

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, SEPTEMBER 18, 2008 – 7 p.m.
ACADEMY BUILDING

Chairman Elizabeth Hackett called the meeting to order at 7:05 p.m. In attendance were Israel Willard, Paul Levesque, Alternate Member Wayne Gray and Land Use Clerk Wendy Keane. Wayne Gray was appointed a full voting member for this session.

While waiting for one of the applicants to arrive, the Board members reviewed the minutes of the June 19, 2008 Zoning Board meeting.

MOTION: P. Levesque moved to approve the minutes of the 6/19/08 meeting as amended, seconded by I. Willard. Motion carried 4-0.

Chairman Hackett stated to the public present that two of the hearings posted for this evening will not be heard as follows:

Public Hearing Case #11-2008 – Paul Preston: Request for Variance from Article VII.B.3. to add 8' x 4' deck, landing and stairs, which will not meet side setback off existing 22' x 30' single-family dwelling located on .29-acre lot at 3 Fir Ave in the Residential Lake District; Tax Map/Lot #119-11.

Chairman Hackett explained that the property owner called the Selectman's Office earlier in the day and explained that there had been a family emergency and they respectfully asked that the hearing be postponed until next month.

MOTION: I. Willard moved to table the hearing until the next regularly scheduled meeting on Thursday, October 16, 2008. Seconded by W. Gray, motion carried 4-0.

Re-Hearing Case #5-2008 – John Walenda: Request to Rehear Case #5-2008 for Special Exception granted on 4/17/08 from Article VII.C.3. to construct 24' x 28' single-family dwelling which will not meet setbacks per Article IV Table 2. Property located on .18-acre lot at 13 Wood Ave in the Residential Lake District, Tax Map/Lot #118-24.

Chairman Hackett referenced a letter from the applicant's attorney stating that the Mr. Walenda is in the process of selling the property and has therefore requested that the hearing be cancelled.

Continued Public Hearing Case #10-2008 - Paul Deforest: Request for Special Exception from Article IV Table 1, to establish a Contractors Yard in the Rural District. Property located on 25-acre lot, at 8 Grant Hill Road, Tax Map/Lot #405-04.

I. Willard informed the Board that he recently purchased a share in the Gardner Cove Association from Attorney Broulliard, who is representing the Harris's in this case.

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However, he does not feel it would sway his judgment in any way and therefore does not believe he should recuse himself from the hearing. The Board members agreed that there would not be a conflict of interest.

Chairman Hackett stated that the reason the public hearing had been continued was because the Board had requested Mr. Deforest to submit a site plan depicting the proposed barn on his property showing the setbacks. At this time, she posted the site plan for all present to view.

Chairman Hackett conveyed that Mr. Deforest presented a letter to the Board signed by several abutters supporting the proposal, which she read into the record. She indicated that if Mr. Deforest should have a letter from his abutters in the future, their names should be printed under the signatures.

Mr. Deforest presented his case by stating that he would like to continue using the existing building for the storage of building supplies and materials and on occasion to perform woodworking. He explained that this he would include repairing and planing old wooden beams used in the construction of antique homes. He continued that the company he works for restores old homes and at times moves them from one site to another. Sometimes the beams need to be slightly restored for use.

I. Willard inquired how long Mr. Deforest has been performing this kind of work at this site? Mr. Deforest responded that he has been doing this for at least ten years.

I. Willard asked if Mr. Deforest was running a sawmill? Mr. Deforest responded that this is not a sawmill.

W. Gray asked, if the special exception is granted, what would the hours of operation be? Mr. Deforest responded that he works at the property approximately two days a month and his work is primarily done in the winter months when it is too cold to work outside, and then he only works during the daylight hours.

Chairman Hackett opened the floor to the public for questions or statements.

Dick DeSeve stated that he is not an abutter but he is a member of the Conservation Commission and he has concerns regarding the building location because of its proximity to nearby wetlands. He displayed the National Wetlands Inventory map, which he stated shows that the area contains significant wetlands and is also a significant wildlife habitat.

W. Gray asked how old is the map? D. DeSeve stated that the map was made within the last five years. The concern being that the building was erected on fill within a wetland. He continued that it would be in everyone's best interest to have a wetlands scientist and the State of NH Wetlands Division come out to the property and delineate the wetlands.

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He then made the Board aware that the green area delineates a wildlife corridor according to the NH Fish & Game. He also stated the different types of soil known to the area are based on geological maps and that they are typically non-draining soils.

W. Gray asked how long has the building been in its current location? Mr. Deforest stated that it has been at this site for well over a year, possibly close to two years.

John O'Malley, an abutter, was in attendance and stated that the building has been there for some time and he is present at the meeting in support of Mr. Deforest and his request.

Eric Harper, an abutter, stated that he spoke with Bob Flanders, Building Inspector and Code Enforcement Officer, when he came out to the property to view the site where the barn was to be erected. Mr. Flanders had indicated that it met the wetland setbacks and the footings were on dry soil.

W. Gray asked if what Mr. DeSeve was saying is that the Conservation Commission is concerned that there are wetlands and wildlife habitat in the area, or that the building has already been there for almost two years? Chairman Hackett stated that the Conservation Commission is not always notified of buildings that are to be erected.

Eric Harper inquired for clarification if Mr. Deforest's property is considered as being located in the Rural Zone?

Wendy Keane acknowledged that the property is located in the Rural Zone and conveyed that in March 2007 the Ordinance was amended by Town Meeting vote, which clarified that the frontage of the property determined the Zone. Since Mr. Deforest's frontage on the Class V roadway is located in the Rural Zone, the remainder of the property is therefore designated as being in the Rural Zone.

Chairman Hackett asked Mr. Harper if he is in favor of the proposal? Mr. Harper stated that he was in favor of the project and conveyed that his house is the only structure within eyesight and hearing distance of the Deforest's barn.

Attorney Broulliard was in attendance speaking on behalf of Bob and Mary Beth Harris, abutters, stated that the proposed project should not be approved as what Mr. Deforest is doing on site is considered Light Manufacturing according to the Zoning Ordinance. He further stated that at the previous hearing the ZBA asked for Mr. Deforest to bring in a site plan equivalent to that required by the Planning Board, which he clearly has not done. He referred to the displayed site plan and stated that it is not up to the standards required by the Planning Board. He stated for the record that his clients are opposed to the project. He also referred to the information provided by Dick DeSeve of the Conservation Commission that there are wetland issues as well as an animal habitat corridor present.

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Chairman Hackett stated that the plan submitted to the Zoning Board is acceptable and that the site plan as per the Planning Board may require more information. However the details provided by Mr. Deforest meet the needs of the Zoning Board for this application.

Chairman Hackett stated that at the beginning of the meeting she made it known that there was not a full Board present to hear the case and reminded Mr. Deforest that he has the option to postpone the meeting until a full Board is present. Mr. Deforest stated that he is comfortable with the amount of ZBA members present and would like to proceed.

I. Willard inquired as to what the hours of operation would be? Mr. Deforest stated that his work is primarily done in the wintertime when it is too cold to work outside and then he only works during daylight hours, which would be approximately 8 a.m. to 3 p.m.

Mary Beth Harris, an abutter, brought it to the Board's attention that the property is for sale. Chairman Hackett stated that if the property is for sale it is not a factor for the Board to consider as part of the approval or denial because the use follows the property and not the property owner.

Mary Beth Harris stated that when Mr. Deforest receives deliveries the trucks cross over her land to reach the barn because it is located on a discontinued road. She continued that even if Mr. Deforest is allowed to cross over her property, no one else is allowed to. She noted that Mr. Deforest has maintained the road to the back of his property and over her land and does not want him to do so anymore. She also stated that the real estate listing online states that the property only has 21 acres and does not even mention the outbuilding.

Chairman Hackett stated that this information is irrelevant to these proceedings.

Wendy Keane conveyed that when a road is discontinued, the road reverts to the abutting property owners at the centerline of the roadway. She further stated that neither property owner shall disallow or prohibit the other from using the roadway to pass to their property, including cutting back brush or whatever maintenance is necessary to get their vehicles through.

P. Levesque stated that if a Contractors Yard were approved for the site it would not allow for work to be done on the property.

Tom Farley, an abutter, stated that he is in favor of the proposed project and sees no reason why Mr. Deforest should not be allowed to continue what he has been doing on his property for some ten years.

Dick DeSeve again addressed the issue of wetland soils present on the property and the concerns of the Conservation Commission.

Attorney Broulliard stated that he understands the position of the Board in regards to the site plan. However, he feels that the Board should not grant the Special Exception unless a better site plan is submitted.

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Mr. Harper reiterated that he, as the closest abutter to the site, has no problem with the project and feels it should be approved.

Mary Beth Harris stated that the project causes her concern because she is hoping someday to subdivide her property so that her son may have a building lot.

MOTION: I. Willard moved to close the public hearing, seconded by W. Gray. Motion carried 4-0. Discussion and deliberation occurred regarding the proposed application.

MOTION: P. Levesque moved to grant the Special Exception for a Contractors Yard with the stipulation that the area not be expanded beyond the edge of the existing gravel nor shall it encroach any further upon the wetlands as delineated on the site plan. In granting the Special Exception the Board finds that:

- (a) It is an appropriate location for such a use.
- (b) The use as developed will not adversely affect the neighborhood.
- (c) Adequate and appropriate facilities will be provided for proper operation of the proposed use.
- (d) There will not be any nuisance or hazards created.
- (e) Any structure(s) will meet all dimensional requirements and setbacks.

Motion was seconded by W. Gray, vote passed 4-0.

ADJOURNMENT: On a motion made by P. Levesque and seconded by I. Willard to adjourn, vote passed unanimously. Meeting adjourned at 9:30 p.m.

Respectfully submitted,

Wendy L. Keane
Recording Clerk