

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 15, 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, Paul Levesque, and Ron LaBelle. Also in attendance were Alternate Member Wayne Gray and Land Use Clerk Annette Andreozzi.

The Chair appointed Mr. Gray as a voting member for this meeting.

The Chair made introductions and explained the ZBA procedures. She explained that with a request for a rehearing that no public input is taken. Requests are granted if points of law were not considered or new information is presented.

Mr. Gray stated that he felt comfortable with knowing the information on the following case, even though he was not at one of the meetings, and could make an informed decision.

Request by Donald Guarino for rehearing of Case # 15-2009 – John & Claire

Wilkins: 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.

The Chair confirmed that every board member had received and reviewed the packet of information relating to the application.

Ms. Baldwin felt the Board needs to rehear this case because a vague line has been left for the building inspector about what is a major repair requiring a building permit. Also the Board received some new information. She strongly urged the board to rehear and take a look at how the Board will advise the building inspector in a case like this where pieces were removed and replaced, but the use or structure of the building did not change.

MOTION by Ms. Baldwin to grant the request for rehearing of Case # 15-2009 John & Claire Wilkins. A decision of law has been seriously questioned and there is new information.

Seconded by Mr. Levesque.

Mr. Levesque stated that he felt the Board was opening Pandora's box if the Board starts deciding which is major or minor repair. The statues don't have a guideline for which is which.

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Mr. Gray said IRC section 105.2.2 says what is major and minor. He read the section (the words major or minor were not included). He said in this case structural supports were cut off and replaced, which shows Mr. Flanders that this case required a building permit, and Mr. Gray didn't think it could be interpreted any other way, so the hearing should not be reopened.

Mr. LaBelle agreed with Mr. Gray and said that it isn't as if they got a permit, they couldn't rebuild the barn.

Ms. Baldwin read section 105.2.2 "...repairs shall not include...the removal or cutting away of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts...". She stated that it doesn't say replacement; replacement is what was happening at this barn. Rearrangement of parts or change of egress, etc., none of that was happening. Remove implies taking away, and not putting it back.

Ms. Hackett said the first part of 105.2.2 says "such repairs shall not include the cutting away of any walls", and the Board had many pictures of cut away walls. If you read the paragraph it doesn't say **and** this, **and** this, **and** this. What it clearly says is OR something OR. By looking at the code and the information the Board had originally, what was presented for the rehearing request isn't a change, other than someone else is looking at the information and interpreting it differently. Relating to the email from the International Code Council technical staff member, the Board does not know what information was presented to him before he gave his email answer.

Mr. Gray said the Board made the right decision according to the rules.

Ms. Hackett again stated that to grant a rehearing the Board considers if a point of law was missed, or if they now have information that they didn't have before, that would cause members to change their mind.

Vote on motion was 2 in favor, 3 against.
The request for rehearing Case # 15-2009 was Denied.

APPROVAL OF MINUTES

MOTION: Ms. Baldwin moved to approve the minutes of the September 17, 2009.
Seconded by Mr. LaBelle. **Motion passed unanimously.**

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POSSIBLE SETTING OF JOINT MEETING WITH PLANNING

It was uncertain if the applicant would have his septic design approval in time for the Planning Board meeting. The ZBA will not hear his case until that approval is final. There will be no joint meeting in November.

REVIEW OF ZBA PROCEDURES

There was a discussion of changes to the ZBA procedural manual.

Motion: Ms. Baldwin move to approve the changes to the "ZBA Rules of Procedure". Mr. Levesque seconded. Motion passed unanimously.

OTHER BUSINESS

The Chair read a memo to the Planning Board referencing the need to amend Article IX : C of the Gilmanton Zoning Ordinance, due to the state legislature defining "unnecessary hardship" in the context of the criteria which must be found by the ZBA when considering an application for a variance.

Ms. Hackett announced that the office had 3 books from the municipal law series available to be borrowed.

The annual LGC conference is November 18-20. There is money in the budget for Board members to attend.

Mr. Gray questioned why a letter from the Henderson's dated August 20, 2009, was put in the ZBA file when the Board did not rehear the case? Since the Board was unable to address the letter, if it was in the file someone might considered it to be fact. Mr. Gray felt the letter should not have been accepted the night of the meeting because the Board can not accept input at that time.

Ms. Baldwin indicated that the letter had to do with the rehearing, but there can be no rebuttal because there was no rehearing. If something is handed to the clerk it has to be kept in the file.

Mr. Gray was concerned that the letter is personal not fact.

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Mr. LaBelle stated it was opinion not fact.

Ms. Hackett said that Mr. Gray could submit a letter of his opinion for the file.

Laurie Henderson, who was in the audience, stated the letter was about the inaccuracy of the minutes. She accused the Board of not having the meetings taped, and letting Mr. Flanders speak.

Ms. Hackett explained that the clerk does not write verbatim minutes, and verbatim minutes are not required by RSA. When Mr. Flanders is asked to speak it is not as a member of the public but as a staff member with special knowledge.

Claire Wilkens asked the Board what will happen now that the board did not rehear the Wilkens case, and will a stop work order be issued? The Board indicated that a building permit should be pulled and the case might or might not go to court. And that Claire should go to the building inspector if she feels a stop work needs to be issued. Enforcement is not the area under the ZBA's control.

ADJOURNMENT: On a motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 8:29 p.m.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk