

**TOWN OF GILMANTON**  
**ZONING BOARD OF ADJUSTMENT**  
**THURSDAY, SEPTEMBER 17, 2009 – 7 p.m.**  
**ACADEMY BUILDING**  
**MINUTES**

Chairman Hackett called the meeting to order at 7PM.  
Members in attendance were Elizabeth Hackett, Carolyn Baldwin, Israel Willard, Paul Levesque, Ron LaBelle.  
Also in attendance Land Use Clerk Annette Andreozzi.

The Chair made introductions and explained the ZBA procedures.

**DELIBERATIVE SESSION:**

**Continued 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.

Ms. Hackett explained that the public hearing for this case had been closed at the last ZBA meeting, so the Board will not be taking public input. The deliberative session had been continued at the last meeting, on a motion by Mr. Willard, so that the board could take a site walk and get an opinion from an outside building inspector. Ms. Andreozzi checked about a building inspector doing a professional courtesy inspection. Joanne Wilkens did not give permission for the board or an outside inspector to have access to her property. Joanne Wilkens is not the applicant in this case, so she has signed no permission for property access. It has not been possible for a site walk or outside inspector visit, so the Board continued the deliberation.

Mr. Willard said he talked to an attorney that said Joanne had to let an inspector on her property, but he wasn't sure that the Board needs that now.

Mr. Levesque stated that he had read all the information on this case going back to July and feels comfortable with continuing as a voting Board member.

Mr. Willard referenced IRC105.2 and showed a picture, supplied by the applicant, of the north side of the barn, Mr. Willard stated that it was a total repair, and on that same side the siding is now going up and down; the siding on other side of the barn is horizontal. Clapboards have been replaced.

Ms. Baldwin said the issue is the building inspector has ruled that what ever is being done on the barn is repair in kind. If we rule this needs a permit we need to define where the line is for repair or the inspector will need to require a permit for every repair.

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Mr. Willard said that people are waiting to see how the ZBA rules before determining if they are going to pull a permit.

Mr. Levesque agreed that there is a limit to how much you can do as a repair.

Ms. Hackett stated that Mr. Flanders had said that the work being done was within the same footprint, which is why he considered it a maintenance issue. IRC 105.2.2 says "repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support...". It clearly states a repair shall not include cutting away.

Mr. LaBelle said that the town seems to want the building inspector to supervise a project as large as this, so we want the project to have a permit.

Ms. Hackett said it needs to be consistent across the board. It is the inspector's decision, but that is why there is an appeal process so folks in town can say I don't agree with your professional opinion. Going by the IRC code, this project is more than a patch and repair; pieces were taken apart and a whole new wall was built. Do we think this is a minor repair?

**MOTION: Mr. LaBelle moved to disagree with the administrative decision of Robert Flanders, Code Enforcement Officer, regarding not needing a building permit for the barn at 739 Province Road, Tax Map/Lot # 414-78, Case # 15-2009 – John & Claire Wilkens. The amount of work done on the barn was a major repair and a building permit should have been required.**

Second by Mr. Levesque.

**Vote was 4 in favor of motion, 1 against.**

**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.

There was a discussion about whether all the items listed above were part of the rehearing. The request was for a rehearing of Case # 11-2009, which is completely stated above.

Mr. Levesque stated that the Board discussed this case in July and he thought the Board decided that there was nothing in the Gilmanton code that would match the pony party use, so the Board had decided that the parties were commercial.

Mr. Willard said that he had been reconsidering this and talking to a lot of people about

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what is farming and what is commercial and now feels, that the Hendersons have their ponies on their property, so they can have kids ride them at a birthday party.

Mr. Levesque felt that it is a party with ponies, not part of the farm work; it is a birthday party, and they are charging money.

Ms. Baldwin said that the birthday parties are not like selling maple syrup because the syrup is made on the property, as the ordinance states.

Mr. Levesque stated that serving food and having a party are different than equestrian lessons.

Ms. Baldwin said that the Hendersons are not giving equestrian lessons. Thinking of Paula Gilman using her property for events, what the Hendersons are doing is similar, using the property for events. There is a problem with considering an event agriculture, just because there are ponies.

Ms. Hackett said she had talked with the Local Government Center lawyer, Paul Sanderson, who said that he had a similar case, using ponies, and that was decided to be a commercial use. He also said that the Board had to make a decision about if it would or would not rehear the case no matter what the end result had been on the property use.

Mr. LaBelle asked about the agritourism information the Henderson lawyer included in the submitted packet. Mr. LaBelle was told that information was a description in the state law, which had been in evidence during the hearing; it was not part of the Gilmanton Zoning Ordinance.

**MOTION: Ms. Baldwin moved to deny to rehear 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 on the grounds that**

- a) The issue is moot since a special exception was already granted**
- b) The Zoning Board's decision was correct in determining that this was a use requiring a special exception as commercial events on the property.**

Seconded by Mr. Levesque.

Mr. Willard said the Hendersons have hired a lawyer; they aren't going to let it drop so the Board should give them a rehearing, and save the town court costs.

Mr. Levesque asked what the Board should do about the granting of the special exception, and what is the point, are the applicants just trying to get after Bob Flanders?

There was a discussion about what was to be gained, whether it was commercial property or commercial use and would that have an affect on anything.

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Ms. Hackett stated that in deciding to grant a rehearing the Board looks for points of law, new information that was not available, or information that was not considered the first time. The Board should not grant a rehearing based on the idea that someone might take the Board to court. She didn't think that the board overlooked or missed anything, or that there was any new information.

**Three voted in favor of the motion, two against. Motion passed.**

APPROVAL OF MINUTES

MOTION: Ms. Baldwin moved to approve the minutes of the August 20, 2009 meeting as corrected, seconded by Mr. LaBelle. Motion passed unanimously.

ADJOURNMENT: On a motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 7:47 p.m.

Respectfully submitted,  
Annette Andreozzi, Land Use Clerk