

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, NOVEMBER 19, 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, Paul Levesque, and Ron LaBelle.

Also in attendance were Alternate Member Wayne Gray and Land Use Clerk Annette Andreozzi.

The Chair made introductions and explained the ZBA procedures.

Public Hearing Case # 16 -2009 – Michael Noah : Request for Variance from Article IV Table 2, to permanently set a temporary style shed closer to the rear property line than the 20 feet setback requirement. Property located at 11 Deer Drive in the Residential Lake Zone; Town Tax Map/Lot #121-1.

Mr. Noah stated the size of the shed structure is 14 feet x 20 feet, and 10 feet high. He plans to store his boat, toys, & lawn furniture inside. His neighbors requested that it be green in color, and are fine with having it where it is. He read a letter of support from a neighbor. He indicated that he spoke with neighbors and abutters, who said they are fine with the shelter; some have the same shelter. It would be inconvenient to move the shelter because it would then restrict the driveway. The land has been surveyed recently, which is how it was determined that the shelter did not meet setbacks.

Mr. Levesque inquired what would be done to make the shelter permanent. Mr. Noah said he would leave it up all year. It is presently on crushed stone, but he would like to pour a slab for it to sit on.

Ms. Baldwin stated that the property has two variances, one for the house and one for a permanent shed. The plan included with the application didn't seem to be drawn correctly.

Mr. Noah said that after a professional survey he found that the house is not located where it is on the plan. The proposed shelter is already on the property. The property abutting his in back is woods, but does not belong to him.

Mr. Gray asked why a variance is needed if it is not a permanent structure and does not have a foundation. Ms. Hackett said even temporary structures need to meet the setbacks.

Mr. Gray stated this will cause a further problem because there are many of these structures in town.

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Mr. Willard said the structure is in the setback on two sides.

Mr. Levesque indicated that the structure could be moved on the property. Mr. Noah said the structure is presently mostly out of sight and he has freedom to move his cars in the driveway. He would have to cut down trees if he moved it.

Ms. Baldwin wanted to know if one abutter was the Sawyer Lake Association Conservation land. It was determined that their land does not abut this applicant's property.

Mr. LaBelle asked the applicant if he would have a problem if the board approved the application with the condition that there be no cement slab. Mr. Noah indicated he would not have a problem with that condition.

Ms. Baldwin moved to close Public Hearing Case # 16-2009.
Seconded by Mr. LaBelle. **Motion passed Unanimously.**

DELIBERATIVE SESSION:

Case # 16 -2009 – Michael Noah : Request for Variance from Article IV Table 2, to permanently set a temporary style shed closer to the rear property line than the 20 feet setback requirement. Property located at 11 Deer Drive in the Residential Lake Zone; Town Tax Map/Lot #121-1.

Ms. Hackett reiterated that the applicant had a small lot, the applicant wants to store a boat, toys and lawn furniture. The shed is 20' x 14' x 10', and the color green. The other shed he has received a variance in 2007. When the lot was surveyed the applicant found that the 2007 shed was not in the setback after all.

Mr. Willard stated that the shed could be moved to conform to the setbacks without bothering his driveway. Mr. LaBelle said when he walked the property it got steeper and steeper and it would be difficult to maneuver in the driveway if the shed was moved. There is no one complaining about the shed and if the Board does not allow a concrete slab the shed will not be permanent.

Mr. Levesque said that the only person that can see the shed is across the street and he wrote the letter of support.

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There was a discussion about why a variance was needed for a temporary shelter. It was determined that the applicant wanted to leave the shelter up, in the same place, for the long term, and it is in the setback. Ms. Hackett stated that she had a problem with allowing this structure to be left up because unless the snow is cleaned off, it is going to fall down and rot and come apart.

MOTION:

Ms. Baldwin moved to grant a variance from Article IV, Table 2 to Michael Noah: Case #16 -2009 to permanently set a temporary style shed closer to the rear property line than the 20 feet setback requirement as shown on the plan submitted. Property located at 11 Deer Drive in the Residential Lake Zone; Town Tax Map/Lot #121-1.

- 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 would result in unnecessary hardship to the property owner in this case because moving the shelter to comply with the setbacks would result in an awkward driveway configuration, and the cutting down of trees, which add to the attractiveness of the property;**
- 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.**

CONDITION:

A permanent foundation or concert slab will never be placed under the shelter.

Seconded by Mr. LaBelle. Vote for approval - 3, vote against - 2.
Motion passes 3 – 2.

APPROVAL OF MINUTES

MOTION: Ms. Baldwin moved to approve the minutes of the October 15, 2009 ZBA meeting. Seconded by Mr. Levesque. Motion passed unanimously.

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OTHER BUSINESS

The Board was notified of a request for a joint ZBA-Planning Board public hearing on January 14, 2010.

The Board members were given a copy of the lawsuit filed by the Hendersons against the Town of Gilmanton. Ms. Hackett reminded the Board that this was an on going litigation so there should be no discussion with or by any parties.

Mr. Willard was asked by the Selectmen to bring to the Board the possibility of making exceptions to the ZBA application requirement that a state approved septic design be in place before the ZBA will hear an application for a variance or special exception. Ms. Hackett said that she did not remember why the application was amended on 7/21/05 to include that requirement, but since it is in the application, that is what is required. Mr. Willard stated his belief was that people were getting building permits and then finding out there wasn't room for a septic system. Ms. Hackett stated that it doesn't matter how many acres one has, in the state of New Hampshire, one may not be able to get a septic on the property. Ms. Baldwin stated that the Board has sent people away because they didn't have a septic design and in one recent case they couldn't get one. The agreement of the Board was that there should not be exceptions, and that the clerk would write a letter to the Selectmen explaining that regardless of property size a septic design approval must be with a ZBA application because it is required in the application, and there have been applications before the board where that issue was enforced. Every application is treated individually with the same requirements enforced.

It was reiterated that once the minutes of a given meeting are approved, the tapes of that meeting will be erased.

Mr. Gray stated that he thought the Selectmen were going to appoint a commission for ZBA over site. Mr. Willard explained that it would be a code enforcement commission.

Ms. Hackett asked the clerk to try and get her on Monday's agenda for the Board of Selectmen to discuss possible misunderstandings.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 7:55 p.m.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk