

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, April 16, 2009 – 7 p.m.
ACADEMY BUILDING

MINUTES

Board members in attendance: Elizabeth Hackett, Carolyn Baldwin, Ron LaBelle, Paul Levesque, Isreal Willard, Wayne Gray (alternate).
Also attending was Land Use Clerk Annette Andreozzi.

Chair Elizabeth Hackett called the meeting to order at 7:01PM.

To Continued Case #03-2009 – Michael & Lillian DePasquale Trust to May 21, 2009 meeting.

MOTION: Ms. Balwin moved to continue Case #03-2009 to May 21, 2009.

Seconded by Mr. LaBelle.

There was a discussion about the applicant not being able to complete the septic design.

Vote was Unanimous to continue Case #03-2009.

In preparation for the ZBA/ Planning Board joint public hearing, the following planning board members joined the meeting: Nancy Girard (Chair), Garth Martindale, Dave Russell, Don Guarino (selectman's rep), Daniel Hudson, Betty Ann Abbott (selectman's alternate). Also joining was Planning Administer, Lynne Brunelle.

Ms. Hackett asked both boards around the table to introduced themselves.

Mr. Guarino stepped down for this case. Ms. Girard sat Ms. Abbott as selectmen's representative for the planning board.

Joint Public Hearing

ZBA Special Exception Case #05-2009 - John & Claire Wilkens &

Planning Board Site Plan Review Case #0509: Request a Special Exception to Article IV, Table 1, to operate a service business [kennel & dog training] in a Rural Zone. Property of 30 acres located at 741 Province Road. Town Map/Lot #414-79.

Ms. Gulbrandsen representing the Wilkens gave background info on this case. In her opinion the pre existing structure was built and approved as a dog kennel. It wasn't used for more than a year so the special exception expired. She stated that there are a number of standards the board should consider. 1st standard- it is appropriate because kennel is not incompatible with a rural zone. 2nd standard- the use would not adversely effect anyone; use is same as since 1987. 3rd standard- the kennel is appropriate for this lot because the kennel has it's own septic, well and bathroom; it can function on it's land. 4th standard- it is not a nuisance or hazard; there is amply parking on sight and off the main road and set back about 100'. Next standard is structure; the boundary near the kennel is preexisting and approved by planning board. Next standard is additional requirements for article 10;

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, April 16, 2009 – 7 p.m.
ACADEMY BUILDING

MINUTES

there are none. The submitted use is consistent with the ordinance.

Ms. Baldwin said use as a kennel is not the same as a farm.

Ms. Gulbrandsen said this is service business.

There was a discussion about whether the shared driveway could legally be used for business access; was it recorded on the deed or registered on the plan. [When the boundary adjustment was done the kennel was not in operation.] There was discussion about how much and where the parking was located. There is another driveway on the property, but there is some concern about the state allowing it's use for a business. It was established that the septic was quite a distance from the overflow parking area.

There was a discussion about the shrubs that were required by the 1987 decision. Claire Wilkens said that the shrubs were there, but have since died.

There was discussion about the use of the kennel as a rental facility and whether that was a legal use.

Ms. Baldwin stated the lessee does not live on the property, which makes it look like a subdivision has taken place. Ms. Hackett asked if the applicants were planning to continue leasing? Claire Wilkens said she didn't know. Ms. Hackett stated that the board has a different approach when the applicant is leasing their land to others for business, as opposed to running a business themselves.

It was stated that presently dogs are being trained in the area over the leach field and inside the kennel, mostly on weekends. Some dogs remain in the kennel after training, and about a dozen cars come and go. The lease requires the dogs to be inside at night.

Mr. Willard stated that other people live close to the kennel and the board was given no business plan. The board doesn't know how many dogs & people will be on the property or when. Mr. Gray said there is a question as to how much traffic and noise will affect the public.

Ms. Gulbrandsen said the kennel would operate from 8-5, and dogs would be coming in and out, and the applicant would accept as a condition, that the facility would only be open to the public between business hours.

Mr. Hudson stated that a kennel is a different thing than a training facility, and asked how many dogs would be boarding.

Ms. Gulbrandsen answered 8 dogs, but the applicants want to have the option to do what ever combination.

Joanne Wilkens, an abutter, said that her attorney could not be present, but she read a letter that he addressed to her, relating to his concerns. Which were: Driveway being used for business not residence (he has submitted a request to DOT for their consideration), No easement on either deed for the driveway, Kennels need to be license under RSA 431:1 or 466:4, The Gilmanton ordinance definition of "Agriculture-traditional" is defined as "all uses directly related to the operation of a family farm". Joanne Wilkens submitting the letter for the record and a packet which included the letter to DOT, application of driveway permit change, maps, the present application, and deeds to the properties. She was also concerned that there is no one on the premises to care for the dogs in the kennel during day.

Ms. Gulbrandsen objected to the packet being presented .

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, April 16, 2009 – 7 p.m.
ACADEMY BUILDING

MINUTES

Ms. Hackett explained that normally the board would not receive a packet of new info and make a ruling in the same night. After the ZBA makes a decision, a person can appeal if they don't agree with the boards decision.

Mr. Gray referenced the ZBA variance of 2007 when the driveway wasn't an issue.

Joanne Wilkens stated that in 2007 there was no business or kennel operating. Previous to that time the business was family owned. Her mom's property has been divided according to the mom's will. Joanne received her portion about a year ago. She believes the kennel & dog training being done by a third party started sometime at the beginning of 2009.

Mr. LaBelle indicated that the business should not have started before a special exception was granted.

Ms. Gulbrandsen said they didn't know they didn't have the right to continue.

Mr. Hudson asked Joanne Wilkens if she objected to the use of the building. She said it was a good use of building, but was concerned about the dogs being left alone.

Mr. Willard asked if liability insurance was being required from the lessee. Claire Wilkens said the lessee and lessor have insurance.

Ms. Gulbrandsen said a kennel license was been submitted, then she read a letter of support from an abutter.

Ms. Baldwin asked if the applicants would consider reconfiguring their other driveway to serve the kennel. Ms. Gulbrandsen stated they would, but DOT would have to approve.

There was a discussion about verification of the use of the shared driveway. It was observed that the note on the plan indicated that it was to be shared, but not to the extent of use. That the boundary line adjustment was made when the kennel was not being used, so it is unknown if the shared driveway use is for residential or business.

MOTION: Mr. Willard moved to close the public hearing Case # 05-2009.

Seconded by Mr. Levesque.

Motion passed unanimously.

The Planning Board members left the room.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, April 16, 2009 – 7 p.m.
ACADEMY BUILDING

MINUTES

The ZBA continued with:

Public Hearing Case #04-2009 - Mark A. Padula: Request for Variance from Article IV Table 2, requiring 200 feet frontage in the Business zone to build on a lot. Property located at 193 NH Route 106 in the Business Zone has 195 feet of frontage. Town Map/Lot #412-17.

Mr. Padula said that he needed a variance to erect a garage on his property in the business zone because he was missing five feet from the required 200'.

There was a discussion about the fact that the application states he wanted a contractor's yard not a building, and that a use variance is not the same as an area variance. This request has nothing to do with use or the site. The business will have to have a site plan review with the planning board. Mr. Gray felt that there have been an oversight when pin was set and the frontage should have measured 200'.

Dave Hilts, NH Asst. Attorney General Transportation & Construction Bureau, stated that they were neutral to the use of land issue, but were speaking because the access to the property is being reviewed. State has been purchasing lots all along Route 106 in that area. The driveway for the applicant's lot is on M/L 412-12, which is owned by DOT. They came to the hearing to be on record that they are working to resolve Mr. Padula's driveway issue. Mr. Hilts explained the history of the driveway access for the lots in the area and what DOT was going to achieve.

MOTION: Mr. Willard moved to close the public hearing Case # 04-2009.

Seconded by Mr. LaBelle.

Motion passed unanimously.

Public Hearing Case #06-2009 – Ryan Benson: Request for Variance from Article III.F.8, Signs to erect a sign that is 4 feet by 8 feet. Property located at 1955 NH Route 140. Town Map/Lot #416-20. Article III.F.8 states "Signs advertising home occupations or businesses in all zones except the Business/Light Industrial District shall be limited to two in number, shall be displayed on the applicable property and shall total not more than nine (9) square feet per side in area for each sign."

Ms. Hackett asked if the applicant was present. Then stated that the board does not hear cases if the applicant or a representative is not present.

MOTION: Mr. Willard moved to deny to hear Case #06-2009 – Ryan Benson's request for Variance from Article III.F.8, to erect a sign, because the applicant did not appear at the hearing or notify the board. Property located at 1955 NH Route 140. Town Map/Lot #416-20.

Second by Mr. LaBelle.

Motion passed unanimously.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, April 16, 2009 – 7 p.m.
ACADEMY BUILDING

MINUTES

DISCUSSION

Case #05-2009 - John & Claire Wilkens:

Request a Special Exception to Article IV, Table 1, to operate a service business [kennel & dog training] in a Rural Zone. Property of 30 acres located at 741 Province Road. Town Map/Lot #414-79.

Ms. Baldwin said the applicant should come back to the board with some options to deal with the access issue, and who looks after the dogs.

Mr. Gray stated that the driveway issue is not relevant to the ZBA; access is a civil issue. Also the service inside the building is not a ZBA issue; it might be code enforcement issue.

Ms. Hackett said that Ms. Andreozzi will copy info received from Joanne Wilkens for the board and Claire Wilkens' attorney.

Mr. Willard wanted a chance to read the new info before making a decision

Mr. Levesque felt that since it was a business before he didn't see an objection. He was concerned about who would watch the dogs.

Ms. Hackett said that the planning board deals with hours of operation, and the details of the business are not the concern of the ZBA.

Ms. Baldwin said the ZBA deals with use, and since it was an abandoned use, the applicant must start from square one.

MOTION: Mr. Willard moved to continue Case# 05-2009 John & Claire Wilkens until the next regularly scheduled meeting of the ZBA so that the Board could review the June 2007 ZBA minutes, the packet of info from Joanne Wilkens, and a business plan from the applicant.

Second by Ms. Baldwin.

Motion passed unanimously.

Case #04-2009 - Mark A. Padula: Request for Variance from Article IV Table 2, requiring 200 feet frontage in the Business zone to build on a lot. Property located at 193 NH Route 106 in the Business Zone has 195 feet of frontage. Town Map/Lot #412-17.

MOTION by Mr. Willard to continue Case #04-2009 - Mark A. Padula until the next regularly scheduled meeting of the ZBA, to have the applicant present a more detailed plan and a driveway permit.

Second Mr. Levesque.

Motion passed unanimously.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, April 16, 2009 – 7 p.m.
ACADEMY BUILDING

MINUTES

APPROVAL OF MINUTES

MOTION: Ms. Baldwin moved to approve the minutes of the March 19, 2009 meeting as amended. Seconded by Mr. Levesque. **Motion passed unanimously.**

OTHER BUSINESS-There was a discussion about having a joint meeting with the planning board on May 14 for the Paula Gilman case.

ADJOURNMENT: On a motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, motion passed unanimously. Meeting adjourned at 9:34 p.m.

Respectfully submitted,
Annette Andreozzi, Land Use Clerk