

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

The joint meeting of the Planning Board and the ZBA was called to order by Planning Board Chair, Nancy Girard at 7:02 PM.

Members of the ZBA in attendance were Chair Elizabeth Hackett, Israel Willard, Ron LaBelle, and Wayne Gray (alternate). Member Paul Levesque was absent.

Members of the Planning Board in attendance were Nancy Girard, John Funk, Dave Russell, Marty Martindale, Dan Hudson, John Weston, and Rachel Hatch(Selectmen's Rep.)

Also in attendance were Land Use Clerk Annette Andreozzi, Planning Clerk Desiree Tumas and Contract planner Mark Fougier.

The Chair made introductions and explained the procedures of the meeting.

The ZBA voted to seat Mr. Gray as a full member of the Board.

Mr. Willard was voted as vice chair.

Ms. Hackett reiterated that the board has only 4 members tonight and the applicant will need 3 positive votes. Mr. Cook, Case #03-2011 applicant rep, accepted that only four members will hear the case.

OLD BUSINESS

Continued Joint Public Hearing – ZBA Case # 03-2011 Planning Case# 0511 GMR Holdings of NH LLC, applicant, Christopher Hottel, owner (Tax Map 411, Lots 27 & 28) - have applied to the Planning Board for Site Plan Review in which they seek approval to construct a 120' multi-tenant monopole wireless telecommunications facility within a 60' x 60' fenced compound area. Proposed accessed by an approximately 700' long and 10' wide gravel driveway. A Special Exception from ZBA is required by Gilmanton Zoning Article III-K4c(2)(b) to be able to erect a Class 2 Cell Tower in area 4. Property located at the end of Copp Road in Gilmanton, in the Rural Zone, Map/Lot # 411-27.

Mr. Cook said that there had been a meeting with the Gilmanton road agent, and the information is now in the file, including modified drawings. Additional specs relating to

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

the generator were also included in the file. The sound level 150 feet from the generator would only be 53db. He was informed that the Gilmanton Fire Chief would like the driveway to be widened to 20' with a turn around. Mr. Cook asked if the ZBA would like to continue the meeting or hear the conditions relevant to a special exception.

Mr. Willard asked why the tower could not meet the town setback requirements. Mr. Cook did not feel that the requirements apply, since both parcels are owned by the same person. He said that if the tower was moved the trees that will hide the compound from the possible home site would be removed.

Mr. Willard said shrubs could be replanted to that effect. Mr. Cook will bring that to Mr. Hottel's attention.

Mr. LaBelle asked why they were not using a tree like taller pole, which would accommodate more co-locators.

Mr. Cook said that the Hottels did not want that. He also felt that they would not need more than 120 feet for any co-locators.

Mr. Funk asked if there was an agreement with the Hottels to not go over 120 feet.

Mr. Cook said it was more like a handshake. He couldn't justify 140 feet, and did not see other carriers in the market place that need the height. More antennas are to be expected on the 120' pole because there can be co-locators.

The meeting was opened to public comment.

Mr. Hudson stated that the NFPA requirement for a 20' wide driveway caught him off guard. He would like to see the code.

Ms. Tumas stated that 20' allows access for emergency vehicles and the fire department would like to the standard to be applied.

Ms. Hatch reminded that the Hottels have said that they want to build house off that driveway.

There was a discussion by the planning board on roads for open space subdivisions.

Mr. Cook said that there isn't a lot there to burn on the lot, but he could see a need to get an ambulance to a hiker. He said that they typically do 10-12 foot wide driveways.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

MOTION:

Mr. Gray moved to continue Joint Public Hearing –Case # 03-2011 GMR Holdings of NH LLC, applicant, Christopher Hottel, owner to June 16, 2011 at 7 PM.

Seconded by Mr. Willard. **Motion passed unanimously.**

The ZBA recessed at 7:30 PM from the joint meeting and reconvened at 7:40 PM in the conference room. Applicants from both new cases were present.

NEW BUSINESS

Ms. Hackett introduced the Board members and stated that there were 4 members available for the Board and that an applicant would need 3 affirmative votes for a positive decision. She stated that in both cases the applicants can state that they would like to have a full 5 member board. If an applicant did want to be heard by a 5 member Board, then their hearing would be continued until next month. It is totally up to the applicants. She then explained the procedures for how the hearing would operate.

Public Hearing Case # 06-2011 – Abigail Renkert & Joy Smith request an appeal from an administrative decision by the Building Inspector, that they cannot put a roof on their deck because ZBA decision # 04-2006 states, "that at no time will the decks be enclosed and utilized as living space." Property is .28 acres located in the Rural Zone at 49 Leatherstocking Lane, a class 5 road in Gilmanton, Map/Lot # 133/12.

Ms. Smith stated that they want to put a roof over their porch.

Ms. Hackett said that the Variance granted in 2006 had restrictions. She read the 2006 decision. She asked what they wanted a roof for.

Ms. Smith said they wanted a roof for protection from snow, and she wanted to have screens and windows.

Mr. Willard stated that they were perfectly happy with a deck with no roof, and asked what else other than shoveling snow a roof would be needed for.

Ms. Smith said that the first time she was before the ZBA she asked for a roof, at that

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

time she didn't know what options she had.

Ms. Renkert stated that they never put on the deck that had been requested. The deck that they presently want a roof over was already on the house at that time.

There was a discussion about what happened on their property. They had moved the house on the lot to make the house more compliant with the Zoning setbacks. They presently want to make a porch out of the deck that was attached to the house.

Ms. Hackett read the Gilmanon Zoning definition of a deck, and explained why the Board is cautious in relation to decks.

Ms. Smith asked if the screening would be a problem.

Ms. Hackett explained that would be determined by the outcome of the meeting.

There was discussion and clarification about the new section of the zoning ordinance related to this case.

Mr. LaBelle moved to close Public Hearing Case #06-2011 – Abigail Renkert & Joy Smith. Seconded by Mr. Willard. **Motion passed unanimously.**

Public Hearing Case # 07-2011 – Brandon Deschuiteneer request a special exception for a contractor's yard in the Rural Zone. Property is 2.32 acres at 296 Sargent Road in Gilmanon, Map/Lot # 405/64.

Tom Varney, representing the Deschuiteneers, stated that the applicants live at the property where they operated their landscape business. All their equipment and materials are stored in sheds, employees park their vehicles on site, and the plan is to build another shed for other equipment. Customers do not come to this site. He referenced the site plan site and pictures that are part of the file. The business is already operating from the property, but landscaping work is not done on the property. There is a plan to move the present sheds away from wetlands.

Ms. Hackett asked how far from the wetlands the sheds would be.

Mr. Varney stated that the present sheds would be removed and the new shed would be 50 feet from the wetlands. The driveway around the house would go to the new

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

structure, away from wetlands.

Mr. Gray asked if the driveway would come off Mr. Thompson's land. Mr. Varney said no.

Ms. Hackett thanked the applicant for submitting pictures, which are very helpful.

Matt Tarr, who lives across from applicant, stated that he has no problems with the application.

Jerry Spaulding, an abutter, stated that he supports the application.

Dayne Thompson, an abutter, said he was ok with the business and that they do a good job.

Buzzy French, who live up the road, said that he supports the application.

Mr. Deschuiteneer stated that he owned a small landscaping business, and they have operated for several years with no complaints.

MOTION:

Mr. LaBelle moved to close Public Hearing Case ## 07-2011 – Brandon Deschuiteneer
Seconded by Mr. Gray. **Motion passed unanimously.**

DELIBERATIVE SESSION:

Case## 06-2011 – Abigail Renkert & Joy Smith

There was a discussion about the change of Zoning Article VII in March by town vote. Mr. LaBelle added that many things the ZBA ruled on in the past are no longer applicable, and wondered how the ZBA would handle that.

Ms. Hackett stated that an application will have to come before the ZBA.

Mr. Gray stated that the new ordinance says that the applicant can put on their roof. He read Article VII C-2.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

Ms. Hackett said that the article stated that the applicant can enlarge their structure not put on a deck.

Mr. Gray stated that they were only putting on a roof. They can meet the setback, so they could remove the deck and add on a room. The present deck is within setback.

Ms. Hackett stated they the applicant was before the Board because the variance they were given has the condition that the decks were not to be enclosed. Now, by town vote, they could put on a roof, so should the Board override its previous decision.

Mr. Gray asked the Clerk if the Board could erase the previous decision and override it.

Ms. Andreozzi stated that the Board could achieve the goal of overriding the previous decision, but the original decision could not be erased.

Mr. Gray said that the reason for his question was to find out what the board can do, because this is going to come up again. He is not comfortable with giving permission for something that might be requested in the future. The Board should only permit what the applicant asked for, a roof over the existing deck.

Ms. Hackett stated that the definition of a deck is that it has no roof.

Mr. LaBelle said that he could see both sides. Many conditions that the Board has included on decisions are up for changes.

Ms. Hackett indicated that the change was made by the town vote.

Mr. Gray reiterated that if the applicant requested a permit to demo the deck and add on a room, the permit would be granted.

There was a discussion and disagreement about what the applicants could or could not do under the new ordinance.

MOTION:

Mr. Gray moved in Case # 06-2011 – Abigail Renkert & Joy Smith , to override the administrative decision of the code enforcement officer to not allow a roof over the present deck, since the present Zoning Ordinance would allow the owners to put a roof over their deck, or remove the deck and start over. The applicants meet the present requirements of the Zoning Ordinance Article VII-C-2.

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

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

Case # 07-2011 – Brandon Deschuiteneer

Ms. Hackett stated that the Board has heard testimony from the applicant and support from abutters. The abutters said the applicant was a good neighbor.

Mr. Willard said that he had a problem with the applicant asking for a contractors' yard. If the ZBA allows this contractors' yard in the rural area they will be flooded with requests to have contractors' yards. A landscaping business is different. The ZBA denied a contractor's yard on High St. and Bean Rd.

Ms. Hackett said that the contractor's yard on High St. was opposed by abutters, and caused traffic problems.

Mr. Gray felt that the better description of the business is the contractors' yard under ordinance definition on page 16-3, which Mr. Gray read. A contractor's yard has no retail.

Mr. Willard said a yard is allowed to store building supplies.

There was a discussion on contractor's yards and what might happen in the future versus landscaping and the definitions in the ordinance.

Ms. Hackett stated that this is where the applicants live. The abutters have said that the yard is kept neat. The Board can only vote on what is before us, not on what might come down the road.

MOTION:

Mr. LaBelle moved to grant a special exception in Case # 07-2011 – Brandon Deschuiteneer for a contractor's yard in the Rural Zone. Property is at 296 Sargent Road in Gilmanon, Map/Lot # 405/64.

- a. The site is appropriate for the use because it is currently being used as a landscaping yard, the owners will be improving the site, and they are aware of the wetlands;**
- b. The use as developed will not adversely affect the neighborhood, because it is in the middle of nowhere, and the 3 abutters present expressed support for the application;**
- c. Adequate & appropriate facilities will be provided for the proper operation of the proposed use, as overseen by the Gilmanon Planning Board;**
- d. No nuisance or hazard has been shown to being created.**

Seconded by Ms. Hackett.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MAY 12, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

Mr. Gray expressed concerns about possible future expansion.

There was a discussion about what the Planning Board would oversee, if the ZBA wanted to condition the motion with allowed hours of operation, and what the hours might be.

Mr. Gray said that the ZBA had not heard from the public about hours of operation and the Board should not make that decision at this time.

Vote on the motion was 2 to 2. Application is therefore denied, based on the “ZBA Rules of Procedure”.

APPROVAL OF MINUTES

MOTION: Mr. Willard moved to approve the minutes of the April 21, 2011 meeting as amended, seconded by Mr. LaBelle. Motion passed unanimously.

OTHER BUSINESS

A request was made for copies of the Fire Chief’s statements relating to the cell tower driveway.

ADJOURNMENT: Motion made by Mr. LaBelle and seconded by Mr. Willard to adjourn, vote passed unanimously. Meeting adjourned at 9:17 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk