

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2009 – 7 p.m.
ACADEMY BUILDING
MINUTES

Chairman Hackett called the meeting to order at 7:02 PM
Members in attendance were Elizabeth Hackett, Carolyn Baldwin, Israel Willard, Ron LaBelle.

Also in attendance were Alternate Member Wayne Gray, Land Use Clerk Annette Andreozzi, and Building Inspector/Code Enforcement Officer Bob Flanders.

Mr. Gray was seated as a full voting member for this session.

The Chair made introductions and explained the ZBA procedures, and that Mr. Flanders was sitting at the table as a staff member not as a voting member.

Attn. Kevin Leonard asked if the Board would be taking public comment relating to the Hendersons request for a rehearing. Ms. Hackett said no.

Public Hearing Case # 14-2009 – Gilmanton Community Church: Request for special exception to Article IV, Table 1 to operate a non profit retail type business (thrift shop and food pantry) in the Village zone. Property of .22 acres located at 1817 NH Rte 140. Town Map/Lot #115-5.

Jane Sisti spoke on behalf of the church which is purchasing the old fire station in the IW. The church would like to move the food pantry into this building and include a thrift shop. They aren't planning to do anything to the building except clean up the outside, and build a walkway from the church parking lot to this building. The building was previously used as a carpenter shop and for selling blueberries. There are other businesses in the area.

Ms. Hackett asked if the walkway was elevated over the grass. Ms. Sisti said yes, to even out the ground for handicap access and so customer parking can be in the church lot.

Ms. Hackett stated that the Board had a copy of the Planning Board's letter of acceptance of the site plan; could Ms. Sisti explain the intended use.

Ms. Sisti said that the church runs a Gilmanton food pantry now 2 days a month. There isn't enough room in the church for the pantry to expand to more days, and the church would like to include a thrift shop that will be open to everyone.

Mr. Willard asked about a septic? Ms. Sisti said that there is no running water or septic for the building; there is a incinolet toilet. She didn't know who maintains it, but only the few working volunteers would use it and they would have hand sanitizer. The church facilities can also be used. There will be no dumpster on the property; the trash will be taken to the church.

Mr. Gray asked about a boundary pin in the middle of the church parking lot. Abutter Bill Stender said that he has given the church permission to use that part of his property for parking. Mr. Stender stated that the previous business in the building in question went

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2009 – 7 p.m.
ACADEMY BUILDING
MINUTES

from parking 3 cars on that lot to 8. He can't get into his driveway sometimes because all the cars that have parked in his yard. If the customers park at the church I have no problem, but they need to have signs. Ms. Hackett clarified that Mr. Stender didn't have a problem with what the church was planning to do in the building, just with where the people park.

Ms. Sisti stated they would like to open as soon as they purchase the building and get their building permit; that she didn't know how many volunteers would work there at any one time, but they would allow only 3 to park on the lot at the same time. The food pantry may be open a day and an evening during the week and on Saturdays; the thrift shop would be open not more than 4 days per week, never past 8 pm. Volunteers will be told to tell people not to park on the Stender's property.

Mr. Willard moved to close Public Hearing Case # 14-2009 – Gilmanton Community Church:

Seconded by Mr. Gray. **Motion passed Unanimously.**

Public Hearing Case # 15-2009 – John & Claire Wilkens: Request for appeal from administrative decision of Robert Flanders, Building Inspector/Code Enforcement Officer, regarding not needing a building permit for the barn at 739 Province Road, Tax Map/Lot # 414-78 in the rural zone.

Mr. Wilkens said that in a letter dated July 1, 2009, Mr. Flanders stated that no structural work was being done on the barn in question. Mr. Wilkens continued that he has pictures showing that structural work is being done. He read from a letter from Mr. Waterman to support his claim.

Ms. Baldwin asked how the non issue of a permit affects the Wilkenses.

The Wilkens said if the work is not done properly the barn could collapse on their building and cause injury, property values are effected, safety reasons, and the law is being broken.

Ms. Baldwin asked Mr. Flanders for his rationale in not requiring a building permit.

Mr. Flanders read from the *International Residential Code (IRC) R104.1* "building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application". Resolving conflicts between codes is also charged to the inspector. The *Town of Gilmanton New Hampshire Building Department Building Packet* states "building permits are not required for normal maintenance". Mr. Flanders said that his interpretation has always been that If nothing was being changed there is no need for a permit. He was asked by the barn's contractor to look at what was going to be done; he did, and since there was to be **no change** in the structure, he interpreted that no permit was required. He said that he has consistently interrupted this

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2009 – 7 p.m.
ACADEMY BUILDING
MINUTES

kind of situation in the same way.

Ms. Baldwin asked Bob if he normally follows up if no permit is required.

Mr. Flanders said that he might with a job like this but not just for replacing the siding. If someone is changing things then they need a permit.

Ms. Baldwin indicated that she was trying to get to the fine line between renovations and maintenance, and Bob said it is about whether anything is being changed.

Mr. Flanders said that his visits showed nothing was being changed, just replacement of rotting wood. If multiple codes apply to the same thing, the inspector determines which is right.

Mr. Wilkens said that in Bob's letter he states there was no structural work, but he just said there was structural replacement. A repair is less than a renovation. In the barn beams are being strengthen; the code says renovation is strengthen and requires a permit.

Mr. Flanders indicated that his interpretation is that if you are doing more than what was there you are strengthening; if you are replacing rotten wood he doesn't interrupt that as needing a permit.

Ms. Baldwin stated to Mr. Wilkens that he has heard that Bob is reviewing the barn project so your concern is being met, that the barn is being done right.

Mr. Wilkens said his concern is for abiding by the law, and Bob has only been there twice, that is not close monitoring. Ms. Wilkens concern was how the law is being followed and selectively being followed.

There was a discussion relating to how many complaints had been made by the Wilkenses and to whom, the timing of the responses, the fact the Mr. Flanders works only 2 days per week and that he is required to deal with the most important items first.

Ms. Baldwin stated that the case before the Board is about the definition of renovation. Did Bob correctly interpret the definition in this instance?

Ms. Hackett asked Mr. Flanders if the IRC is the building bible. He stated that it is primary but the *Building Packet* statement about maintenance was set in place before he was employed in Gilmanton.

Mr. Wilkens said that his reading of the code definition of renovation makes it pretty clear.

Mr. Maltzie said that it is important for homeowners to understand every one has to get a building permit using the same rules; in this case it is questionable. Laurie Henderson explained how unfairly she felt Bob treated her and that the issue is in interpretation. There was a discussion about Ms. Henderson's property and insurance issues on the Wilkens property.

Ms. Hackett reiterated that the Board's purview is to look at this case which is the administrative decision about the barn.

Mr. Willard moved to close Public Hearing Case # 15-2009 – John & Claire Wilkens
Seconded by Ms. Baldwin. **Motion passed Unanimously.**

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2009 – 7 p.m.
ACADEMY BUILDING
MINUTES

Request for rehearing of 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.

Ms. Hackett said as she stated earlier the Board looks at the written material that was submitted in advance and given to every Board member. She stated that the Board looks for points of law that were forgotten or overlooked, or information that was not considered or overlooked.

There was a discussion about whether Mr. LaBelle would recuse himself since he was not at the original hearing. It was determined that he had all the information on the case and had spent time reviewing it.

Mr. Gray asked why there was a request for rehearing from the Hendersons, when the Board granted them their special exception.

Ms. Hackett said that the Hendersons disagree that the pony parties were a commercial use.

Ms. Baldwin felt that this request was inappropriate; the special exception was granted so it is moot whether the use is commercial, and the Board should consult the attorney to make sure that the proper procedure is followed. It is more efficient to ask counsel ahead of time to see if this is moot even if the Board has to ask the selectman to be able to talk with counsel.

Ms. Baldwin moved to continue the request for rehearing Case # 11-2009 – Laurie & Robert Henderson to the next regular ZBA meeting to be able to consult with town counsel relating to if the rehearing of the case is moot considering the previous actions of the ZBA.

Second Mr. Willard **Motion passed Unanimously.**

Mr. Gray asked at what point does the Board address the issue of the Hendersons' complaints with the ZBA minutes. Ms. Hackett stated that they would be address after the rehearing is addressed.

Ms. Hackett clarified that Ms. Andreozzi would ask Tim Warren about getting on the Selectmen's agenda, then notify Ms. Hackett.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2009 – 7 p.m.
ACADEMY BUILDING
MINUTES

DELIBERATIVE SESSION:

Case # 14-2009 – Gilmanton Community Church: Request for special exception to Article IV, Table 1 to operate a non profit retail type business (thrift shop and food pantry) in the Village zone. Property of .22 acres located at 1817 NH Rte 140. Town Map/Lot #115-5.

Ms. Hackett stated that this building has been used by a carpenter. Mr Willard said it had also been used for selling blueberries. Ms. Baldwin said that it seems as appropriate a use as any; the building sits in a commercial area.

Ms. Hackett indicated that the only abutter issue was with parking on the abutter's property.

Mr. Gray stated that the abutter has good relations with the church and can the Board ask the Selectmen to ask the state to put up no parking signs on Rte 140.

Mr. Willard was concerned about the age of the toilet system and wanted the board to have the health officer inspect it.

There was concern expressed about the walkway and the hydrant, Ms. Hackett indicated that those were planning issues and site plan approval has been given.

MOTION:

Ms. Baldwin moved to grant a special exception from Article IV, Table 1 to Case # 14-2009 – Gilmanton Community Church for operating a thrift shop and food pantry in the Village zone on property located at 1817 NH Rte 140, Town Map/Lot #115-5. And to build a walkway to gain access to the building

- a. **The site is appropriate for the use as it is in the center of the village, and is clearly a commercial building with access from other commercial buildings**
- b. **The use as developed will not adversely affect the neighborhood; there are other commercial buildings including a consignment shop**
- c. **Adequate & appropriate facilities will be provided for the proper operation of the proposed use. There will be an appropriate sanitary inspection, and there is an understanding that the church building will provide additional sanitary facilities**
- d. **There will be no nuisance or hazard created**
- e. **No structures are proposed other than the walkway, which must meet all requirements of zoning ordinance Table 2**

CONDITION:

No more than 3 parking spaces will be placed on the lot. Other parking will take place on the church lot.

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

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2009 – 7 p.m.
ACADEMY BUILDING
MINUTES

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Ms. Baldwin stated that this comes down to two paragraphs, the definition of renovation and reconstruction.

Mr. Willard moved to continue Case # 15-2009 – John & Claire Wilkens to the next meeting so the board can take a site walk of the Joanne Wilkens property being questioned and obtain input from an outside building inspector.

Seconded by Mr. LaBelle.

Mr. LaBelle asked what the goal was for a site walk; he hasn't seen the building before the work was done. Mr. Gray said you can tell the new work because the new wood looks different from the old.

Ms. Baldwin indicated she was looking at the words, what is minor, what is major. She has already seen the barn, but another consideration is the state has a policy of preserving barns that affects which way to put the emphasis. If the owners were making the barn into something else there is no question they would have to have a permit.

Mr. Gray felt this case was about the feeling of conflict between parties and that is why the Board needs an outside person, because there is always a conflict between codes.

Ms. Baldwin observed that maintenance isn't defined.

Mr. LaBelle expressed concern that an outside officer may look at things differently than Mr. Flanders's across the board standard interpretation of the Gilmanton code.

Ms. Hackett indicated that another person would give the Board a second opinion, that the Board does not have to accept that opinion.

Ms. Baldwin stated that the Board has to judge on the facts before them; Mr. Flanders has never had precisely this situation before.

Mr. Gray felt that as soon as you touch an element of a building, a building permit should be pulled, and he and Bob have had this disagreement before.

Motion passed unanimously.

Ms. Andreozzi will speak to Mr. Warren about the process for having an outside building inspector.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 20, 2009 – 7 p.m.
ACADEMY BUILDING
MINUTES

APPROVAL OF MINUTES

MOTION: Ms. Baldwin moved to approve the minutes of the June 18, 2009 meeting as amended. Seconded by Mr. LaBelle. **Motion passed unanimously.**

MOTION: Mr. Willard moved to approve the minutes of the July 16, 2009 meeting as amended. Seconded by Mr. Gray. **Motion passed 3-0 with 2 abstentions.**

OTHER BUSINESS

Mr. Gray asked if the Hendersons were sent a written notice of decision of the ZBA's decisions from last month with a return receipt. Ms. Andreozzi stated that they were sent a written notice; it is not the office policy to send the notices with return receipt. The Hendersons were at the meeting when the decision was made and have been in the office since the meeting. Mr. Gray felt that possibly the Hendersons didn't have the decision information, that is why they made this new application. He will talk to the selectmen about additional money to send notices with return receipts.

Mr. Willard questioned the board that Brett Currier went to the Planning Board and Planning made a change in Brent's boundary; doesn't that have to be notified? There was a discussion about Mr. Currier's former property which borders Mary Butler Lane. Ms. Baldwin read from the *Gilmanton Zoning Ordinance* Article 2 C "where there is doubt...the Planning Board shall determine the location of such boundary...The frontage or point of access shall determine the applicable Zoning District." Mr. Willard questioned where does Brent have to put his driveway, and can the Planning Board change the zone of his property or does the ZBA?

ADJOURNMENT: On a motion made by Ms. Baldwin and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 9:50 p.m.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk