

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 21, 2010 – 7 PM.
ACADEMY BUILDING
MINUTES

Chairman Hackett called the meeting to order at 7:04 PM.

Members attending: Elizabeth Hackett, Carolyn Baldwin, Israel Willard, Ron LaBelle, and Wayne Gray (alternate).

Member not attending: Paul Levesque.

Also in attendance: Annette Andreozzi, Land Use Clerk.

APPROVAL OF MINUTES – September 16, 2010

MOTION: Ms. Baldwin moved to approve the minutes of the September 16, 2010 meeting. Seconded by Mr. LaBelle. **Motion passed unanimously.**

The Chair advised Mr. Grimard of options related to the fact that there were only 4 members present. He stated that he would like to have his application heard this evening.

The Chair made introductions and explained the ZBA procedures further.

Public Hearing Case # 14-2010 Robert Grimard, owner applicant:

Request for Variance from Article IV Table 2 to place a shed, on cinder blocks, 60 feet from the edge of Shellcamp Pond, setback requires 75 feet, and 8 feet from property line, setback requires 20 feet. Property located at 107 Lakeshore Drive in the Rural Zone; Town Map/Lot # 132-1.

Mr. Grimard stated that the shed would be 18 feet from the lot line not eight feet. The clerk reviewed the application and said that Mr. Grimard was correct and that there had been a typo in the notice.

Mr. Gray entered at 7:09 PM and was seated as a voting member.

Mr. LaBelle asked if the shed in question was the one now near the road on the property. Mr. Grimard said yes; it will be moved to the left side of the house.

Ms. Hackett stated that the property has one shed on the right side and the applicant plans to move the one from the road next to the trellis on other side of house.

Mr. Willard asked the applicant if he knew that he needed a permit. Mr. Grimard said he didn't know sheds were included in permitting.

Ms. Baldwin said that she went by the property and there was a large temporary hut like

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garage. She asked what would be happening with that. Mr. Grimard said that it will probably stay. Ms. Baldwin indicated that there is the temp garage and another shed already on the tiny lot. She questioned the legality of the temp garage.

There was discussion about temporary structures all around town. Some have concrete pads making them more permanent. Mr. LaBelle was also concerned about the temporary garage on the site. Ms. Hackett said that the matter of the temporary structures will have to be addressed through the zoning ordinance with the planning board, but right now the ZBA needs to address the issue of the shed.

Mr. LaBelle moved to close Public Hearing Case #14-2010 Robert Grimard, owner applicant. Seconded by Mr. Willard. **Motion passed unanimously.**

DELIBERATIVE SESSION:

Case # 14-2010 Robert Grimard, owner applicant:

Ms. Baldwin said she had no problem with the shed, but has a concern with the temp garage being on the property.

There was discussion about what makes a structure temporary, and the fine line of definition between temp and permanent. Also the length of time something can be temporary.

Ms. Baldwin stated that the spirit of the ordinance was not to have any structures in the setbacks.

Mr. Willard was against granting the variance because the lot is full with the temp garage that is not coming down and other shed, unless the Board makes a condition that the garage is removed.

MOTION: Mr. LaBelle moved to grant a variance in Case # 14-2010 Robert Grimard, owner applicant: Request for Variance from Article IV Table 2 to place a shed, on cinder blocks, 60 feet from the edge of Shellcamp Pond, and 18 feet from property line. Property located at 107 Lakeshore Drive in the Rural Zone; Town Map/Lot # 132-1.

- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection; one abutter sent a letter stating he had no issues;**
- b. The spirit of the Ordinance is observed because the applicant has limited space for storage, and keeping stuff in the shed will be keep the property neat;**

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- c. By the granting of the variance, substantial justice will be done because there is limited space for storage;
- 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 because he has already purchased the shed, the small size of the lot, there will be minimal encroachment, and the desire to keep the neighborhood tidy.

CONDITIONS: Removal of the non-conforming temporary garage/shed.

Ms. Baldwin seconded the motion.

Mr. Gray asked if the applicant could reject the variance and keep the garage. He was told that could happen. He stated that he was voting no because he didn't agree with the condition.

Vote was 4 in favor, one opposed. Motion passed.

Ms. Baldwin told the applicant that he could appeal the decision within 30 days.

OTHER BUSINESS

There was discussion about adding to the ZBA Procedures for a case that received a 2-2 vote. The following wording to be added was agreed on.

Decisions.

- a. RSA 674:33 III states "The concurring vote of 3 members of the board shall be necessary to reverse any action of the administrative official or to decide in favor of the applicant on any matter on which it is required to pass." For this reason, the Board will make every effort to ensure that a full five-member Board is present for the consideration of any application.
- b. A tie vote (2 in favor, 2 opposed) shall be deemed a denial of the application or appeal. The Board shall advise the applicant that he may either:
 - Appeal for rehearing as provided by RSA 677:2 **OR**
 - Submit a new application, taking into consideration the concerns expressed by the Board in its deliberation.[1]
- c. In its sole discretion, the Board may agree to waive the application fee. However, cost of notice to abutters shall not be waived.

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[1] Fisher v City of Dover, 120 N.H. 187, states: "When a material change of circumstances affecting the merits of the application has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of [a second] petition."

Motion: Made by Ms. Baldwin to vote on the additional procedure at the next meeting. Seconded by Mr. Willard. All in favor.

Ms. Hackett informed the Board of the meeting that the selectmen called with the Chairs of ZBA & Planning and their clerks.

She explained that the reason for the meeting was that 3 applications that came before the ZBA and were granted variances will need to go to Planning. The Planning board felt that enough wasn't done to let applicants know that they might have to get approval from the Planning Board. She read from Selectmen's minutes of October 7, 2010. Some relevant information was left out of the Selectmen's minutes i.e. that it is the applicant's choice to have or not have a joint meeting; that the applicant does not always have additional plans when they appear before the ZBA; and that the applicants have been told that they may need other approvals for their project.

A checklist has been made up for the office, making an application sign off from many departments. The ZBA has to be proactive with applicants about what the applicants need to do.

The Board concurred that Ms. Hackett should write a letter to the Selectmen stating the important things that were left out of the minutes.

Discussion of suggested changes to the Zoning Ordinance.

A discussion occurred. It was decided to give more thought to possible changes and continue discussion at the next meeting.

The LGC annual meeting was announced. The clerk will send the information link to board members.

ADJOURNMENT: Motion made by Mr. Willard and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 8:52 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk