

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, JUNE 17, 2010 – 7 PM.
ACADEMY BUILDING
MINUTES

Chairman Hackett called the meeting to order at 7:02 PM.

Members Attending: Elizabeth Hackett, Carolyn Baldwin, Israel Willard, Paul Levesque, and Ron LaBelle.

Also in attendance: Annette Andrezzi, Land Use Clerk.

Member not attending: Wayne Gray (alternate)

The Chair made introductions and explained the ZBA procedures.

Public Hearing Case # 07-2010 – Regina Nadeau: Request for Variance from Article VII Section C-2 to build a single family residence with garage on a private roadway, with 2.15 acres in the Rural Zone. Property located on the western side of the northern end of Powderhouse Lane; Town Tax Map/Lot # 126-22.

Ms. Hackett explained that the owners of the property are Peter & Nancy Amaral, who gave the power to act on their behalf to Mike Amaral, who hired Attorney Regina Nadeau to apply to the ZBA on their behalf. Paul Darbyshire, surveyor, was in attendance to present the case to the Board.

Mr. Willard moved to not accept the application because it was incomplete.
Seconded by Mr. Levesque.

Mr. Willard said that no site plan drawn to scale was submitted with the application.

Attorney Nadeau stated that she didn't know she needed a design for the house with the application. They are not asking for any relief except being on a private road.

Mr. Willard said he could consider the application if he knew where the house and septic were located. Mike Amaral said he thought he submitted the site plan.

Attorney Nadeau stated that the Code Enforcement Officer denied the permit based only on the fact that it was on a private road; he didn't ask for a septic plan.

Ms. Hackett said that normally the ZBA looks, in advance, for where the garage and house are going to go and where the septic is located.

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Ms. Baldwin indicated the size of the house isn't the purview of the ZBA.

Mr. Darbyshire said that they had copies of the site plan with the house & septic.

Mr. Willard withdrew the motion. Mr. Levesque withdrew his second to the motion. The plans were passed to the Board.

Mr. Darbyshire said the lot is 2.2 acres. It is serviced by a right of way (Powderhouse Lane), where there are 4 other houses. The lots were laid out and the houses built before there was zoning in Gilmanton. He pointed out on the lot plan where the septic and house would be. He said that there is no garage shown on the plan, but there is plenty of room on the site to build a garage.

Ms. Baldwin noted that the sight distance exiting Powderhouse Lane onto Rte. 107 is scary.

Mr. LaBelle asked if the maintenance of Powderhouse is shared by the homeowners. Mr. Darbyshire said yes.

Mr. Munsey, an abutter, said that cars on Rte. 107 can stop if they are going the speed limit, but they usually aren't.

Attorney Nadeau brought photos for the record of the new gravel on Powderhouse Lane. Five abutters signed a paper saying they have no objection to granting the variance. She mentioned that it does not make sense to apply hardship criteria to the parcel. And if the Board did apply that criteria, there would be no other reasonable use for the property. She asked to waive the requirement to be on a class 5 road, because the reason for the provision is to avoid premature scattered development. The area is already developed and is close to the center of town. It is consistent with the spirit of ordinance to allow this because there will be no nuisance. The town has nothing to gain by not approving this house, because service vehicles are already going up Powderhouse Lane, so this would be substantial justice. The favorable petition from abutters addresses the impact on property values. To the standard of hardship, what is unique about this property is it needs a variance where the other houses on the Lane did not, even though they are similarly situated.

Mr. Willard moved to close the Public Hearing Case # 07-2010 – Regina Nadeau.
Seconded by Mr. Levesque . **Motion passed Unanimously.**

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Public Hearing Case # 08-2010 – John & Donna Reardon: Request for Variance from Article VII Section C-2 and Article IV Table 2 to build a 16' x 20' three season porch 55 feet from Sawyer Lake, 75 feet distance required. Property located at 338 Hemlock Drive in the Residential Lake Zone; Town Tax Map/Lot # 122-81.

Mr. Reardon stated that they want to put in a three season porch because they now have grandchildren, and they do not want the children going up & down the hill. They cannot put the porch anywhere else because of setback requirements. Where they are requesting to put the porch meets all setbacks except from the water.

Ms. Hackett noted that the porch would not be closer to the water than the house is presently.

Ms. Baldwin asked that three season be explained. Mr. Reardon said that the porch would be enclosed with insulated windows, but there is no heat in the building; it is a camp. It would not be sleeping quarters.

Mr. LaBelle asked how old the septic system was. Mr. Reardon said that it was a new two bedroom septic in 1985. Mr. LaBelle was concerned that there could be 12 people at the camp at a time with only a 2 bedroom septic and they may all stay overnight.

Mr. Levesque moved to close Public Hearing Case # 08-2010 – John & Donna Reardon. Seconded by Mr. LaBelle. **Motion passed Unanimously.**

Public Hearing Case # 09-2010 – John Reardon: Request for Variance from Article VII Section C-2 and Article IV Table 2 to build a ramp and deck 50 feet from Sawyer Lake, 75 feet distance required, and 10 feet from side setback, 20 feet required. Property located at 224 Hemlock Drive in the Residential Lake Zone; Town Tax Map/Lot # 119-119.

Mr. Koch, the owner, stated that the existing deck and steps are rotted. He has Muscular Dystrophy and has trouble with stairs. He wants to make the front entrance a ramp one foot wider than the present steps and come around the corner to a deck, level with the sliding door. He would like to put a ramp that a wheel chair could use in case that

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becomes necessary. Below where the deck will go is an existing impervious surface patio. He wants to make the deck larger than it is presently because it is the only outdoor space he can use due to his medical condition he can no longer get to the water. The deck will not affect the vegetation. The deck will be in line with the house so it will not be any closer to the abutters. DES told him that their only concern might be with the affect on vegetation, but the owner is not going to do anything to the vegetation.

Ms. Hackett mentioned that the deck would not be any closer to the neighbor, but it would be closer to the water. Vegetation is covered by DES.

Mr. Willard asked how he would be getting down to the patio. Mr. Koch said he would not.

Mr. Willard moved to close Public Hearing Case # 09-2010 – John Reardon
Seconded by Mr. LaBelle. **Motion passed Unanimously.**

DELIBERATIVE SESSION:

Case # 07-2010 – Regina Nadeau

Ms. Hackett indicated this application is to build a house & garage on a private road.

Ms. Baldwin said that the lot is big enough for them to expand their access on to the private road.

Mr. Willard expressed concern that the Board does not know where the garage is going; in past the Board has required that information. Ms. Baldwin did not feel that was in the Board's purview. Mr. LaBelle said the garage has to be placed inside the setbacks.

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MOTION:

Mr. LaBelle moved to grant a variance for Case # 07-2010 - Regina Nadeau: Request for Variance from Article VII Section C-2 for building a single family residence with garage on a private roadway. Property located on the western side of the northern end of Powderhouse Lane; Town Tax Map/Lot # 126-22.

- a. **The granting of the variance would not be contrary to the public interest since no one spoke against the variance and the abutters are in favor of granting the variance;**
- b. **The spirit of the Ordinance is observed because the lots were formed before zoning was in affect;**
- c. **By the granting of the variance, substantial justice will be done because the proposed use is reasonable and consistent to the present use of other lots on the road;**
- d. **By granting the variance, there would be no diminution of value to the surrounding properties, an additional home served by the private road and participating in maintenance cost reduces cost burden for other properties using the road;**
- e. **Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to the 2.2 acre lot having no other reasonable use.**

CONDITIONS: The house and garage will meet all current setbacks.

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

Case # 08-2010 – John & Donna Reardon

Ms. Hackett stated that the proposed porch would not meet the 75' setback from the water but would not be any closer to the water than the house is now.

Mr. Willard stated that the applicant should just enclose the existing deck; there is no

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stipulation in the old ZBA decision against enclosing the existing deck. Many people could be using the new porch as a room and the property has only a 2 bedroom septic system.

Ms. Hackett said sometimes it gets buggy and screens are not enough to make a porch usable.

Ms. Baldwin said she preferred to see a new porch than enclosing the existing deck, which is closer to water. She would add a condition that the existing deck not be enclosed.

Mr. Willard said the applicant would be over building the lot.

Ms. Baldwin said that enclosing the existing deck will increase run off to a steep slope and more erosion.

MOTION: Ms. Baldwin moved to grant a variance for Case # 08-2010 – John & Donna Reardon: Request for Variance from Article VII Section C-2 and Article IV Table 2 to build a 16' x 20' three season porch, meeting all setbacks excepting to the lake, where it can be no closer than the existing house. Property located at 338 Hemlock Drive in the Residential Lake Zone; Town Tax Map/Lot # 122-81.

- a. The granting of the variance would not be contrary to the public interest as no one objected to the variance, nor will the deck interfere with any abutter;**
- b. The spirit of the Ordinance is observed because the lot is typical of lots around Sawyer Lake, and the new deck will not be any closer to the lake than the existing house;**
- c. By the granting of the variance, substantial justice will be done;**
- d. There was no evidence presented that granting the variance, would create diminution of value to the surrounding properties;**
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking because there is no fair & substantial relationship between the general public purposes of the ordinance & this specific addition to this property, and the proposed use is a reasonable one because it is a small camp and not used year round.**

CONDITIONS: The existing deck on the lake side will never be enclosed. The new porch can never be made into winterized space or used as a bedroom. A DES permit must be obtained before construction can begin. The vegetation between the new porch and the lake cannot be removed.

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Mr. Levesque seconded. **Vote was 3 in favor, 2 opposed. Motion passed.**
Case # 09-2010 – John Reardon

Ms. Hackett stated the application was to build a ramp and deck giving Mr. Koch a more feasible entry.

Mr. LaBelle said it would not be reasonable to deny the owner a deck and access when the Board has been allowing decks in this area. He also mentioned that the lot is steep.

Mr. Willard noted that there was no objection from the neighbor on the side where construction would be in the side setback.

Mr. Levesque said the deck will be no closer to the water than the current patio.

MOTION: Mr. Levesque moved to grant a variance for Case # 09-2010 – John Reardon ; Request for Variance from Article VII Section C-2 and Article IV Table 2 to build a ramp and deck 50 feet from Sawyer Lake, 75 feet distance required, and 10 feet from side setback, 20 feet required. Property located at 224 Hemlock Drive in the Residential Lake Zone; Town Tax Map/Lot # 119-119.

- a. The granting of the variance would not be contrary to the public interest because the deck will not be seen;**
- b. The spirit of the Ordinance is observed because the ramp and deck fit the need of the owner going forward in his life;**
- c. By the granting of the variance, substantial justice will be done to enable the owner to enjoy the outdoors at his property, where he is not able to do so now;**
- d. There was no evidence presented that granting the variance would create 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 need to make changes so that the owner can live a better life.**

CONDITIONS: DES approval must be received. The deck can never be enclosed. Vegetation between the deck and the water may not be removed.

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Ms. Baldwin seconded. **Motion passed unanimously.**

APPROVAL OF MINUTES

MOTION: Ms. Baldwin moved to approve the minutes of the May 20, 2010.
Seconded by Mr. Levesque. Motion passed unanimously.

OTHER BUSINESS

Ms. Hackett asked the clerk to call Mr. Gray and see if he still wants to remain on the Board.

Ms. Hackett announced that 40% of the boards budgeted funds had been expended as of the beginning of June.

Mr. Willard brought up that the ZBA should have its own lawyer, according to a recent case supreme court he had heard about; the Selectmen don't have the authority to negotiate for the ZBA. Ms. Baldwin & Mr. Willard will look up the case.

Discussion on applications to ZBA determined that applications will not be accepted unless there is a septic plan and/or site plan including all buildings (existing & proposed), including all dimensions and setbacks. The applicant is responsible for directions to the site as well as stakes and ribbon marking vacant property.

The conditions of the ZBA decision at 19 Province Road needs to be checked.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 8:32 PM

Respectfully submitted,

Annette Andreozzi, Land Use Clerk