

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY APRIL 15, 2010 – 7 p.m.
ACADEMY BUILDING
MINUTES

Chairman Hackett called the meeting to order at 7:02PM.
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 # 4-2010 – Bruce A. Pearl: Request for Variance from Article IV Table 2 to create a buildable lot of 5.5 acres in the Conservation Zone where lot size requirement is 10 acres. Property located on Middle Route across from 822 Middle Route in the Conservation Zone; Town Tax Map/Lot #405-20.

Mr. Green spoke on behalf of Mr. Pearl, referencing the diagram of map/lot 405-20 which is 33 acres. Mr. Pearl would like to make a boundary line adjustment which would create a new lot of 5.5 acres, but add the remaining 27.5 acres to his existing lot # 405-16. All the lots on that section of Middle Route are about 5 acres. The owner intends to leave the 27.5 acres "back area" wooded.

Ms. Hackett asked where the setbacks were on the septic design plan. Mr. Green pointed them out. Ms. Hackett asked the height of the proposed house. Mr. Green said that hadn't been discussed yet. Ms. Hackett was concerned about the wetlands setback. Mr. Green showed on the plan that the position of the house meets the setback. Ms. Hackett reiterated that the applicant planned the "back area" to remain wooded.

Ms. Baldwin asked if the applicant understood that the new lot would come out of current use. The applicant understood.

There was a discussion about how much of Grant Hill Road, which is one boundary line of map/lot 405/20, is a discontinued or class 5 road. The road follows the stone wall.

Mr. Levesque said that there are 30+ acres in the lot; there must be some way to make a ten acre conforming lot.

Mr. Green said that Mr. Pearl presently bought and lives on, M/L 405-16, which would have been 2 lots in the surrounding subdivision. Lot 16, is the only lot of 10 areas; all the other lots in the area are only 5 acres and most have houses on them. If the new lot

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were to be made 10 acres, the "back area" would be cut off from its access, which is Grant Hill Road.

Mr. Willard said if he owned the property he would make a cul de sac and subdivide the back part.

Russ Pearl said that he is an abutter on the end away from Grant Hill Road, and he has no issues with the lot creation.

Ms. Hackett read for the record a letter from the Gilmanton Conservation Commission, which is in the file folder. It requested that if a variance was granted that a condition be attached that there be no further subdivision.

Mr. Willard asked the applicant if there would be a problem with the condition of no further subdivision. The applicant's agent said that it is not a problem.

Mr. Willard moved to close Public Hearing Case #4-2010 – Bruce A. Pearl.
Seconded by Mr. LaBelle. **Motion passed Unanimously.**

Public Hearing Case # 5-2010 – Shawn P. McCarthy: Request for Variance from Article IV Table 2 to build a deck which will be 52 feet from the edge of Shellcamp Pond, setback from water bodies is 75 feet. A DES Shoreland Protection Permit has been issued. Property located at 69 Leatherstocking Lane in the Rural Zone; Town Tax Map/Lot #133-45.

Mr. McCarthy stated that he bought the house from the original owners who used it in the winter months for hunting, not in summer, so they didn't build a deck. Most other houses in the neighborhood have decks. The lot is not level so there is no outdoor place to enjoy the property. There are woods on one side of the property so the deck would not be seen from that side. He referred to a drawing of the proposed deck which showed 2 supporting posts, and said that he would prefer to put in 4 supports.

Ms. Hackett asked if the applicant was planning to have steps from the deck. Mr. McCarthy said no steps, just access from the house.

Ms. Hackett found that the applicant would have no problem with a condition on the application of never enclosing the deck.

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Mr. McCarthy showed pictures of a house built in his neighborhood in 2008, which is closer to the water than he is proposing putting his deck. He said there is no place on his lot that can be used for sitting.

Mr. Gray asked why the deck would only be 20' wide. McCarthy said that 20' is big enough.

Mr. Levesque moved to close Public Hearing Case# 5-2010 – Shawn P. McCarthy.
Seconded by Mr. LaBelle. **Motion passed Unanimously.**

DELIBERATIVE SESSION:

Ms. Hackett seated Mr. Gray to replace her for this case.

Case #4-2010 – Bruce A. Pearl: Request for Variance from Article IV Table 2 to create a buildable lot of 5.5 acres in the Conservation Zone where lot size requirement is 10 acres. Property located on Middle Route across from 822 Middle Route in the Conservation Zone; Town Tax Map/Lot #405-20.

Ms. Baldwin said her first reaction was why not make the lot 12 acres, and keep 10 acres in current use, but she would consider the request if there was a condition for no further subdivision, so that the big lot would be kept in one piece.

There was more discussion on which part of Grant Hill Road was discontinued.

Mr. Gray liked the idea of the new lot because it would be consistent with the neighborhood. When the lots in the area were originally subdivided only 5 acres were required. He would like to keep the back part open to hunting and fishing.

Mr. Willard said that since the lot has septic approval and a well, building a house should be allowed.

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MOTION: Mr. Willard moved to grant a variance from Article IV Table 2 in Case #4-2010 – Bruce A. Pearl to create a separate buildable lot of only 5.5 acres out of Town Tax Map/Lot #405-20 in the Conservation zone as shown in the plan attached to the application

- a. The granting of the variance would not be contrary to the public interest because the back land will be preserved and still be available to the public
- b. The spirit of the Ordinance is observed because the back land will not be subdivided
- c. By the granting of the variance, substantial justice will be done;
- d. By granting the variance, there would be no diminution of value to the surrounding properties;
- e. Literal enforcement of the ordinance would result in unnecessary hardship to the property owner seeking it owing to the fact that the other lots around it are 5 acres.

CONDITION: The 27.5 acres that are separated from the 5.5 acres will not be subdivided and no buildings will be placed there.

Mr. LaBelle seconded. **Motion passed unanimously.**

Ms. Hackett replaced Mr. Gray as a voting member for the next case.

Case #5-2010 – Shawn P. McCarthy: Request for Variance from Article IV Table 2 to build a deck which will be 52 feet from the edge of Shellcamp Pond, setback from water bodies is 75 feet. A DES Shoreland Protection Permit has been issued. Property located at 69 Leatherstocking Lane in the Rural Zone; Town Tax Map/Lot #133-45.

Ms. Hackett stated that the land is very steep in back of the house on the lake side.

Mr. LaBelle felt this case was similar to the one that was approved last month. And he likes people to fix up their property.

Mr. Willard said the requested deck was a reasonable size and it was a good idea.

Mr. Levesque stated that with the deck the applicant will be able to use his property.

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MOTION: Mr. LaBelle moved to grant a variance from Article IV Table 2 in Case #5-2010 – Shawn P. McCarthy to build a deck according to plans submitted with the application, which will be 52 feet from the edge of Shellcamp Pond on property located at 69 Leatherstocking Lane; Town Tax Map/Lot #133-45.

- a. The granting of the variance would not be contrary to the public interest because there will be no increase in traffic or pollution;
- b. The spirit of the Ordinance is observed because the deck will not affect any other property;
- c. By the granting of the variance, substantial justice will be done given similar properties have similar decks;
- d. By granting the variance, there would be no diminution of value to the surrounding properties, as there were no abutters present to protest;
- e. Literal enforcement of the ordinance would result in unnecessary hardship to the property owner seeking it owing to the special conditions of the steep property making the lakeside land unusable.

CONDITION: Deck will not be turned into living space or have a roof. The deck is approved for up to 4 upright supports.

Mr. Levesque seconded. **Motion passed unanimously.**

APPROVAL OF MINUTES

MOTION: Mr. LaBelle moved to approve the minutes of the March 18, 2010 meeting as corrected. Seconded by Ms. Baldwin. **Motion passed unanimously.**

OTHER BUSINESS

Ms. Hackett announced the municipal law series of lectures available to board members to attend and the Lakes Region Planning Commission meeting.

Mr. Willard questioned page 15-2 of the Gilmanton Zoning Ordinance if the stated RSA

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483-A should be RSA 482-A. The Board asked the clerk to check that for the next meeting.

There was a discussion of the Gilmanton Zoning Ordinance section 15-C-7.

There was a question of enforcement of ZBA decisions. Ms. Hackett stated that the ZBA is not the enforcer, the code enforcement officer is. The consensus of the Board was to ask the officer to enforce the ZBA decision related to M/L 135/2 owned by the Howland Trust.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 8:20PM

Respectfully submitted,

Annette Andreozzi, Land Use Clerk