stated that he was blocking the road. Mr. Gray stated that now they are saying that the truck was parked in the discontinued part of the road. Mr. Harris stated that Mr. Deforest was parked on his side of the road.

Chairman Hackett called the meeting back to order and stated all questions from here on will go through her only. She asked if there were any other questions of the Board. She stated that as the road is discontinued then half of the roadway goes back to the abutters of the roadway and if there is a truck in the road then it is blocking half of the access.

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Wayne Gray stated that the point that he was trying to make is from what point do the Deforest and Harris' own the road, from middle route or another location.

Carolyn Baldwin stated that this road has been discontinued since 1964 and that with a discontinued road abutters have a right to go over a discontinued road to access their property. Both abutters have a right to use the road. She further stated that that road exists for access to abutting properties even though the Harris's and Deforests own to the middle of the road they cannot deny access to whomever may have property further up the road. When a road is discontinued it is subject to an easement for both of them to utilize.

Discussion continued in regards to the discontinued roadway.

MOTION: Carolyn Baldwin moved to table the application until a plan is submitted per site plan regulations and drawings with all details. She stated that the plan should include all buildings and what work is going to take place in which building. Israel Willard seconded the motion and extensive discussion occurred.

Mr. Harper stated that ten abutters are not opposed to this plan however because of one abutter Mr. Deforest now has to spend a lot of money because they got their lawyers involved. Chairman Hackett stated that it is the right of any abutter to not be in favor of a plan. Mr. Harper further stated why the previous applicant was not held to the same standards as Mr. Deforest. Chairman Hackett explained that it is a different type of application because it is not a contractors yard but only a request to construct a screen house. Chairman Hackett further stated that it would most impact the abutter across the roadway, which are the Hooks themselves. Chairman Hackett stated that with a contractors yard they would need to see a plan with lighting and how it would affect the abutters.

Mr. Deforest stated that Mr. Harper is closest to the building and he does not have an issue with it. Chairman Hackett stated that everyone in town would like to say they get along with everyone else, but everybody in town also has their rights to use their property and to be concerned with what their neighbor does. She stated that it is not so much to restrict what their neighbors do but that they do have a right to express any concerns. Chairman Hackett state that she does not want any he said she said conversations and inquired if there was any one who had not spoken on this case if they would like too.

Mr. O'Malley, an abutter, stated that he drives down that road all the time and Mr. Deforest has an ample parking area and that there is a turn around area that would fit many vehicles which would not block the road. Eva Fox stated that what she heard was that people should be able to do as they wish with their land and that the right is also given to abutters to mettle in their business. Ms. Fox continued to state that this is what is going on here tonight. She continued to state that Paul Deforest tries to restore buildings in the area to keep New Hampshire a beautiful place and he is not doing anything that others in town are not doing out of their properties however they have neighbors who like to interfere with what they do, right down to putting in a flagpole, and she feels this has gone far enough.

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Thomas Farley stated that one of the points made was about fire apparatus concerns and that the fire department would not be able to access the site. He continued to state that in the four years he has lived in his home he has heard them probably three times and that is probably easier to access the barn on the discontinued road than it would be to access the Harris's home based on looking up their driveway.

Carolyn Baldwin stated that her motion is to continue the hearing pending receipt of a plan that meets the requirements for a special exception and the site plan review regulations so that there is a clear picture of what Mr. Deforest proposes to do. Seconded by Israel Willard.

Chairman Hackett inquired if there were any other comments. Jim Smith, an abutter, inquired if Mr. Deforest would have to file addition paperwork as a contractors yard or a cottage industry because he does not really fall into either category. Chairman Hackett stated that it is a contractors yard if he is storing materials. However, she stated that in reading the definition of a cottage industry, it does sound more like what Mr. Deforest is doing on his property. Mr. Deforest stated that there are many associates of his doing what he is doing and more with employees on their property. Carolyn Baldwin stated that some of them have come before the Board and some have been denied. Chairman Hackett stated that she is aware there are plenty out there that the Board does not even know exist.

Wendy Keane stated that as part of her job she assists the applicants with their application so she asked for clarification on whether Mr. Deforest is being classified as a cottage industry with a site plan review. Carolyn Baldwin stated that she should look at Article 10-1 for the information.

Chairman Hackett reminded the Board that there was a motion on the floor to table the application until a site plan is submitted by the applicant, and called for a vote. Motion carried 5-0.

Wayne Gray asked Wendy Keane where the definition of a sawmill is. Wendy Keane stated that there is no actual definition.

Chairman Hackett brought the meeting back to order. She stated that the first case has been tabled and continued to the August 21, 2008 meeting. She further stated that the Deforest case has been tabled/continued to the July 17, 2008 meeting. Carolyn Baldwin stated that if he does not have a site plan ready then he could ask for a continuance.

DELIBERATIVE SESSION:

Case #9-2008 K. & A. Hook applicants:

Wayne Gray inquired why if it is not a permanent structure the applicants have to come before the Board. Wendy Keane stated that we make people come before the Board for sheds that are not always permanently affixed. Israel Willard stated that unless it has wheels under it then it is considered a permanent structure.

Carolyn Baldwin stated that the application is very straightforward.

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MOTION: Paul Levesque moved to grant the Variance to Kim and Andy Hook to construct a 16'x 16' screen house. In reviewing the application the Board finds that there would be no diminution of value to the surrounding properties. Granting the variance would not be contrary to the public interest. Denial of the variance could result in an unnecessary hardship to the owner and by granting the variance substantial justice will be done and not be contrary to the spirit of the ordinance. Carolyn Baldwin suggested that the motion be amended to include that the structure shall never be closed in for living area. The amended motion was seconded by Israel Willard. Motion carried 5-0.

Chairman Hackett stated that during the last case it was mentioned that the property was in the conservation zone. She wanted to clarify that Wendy Keane brought to her attention that on March 13, 2007 the town voted to clarify the ordinance to read "the frontage or point of access shall determine the applicable zoning district". Chairman Hackett further pointed out that Mr. DeForest's frontage or point of access is both on Middle Route and Grant Hill Road which is in the rural district and not in the conservation zone as was stated during the public hearing by Attorney Broulliard.

ACCEPTANCE OF MINUTES:

MOTION: Carolyn Baldwin moved to accept the minutes of 4/17/08 with the amendment that the two lots have been merged on the Funk property. Seconded by Paul Levesque, motion carried 5-0.

Wayne Gray asked for clarification if the last case were being considered as a cottage industry, which is allowed in the rural district, if the applicant needs to come back to the Zoning Board of Adjustment. Chairman Hackett stated that there are materials on site. Wendy Keane stated that even in the office there seems to be disagreement on what the property is.

MOTION: Carolyn Baldwin moved to accept the minutes of 5/15/08 as amended. Seconded by Ron Labelle, motion carried 5-0.

OTHER BUSINESS:

Chairman Hackett inquired if the entire Board had a copy of the June 6, 2008 ordinance amendments as posted. Discussion took place on the proposed amendment to the Zoning Ordinance for the Special Town Meeting on July 22, 2008.

ADJOURNMENT:

MOTION: Paul Levesque moved to adjourn the meeting. Seconded by Israel Willard, motion carried 5-0.

Meeting adjourned at 9:35 p.m.

Respectfully submitted,

Wendy L. Keane
Land Use Clerk