

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

Chairman Hackett called the meeting to order at 7:06 PM. Members in attendance were Elizabeth Hackett, Israel Willard, Paul Levesque. Also in attendance were Alternate Member Wayne Gray, Land Use Clerk Annette Andreozzi, and Building Inspector Bob Flanders.

Mr. Gray was seated as full voting member for this meeting.

The Chair made introductions and explained the ZBA procedures, including the fact that applicants need 3 affirmative votes, and they could choose to postpone their hearing, since there are only 4 members in attendance. No one chose to postpone.

**Public Hearing Case # 11-2009 – Laurie & Robert Henderson:** Request for appeal from administrative decision of Robert Flanders, Code Enforcement Officer, regarding commercial activities being held at 120 Middle Route, Tax Map/Lot # 409-76 in the rural zone, without obtaining a use variance from the Gilmanton ZBA and a site plan approval from the Planning Board, in addition the building has not met requirements of International Building Code for commercial structures.

Mrs. Henderson explained that 2 years ago she presented, informally, to the planning board a business plan including equine education, birthday parties, craft selling, and preschool. One year ago she had an informal site plan review with planning, then she started having pony birthday parties and marketing them. After the second party she received a certified letter (copy of which is in the file), stating she could not have pony parties without applying to the ZBA.. She met with the Selectman that next week. She said that the Selectmen said they would work it out with Mr. Flanders. She referred the Board to parts of RSA 21:34-a. She stated that she had issues with Mr. Flanders removing her off-site sign. She stated that RSA 170-E:3 I (b) gives her an exemption to have 3 children for educational purposes. She showed pictures of signs around Gilmanton, and stated that one of them is within a mile and that person has never been told to pull a permit. If Mr. Flanders passes rules for some people and not others, that is not fair. Bob has treated me unfairly. We have been targeted.

Mr. Flanders stated that he had none of the paper work Mrs. Henderson was referring to.

Mr. Gray explained that Mr. Flanders does not make rules; he enforces them. Someone made a complaint relating to your property, that caused Bob to go out.

Mr. Flanders explained that the Hendersons were rebuilding the ell without a building permit; he became aware of it and stopped the work. He then worked with the Hendersons to get a permit. He did some inspections, but they did not complete the work. Last spring someone came to the office and gave him the flyer for pony parties. He looked at the *Gilmanton Zoning Ordinance Table of Uses* to see which use was close to what they were doing. Pony parties didn't fit "agriculture traditional"; "childcare facility" was the closest, which requires a special exception in every zone if there are more than 5 children for any part of a day. The Henderson Brochure says the parties would be for more than 5 children. He looked at the definition for schools, that didn't

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**ZONING BOARD OF ADJUSTMENT**  
**THURSDAY, JULY 16, 2009 – 7 p.m.**  
**ACADEMY BUILDING**  
**MINUTES**

fit as close as childcare. In talking with the State office, the State said it would probably be ok if every child has a parent with them at all times during the party. He sent the letter which the board has a copy of with dated receipt. Mr. Flanders read the letter he had sent. He said that the structure the Hendersons are using does not have a certificate of occupancy, and isn't safe for children. He never received a call from the Hendersons in response to the letter. The Gilmanton sign ordinance does not allow for off site signs. He stated that he does pick up the illegal signs when he is already in an area and sees them. He does not have the authority to say which signs can have an exemption. He stated that based on the present zoning ordinances he is correct; Mrs. Henderson had been in to the board informally but had never gotten any approvals. He recommended that both boards get her plans in writing. He stated that he has no opinion about what permission is given; he can only work with what is.

Ms. Hackett asked if the removed sign was close to the Henderson property, if it was in the right of way, and if he picked up other signs? Mr. Flanders said it was in the ROW, not close to the Henderson property. He stated that he picks up illegal signs when he sees them, the signs stay in the Explorer until someone asks for them or he goes to the dump.

There was a discussion about special event signs, and whether all parents were with their children at the pony parties, and Mrs. Henderson's release forms.

Mrs. Henderson stated that Don Guarino had seen the room she was using and saw no problem with it, and she is going to use it as is.

Mrs. Henderson showed minutes from the planning board; she interpreted those minutes to say she did not need to do any more with the planning board unless she decided to do childcare.

Abutter, John Westin at 137 Middle Rte., spoke in favor of what the Hendersons were doing on their property. As did neighbor, Mr. Tetreault. Mr. Flanders pointed out that this hearing was not about what the Hendersons plan to do on their property, but about the decision he made that they need to apply to the ZBA before using their property for pony parties.

Mr. Funk stated that he felt what the Hendersons were doing was a home occupation.

Mr. Flanders read the Ordinance definition of "home occupation", which states "any use conducted by an owner or residential tenant **entirely** within the owner's or residential tenant's existing dwelling". Pony parties take place outside.

Ms. Henderson indicated that she spoke with the Selectmen relating to this matter and that they told her she could continue.

Selectman Abbott stated that her recollection of the Selectmen's meeting was that they expressed support for her enterprise, but that the misunderstanding needed to be worked out with Mr. Flanders. They had hoped that it would be worked out, but it hasn't.

Mr. Gray asked Mr. Flanders why he had written a "cease & desist" to the Hendersons.

Mr. Flanders stated that at that time (which is not the letter being referred to at this hearing) the Hendersons had gutted the room including electrical and that needs a permit.

**Mr. Willard moved to close Public Hearing Case # 11-2009**  
Seconded by Mr. Levesque. **Motion passed Unanimously.**

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

**Continued 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 stated that at the last meeting he was asked to take care of the driveway permit. The Board has copies of the permit.

Ms. Hackett read into record Mr. Martin's letter of selling an easement to use his driveway to Mr. Padula so that he could reach his property. A copy of the letter is in the file.

**Mr. Gray moved to close Public Hearing Case # 04-2009**  
Second by Mr. Willard. **Motion passed Unanimously.**

Planning members, Nancy Girard, Dave Russell, Betty Ann Abbott (Selectmen's representative), Dan Hudson, and John Funk joined the meeting for the joint hearing.

**Joint Public Hearing - Laurie Henderson ZBA Case # 12-2009 & PB # 1209:**  
Request for special exception provided in Article IV, Table 1 & Site Plan Review to operate a childcare facility in the rural zone. Property of 122 acres located at 120 Middle Route. Town Map/Lot #409-76.

Mrs. Henderson stated that her reason to be here is for closure. She passed out her company description. She read the description. There were four parts: 1] pony parties, 2] riding lessons, 3] craft collective, 4] childcare.

Ms. Hackett asked Ms. Henderson if she would have any problem with being granted a special exception if it was on condition that she finish the room in question. Ms. Henderson said no. There was a discussion on what the Hendersons were applying for. Ms. Hackett indicated that for the ZBA this hearing is about a special exception to operate a childcare facility in the rural zone.

There was a discussion among planning board members about items of concern to them.

**Mr. Willard moved to close Public Hearing Case # 12-2009**  
Seconded by Mr. Levesque. **Motion passed Unanimously.**

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

**Joint Public Hearing – Anne Bartlett ZBA Case # 13-2009 & PB # 1309:**

Request for a special exception provided in Article IV, Table 1 & Site Plan Review to operate a retail business in the village zone. Property of 1.68 acres located at 525 Province Road (the “Brick House”). Town Map/Lot #127-8.

Ms. Richards spoke for the applicant. She gave a history of the property and stated that the use applied for is appropriate because it is in the heart of community, that no nuisance or hazard would be created, and that the use was approved in the past. It was clarified that the former use had expired two years ago.

Ms. Hackett read 2 letters in support of the requested use of the Brick House.

There was a discussion about the sign. It was determined that the sign was within the size limits of the ordinance, and if there were no changes to it, no additional permissions would be required.

Mr. Funk, as an abutter, spoke in favor of the application.

**Mr. Levesque moved to close Public Hearing Case # 13-2009**

Second by Mr. Willard. **Passed Unanimously.**

**DELIBERATIVE SESSION:**

**Case # 11-2009 – Laurie & Robert Henderson:** Request for appeal from administrative decision of Robert Flanders, Code Enforcement Officer, regarding commercial activities being held at 120 Middle Route, Tax Map/Lot # 409-76 in the rural zone, without obtaining a use variance from the Gilmanton ZBA and a site plan approval from the Planning Board, in addition the building has not met requirements of International Building Code for commercial structures.

Mr. Gray stated that pony parties are not listed in the Gilmanton table of uses, so the question is did Mr. Flanders classified the parties appropriately as commercial? Mr. Gray said that in his opinion they are commercial because they are being used as entertainment not agriculture.

Ms. Hackett thought they might be a home occupation.

Mr. Gray stated that Paula Gilman was using the exterior of her property not the interior which did not allow her parties to be classified as a home occupation. He didn't see the parties falling under agriculture according to the RSAs, and could see them fitting under the town ordinance only under commercial; so Mr. Flanders ruled correctly. He said he wasn't saying the parties shouldn't be allowed, but this is about did Mr. Flanders rule correctly. The parties do not fall under "agriculture- traditional".

Ms. Hackett indicated that the classification could not be "cottage industry", because a product was not being made to sell off site.

Mr. Gray stated that it was not retail business; they are not selling ponies.

Mr. Willard asked if the Board was saying getting on a pony isn't agriculture.

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

Mr. Gray said that birthday parties are being sold, which include pony rides.

Ms. Hackett indicated to the Board that the Board's duty is to rule if the Hendersons were doing commercial activities in a rural zone, which isn't allow under the Gilmanton ordinance.

Mr. Willard felt that Mr. Flanders had to make a choice in classifying the parties, but he had a problem with what category was chosen.

Mr. Gray said that if a person disagrees with Mr. Flanders ruling that the parties are in the commercial category, then it has to be stated what category the parties are in.

Ms. Hackett didn't see the parties as agriculture; it is selling a product.

Mr. Levesque stated that Mr. Flanders was right, the only place he could have put the parties was commercial.

Ms. Hackett recapped that she, Mr. Gray and Mr. Levesque felt that Mr. Flanders made the correct decision in classifying the parties as commercial.

**MOTION: Mr. Levesque moved to uphold the administrative decision of code enforcement officer, Robert Flanders in case 11-2009**

Mr. Gray second. **Motion passed unanimously.**

**Continued 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.

Ms. Hackett indicated that the Board had a copy of the driveway permit for Mr. Martin, and a letter from him giving an easement to Mr. Padula, and that is what the board had been waiting for. A contractor's yard is already a permitted use in that zone, the only reason Mr. Padula couldn't build was his property lacked 5 feet of frontage.

**MOTION: Mr. Willard moved to grant variance from Article IV Table 2, requiring 200 feet frontage in the Business zone to build on a lot to Mark A. Padula Case #04-2009. Property located at 193 NH Route 106. Town Map/Lot #412-17.**

- a. That by granting the variance, there would be no diminution of value to the surrounding properties;
- b. The granting of the variance would not be contrary to the public interest;
- c. The denial of the variance could result in unnecessary hardship to the owner seeking it;
- d. By the granting of the variance, substantial justice will be done; and
- e. The proposed variance is not contrary to the spirit of the Ordinance.

Mr. Levesque seconded. **Motion passed unanimously.**

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

**Laurie Henderson Case # 12-2009:** Request for special exception provided in Article IV, Table 1 & Site Plan Review to operate a childcare facility in the rural zone. Property of 122 acres located at 120 Middle Route. Town Map/Lot #409-76.

Ms. Hackett recapped that Mrs. Henderson stated that she wouldn't use the room until it was finished and she was ok with having that as a condition. And the Board had an administrative review, that was noticed to public, on this property in relation to pony parties, so the Board could rule on granting a special exception to have pony parties, as well as the special exception for childcare.

Mr. Willard said that the Board and the public discussed the Henderson property so he didn't think the Hendersons should have to make a separate application for the pony parties.

Mr. Gray was concerned that people might not have come to the earlier hearing to give their input on the pony parties because the notice didn't say (and there was no application for) pony parties to be discussed.

Mr. Flanders as a staff member indicated that both uses, pony parties and childcare, require a Special Exception in the rural zone.

Mr. Gray wanted to know if the Board members were comfortable adding pony parties to the application for Case #12-2009. Mr. Willard and Ms. Hackett both said yes.

**MOTION: Mr. Levesque move to grant a special exception to Laurie Henderson Case # 12-2009: Request to operate a childcare facility in the rural zone located at 120 Middle Route. Town Map/Lot #409-76.**

- a. The site is appropriate for the use
- b. The use as developed will not adversely affect the neighborhood
- c. Adequate & appropriate facilities will be provided for the proper operation of the proposed use
- d. There will be no nuisance or hazard created
- e. No structures are proposed
- f. Any additional requirements found in Article x shall be met

**CONDITION: This special exception will become effective only after the building has been brought up to code and inspected by the code enforcement officer, and any state licenses that may be required have been obtained.**

Seconded by Mr. Willard. **Motion passed unanimously.**

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

**MOTION: Mr. Levesque move to grant a special exception to Laurie Henderson Case # 12A-2009: Requesting to have pony parties at 120 Middle route Town Map/Lot #409-76**

- a. The site is appropriate for the use
- b. The use as developed will not adversely affect the neighborhood because it is a farm with horses presently and the new use is consistent with the area
- c. Adequate & appropriate facilities will be provided for the proper operation of the proposed use
- d. There will be no nuisance or hazard created
- e. No structures are proposed
- f. Any additional requirements found in Article x shall be met

**There was significant testimony from the public to warrant this use.**

Second Mr. Willard. **Motion passed unanimously.**

**Case # 13-2009 Anne Bartlett**: Request for a special exception provided in Article IV, Table 1 & Site Plan Review to operate a retail business in the village zone. Property of 1.68 acres located at 525 Province Road (the “Brick House”). Town Map/Lot #127-8.

Ms. Hackett stated that the request was for the same use as had been previously at that location, but the use had lapsed for a few years. There were two letters and a neighbor in attendance that were in favor of the use.

**MOTION: Mr. Willard move to grant a special exception for Anne Bartlett Case#13-2009: Request to operate a retail business in the village zone, located at 525 Province Road (the “Brick House”). Town Map/Lot #127-8**

- a. The site is appropriate for the use as it was previously used for retail
- b. The use as developed will not adversely affect the neighborhood
- c. Adequate & appropriate facilities will be provided for the proper operation of the proposed use
- d. There will be no nuisance or hazard created
- e. No structures are proposed
- f. Any additional requirements found in Article x shall be met.

Mr. Levesque seconded. **Motion passed unanimously.**

**APPROVED**

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

The minutes of the June 18 meeting were not considered for approval because only 2 of the members had been at the last meeting.

ADJOURNMENT: On a motion made by Mr. Levesque and seconded by Mr. Willard to adjourn, vote passed unanimously. Meeting adjourned at 10:35 p.m.

Respectfully submitted,  
Annette Andreozzi, Land Use Clerk