

TOWN OF GILMANTON  
ZONING BOARD OF ADJUSTMENT  
THURSDAY MARCH 18, 2010 – 7 p.m.  
ACADEMY BUILDING  
MINUTES

Chairman Hackett called the meeting to order at 7 PM .  
Members in attendance were Elizabeth Hackett, Carolyn Baldwin, Israel Willard, Paul Levesque, 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 # 2-2010 – Richard Faro:** Request for Variance from Article IV Table 2 to replace existing 15' x 7' deck & stairs with a 12' x 32' deck and stairway, which will be 38 feet from the edge of Sawyer Lake, setback from water bodies is 75 feet. A DES Shoreland Protection Permit has been issued. Property located at 40 Hemlock Drive in the Residential Lake Zone; Town Tax Map/Lot #119-163.

Mr. Faro brought the revised variance standards list with his written reasons, which he passed out to the members, he also had some pictures. He stated that the decision to make the deck 12 feet out came from working with DES. The need for the deck is a safety issue, their lot is very steep.

Ms. Hackett asked if the applicant was adding onto the existing deck. Mr. Faro indicated no, and referenced the pictures showing the existing deck and proposed deck.

Ms. Hackett stated that the stairs, perpendicular to the deck, which are an additional 10.3 feet, make the project well inside the 75 feet water body setback allowed by Gilmanton ordinance.

There was a discussion about an alternate design of stairs, which would be parallel to the deck. Ms. Hackett said the perpendicular stairs would just replace the steps that are presently there. The applicant preferred the perpendicular stairs, because they are the shortest distance to the water, therefore disturbing the land the least, and the design looks better.

Ms. Hackett asked if there would be a problem if the board reduced the width of the 12 feet wide deck. Mrs. Faro stated that less than 12 feet would not be safe, and DES has indicated that the deck would create less erosion by reducing foot traffic. All the digging

TOWN OF GILMANTON  
ZONING BOARD OF ADJUSTMENT  
THURSDAY MARCH 18, 2010 – 7 p.m.  
ACADEMY BUILDING  
MINUTES

for the new deck will be done by hand, because equipment can't get back into the space behind the house.

**MOTION: Ms. Baldwin moved to close Public Hearing Case #2-2010 – Richard Faro**  
Seconded by Mr. Levesque. **Motion passed Unanimously.**

**Public Hearing Case # 3-2010 – Richard Lepene:** Request for Variance from Article IV Table 2 to replace existing non-conforming residence with a less non-conforming residence, one point of new residence to be 11.5 feet from road. Property located at 9 Manning Lake Road in the Rural Zone; Town Tax Map/Lot #101-11.

Ms. Hackett stated that there was a letter in the file giving Mr. Lepene authorization to act for the owners.

Mr. Lepene indicated that the builder, Richard Belair was present also. Mr. Lepene stated that the present home located on a corner lot was last updated in the 1950s and the septic is from the time before recording by DES. The storage building on the lot has no heat or plumbing, but looks better than the house. The front of the house is almost on the ROW line. the ROW line was taken from a former survey by Paul Darbyshire, which makes the road quite wide. For this reason and because the house is not in good shape and has a flat roof, the owners would like to build a new house. Though the parcel of land is 6 acres, conditions for sighting the house & septic include being 250 feet from the shoreline, 50 feet from the wetlands, access to the storage building for cottage owners, fire department access to the buildings, access to a below grade garage, and taking advantage of the view.

Ms. Hackett asked if moving the house back had been considered. Mr. Lepene said that the angle and location is based on contours of topography, the lake view, and getting more of the house out of the setback. Ms. Hackett said that when you have 6 acres you should be able to move the house off the set back.

There was a lot of discussion about where and how to move the house, considering all the concerns of the applicant, the downhill slope, the wetlands, and the septic. The distance between the two buildings, which would be 13.5 feet. The use of the storage building, which is a recreation hall for the cabins across the street and storage for tractors, boats, and equipment.

**TOWN OF GILMANTON**  
**ZONING BOARD OF ADJUSTMENT**  
**THURSDAY MARCH 18, 2010 – 7 p.m.**  
**ACADEMY BUILDING**  
**MINUTES**

**MOTION: Ms. Baldwin moved to close Public Hearing Case #3-2010 – Richard Lepene. Seconded by Mr. LaBelle. Motion passed Unanimously.**

**MOTION: Ms. Baldwin moved to reopen Public Hearing Case #3-2010 – Richard Lepene. to introduce for reading an email communication in support of the application. Seconded by Mr. Levesque. Motion passed Unanimously.**

The email was read and placed in the file.

**MOTION: Ms. Baldwin moved to close Public Hearing Case #3-2010 – Richard Lepene. Seconded by Mr. Levesque. Motion passed Unanimously.**

**DELIBERATIVE SESSION:**

**Case #2-2010 – Richard Faro**

Ms. Hackett indicated that the slope of the applicants property makes the lakeside unusable, which would be a factor in the Boards decision.

There was a discussion about whether a 10 foot wide deck would be impractical even though it would place the project further from the water.

There was additional discussion on the steepness of the slope and whether perpendicular or parallel stairs would look better or cause less erosion.

Ms. Hackett stated that the house isn't 75 feet back from the water as it is.

**MOTION: Mr. Levesque moved to grant a variance from Article IV Table 2 for Case # 2-2010 – Richard Faro to replace an existing 15' x 7' deck & stairs with a 12' x 32' deck and stairway. Property located at 40 Hemlock Drive; Town Tax Map/Lot #119-163.**

- a. The granting of the variance would not be contrary to the public interest because NHDES has granted a wavier to build the deck and stated that the deck will diminish the foot traffic and lessen erosion on the slope;
- b. The spirit of the Ordinance is observed because the plan is the most attractive way to comply using the space the applicants have;
- c. By the granting of the variance, substantial justice will be done for the

TOWN OF GILMANTON  
ZONING BOARD OF ADJUSTMENT  
THURSDAY MARCH 18, 2010 – 7 p.m.  
ACADEMY BUILDING  
MINUTES

- same reasons as a and b above;
- d. By granting the variance, there has been no evidence presented that there would be a diminution of value to the surrounding properties;
  - e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to the special condition of the property, which is the steep slope to the water where a deck is the best solution.

**CONDITION:** The deck is never to be enclosed.

Ms. Baldwin seconded. **Motion passed unanimous.**

**Case # 3-2010 – Richard Lepene**

Ms. Hackett stated that this application needs to take into account issues for the clients which go back further than the existing house.

Mr. Gray stated that he didn't feel the application can meet the hardship standard.

There was additional discussion relating to moving the house so it would meet the set backs, or adding a second story to the existing house, and because there were options on the lot the application could not meet the hardship standard.

Ms. Hackett stated that it is not the Board's purview to design the house or locate the building.

**MOTION:** Ms. Baldwin moved to deny a variance from Article IV Table 2 for **Case # 3-2010 – Richard Lepene** to replace an existing non-conforming residence with a less non-conforming residence. Property located at 9 Manning Lake Road; Town Tax Map/Lot #101-11. With the finding that there are feasible alternatives for the same sized building to be placed on the lot which would meet the set back requirements within a few feet, therefore no hardship is present.

Mr. Willard seconded. **Motion passed unanimously.**

Ms. Baldwin clarified that she strongly advised the applicant to reconfigure the placement of the house, perhaps by turning the house 45 degrees.

TOWN OF GILMANTON  
ZONING BOARD OF ADJUSTMENT  
THURSDAY MARCH 18, 2010 – 7 p.m.  
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MINUTES

OTHER BUSINESS

Ms. Hackett stated that in January a letter to the Board, relating to an application, was not read because it remained in her file being that she wasn't present at the meeting. Selectman Guarino asked her to read the letter into the record at this meeting.

Mr. Willard said that he had a bad feeling about reading the letter into the record at this time, because the case is closed and the problem has been corrected. Ms. Baldwin stated that the appeal period is over, so the case isn't going to be appealed. Mr. Gray wanted to know why the reading was being done since the appeal period is over.

Ms. Hackett stated that the Selectman had asked for the letter to be read because the letter writer was upset, and it is her decision to read it; she is clarifying the contents of the letter.

The letter was read and is attached to the minutes.

Mr. Gray asked Ms. Hackett if the Board could ask her not to make decisions without asking the Board first. Ms. Hackett said, yes, and since the letter had already been discussed she thought she would put an end to it by reading it.

APPROVAL OF MINUTES

**MOTION: Mr. LaBelle moved to approve the minutes of the February 18, 2010 meeting. Seconded by Ms. Baldwin. Motion passed 4-0.**

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 8:38 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk