

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, JUNE 16, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

The joint meeting of the Planning Board and the ZBA was called to order by Dave Russell 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 Dave Russell, Marty Martindale, Dan Hudson, and Rachel Hatch (Selectmen's Rep.)

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

Introductions were made, and the procedures of the meeting explained.

Mr. Gray was seated as a full voting member of the ZBA Board.

Applicants of both joint cases were present.

Ms. Hackett informed the applicants that the ZBA Board had only 4 members this evening and the applicant will need 3 positive votes to carry a decision.

Mr. Cook, Case #03-2011 applicant rep, accepted that only 4 members would hear the case.

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 stated that last month's meeting was left hanging relating to the fire department's request to widen the access road. The Fire Chief has flexibility in the

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requirements for the road, and has decided that a cleared way, a minimum of 15 feet wide, will be acceptable with a hammerhead turn around area. An updated set of drawings had been distributed to Board members and included in the file. Mr. Cook restated the general Special Exception criteria that was listed on his initial cover letter, dated 2/28/11:

1. The site is an appropriate location because it is located within the cell tower district outlined in the ordinance
2. Site as developed will not adversely affect the neighborhood due to set backs provided, and the overall size & heavily wooded nature of the lot
3. Adequate & appropriate facilities will be provided for proper operation of the use, because the tower will be engineered to meet all standards
4. A safer environment is provided due to increased cell service.

He then stated the additional criteria required by the ordinance for a cell tower:

The tower placement is in the only area that meets all the criteria,
There are no other towers that can provide the coverage,
The tree growth would be maintained,
Tower will be set back 1000 feet from the road, will not exceed the height limit,
will be constructed to allow for expansion, and will not be within 2000 feet of another facility,
Equipment shelter will comply with the ordinance,
Co-locators are provided for,
There will be a small area in front of the driveway gate for someone to turn around if they can't go through the gate.

Mr. Cook requested a waiver of the 125 percent fall zone requirement. He stated that the ordinance allows for a 75 percent reduction of the fall zone. The tower is planned to be 121 feet from the property line, which is only a 25 percent reduction of the fall zone. The tower was engineered to collapse. The location selected takes best advantage of the site and existing trees. Moving the tower would put it closer to existing homes. Trees and under story will be mostly preserved.

There were no public comments.

MOTION:

Mr. LaBelle moved to close Public Hearing Case # 03-2011 GMR Holdings of NH LLC, applicant, Christopher Hottel, owner.

The motion was seconded by Mr. Gray. **Motion passed unanimously.**

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Joint Public Hearing – ZBA Case # 08-2011 Planning Case# 0611 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners: Requests Variance from Article IV Table 2 to create two buildable lots both of which will lack the required 200 feet of road frontage. The Applicant has also applied to the Planning Board for Subdivision, in which they seek approval to subdivide the 38-acre parcel. Property located on 117 Crystal Lake Road in Gilmanton, in the Rural Zone, Map/Lot # 415-29

Mr. Willard & Mr. Gray recused themselves, because they had not picked up the information on the case before that evening.

MOTION:

Mr. LaBelle move to continue Case # 08-2011 to the next month's ZBA meeting due to lack of a quorum willing to hear the case.

Mr. Willard seconded the motion. **The motion passed unanimously.**

The ZBA recessed at 7:40 PM from the joint meeting and reconvened at 7:46 PM in the conference room.

Applicants Deschuitneer, Farris, & Lavin were all present.

Ms. Hackett stated that there were 4 members available for the Board and that an applicant would need 3 affirmative votes for a positive decision. If an applicant wanted to be heard by a 5 member Board, then their hearing would be continued until next month; it would be totally up to the applicants. She then explained the procedures for the operation of the hearings.

APPROVAL OF MINUTES

MOTION:

Mr. LaBelle moved to approve the minutes of the May 12, 2011, meeting as amended. Seconded by Mr. Gray. **The motion passed unanimously.**

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Case #07-2011 Brandon Deschuitneer, owner: Requests a rehearing under RSA 677:2, of Gilmanton ZBA Case # 07-2011, decision made on May 12, 2011, regarding land use for a contractor's yard. Property located at 296 Sargent Road in Gilmanton, in the Rural Zone, Map/Lot # 405-64.

Ms. Hackett explained that a request for a rehearing was a little different from regular ZBA cases. In rehearing requests there would be no public input. The Board would decide to grant a rehearing, after considering the evidence that has been submitted. If the Board determined that the submitted evidence contains new information, that wasn't heard at the hearing, or something was overlooked, or if there was a point of law to consider, then the Board would grant a rehearing. At the time of the rehearing then there would be public input.

Mr. LaBelle referenced the statement that Mr. Deschuitneer was not asked if he wanted to be heard by a 5 member Board. Ms. Hackett stated, that was not a point of law, but that is a practice of the Board.

Mr. Willard said that he didn't see any new information. Mr. Gray agreed.

Ms. Hackett explained to the applicant that the Board needs information that the Board hadn't heard before, or something that the applicant did not say, or a reference to a point of law.

She said to the Board that there had not been an operation plan in the original hearing. Mr. Willard stated that the information in the operation plan was not new. Mr. Gray said that he reviewed the letter and did not see anything new. Ms. Hackett stated that the Board had discussed the information that was listed in the operation plan.

Mr. Gray said that he had not known the hours of operation, but he didn't feel the hours were of concern to the public that had been at the meeting.

Mr. Varney broke into the Boards discussion, stating that his client would like to request a 5 member board to decide on the rehearing, and he would like the determination to be continued.

Ms. Hackett stated that at the applicant's request the decision for rehearing in Case #07-2011 Brandon Deschuitneer, owner would be continued to the July 21, 2011 meeting of the ZBA.

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Continued Public Hearing Case#05-2011 – Norman Maryea, owner: Requests Variance from Article IV Table 2 to build a house on a non conforming lot of 1.1 acres and on a private road. Requirements are 2 acre minimum with some frontage on a class 5 road. Property located at the end of Arrowhead Lane and Warbonnet in Gilmanton, in the Rural Zone, Map/Lot# 132-113.

The clerk informed the board that Mr. Maryea would like to continue his hearing to July 21, 2011 as he was still working on information for the Board.

Mr. Willard stated that the Board should not hear the case because he did not have a site plan or a septic design.

MOTION:

Mr. Willard moved, that provided that the Board had a septic design from the state and a plot plan, and that the roadway was travelable, Public Hearing Case# 05-2011 – Norman Maryea, owner, would be continued to the July 21, 2011 meeting of the ZBA.

Mr. Gray seconded the motion. **The motion passed unanimously.**

Public Hearing – ZBA Case #09-2011 Jeffrey W. Farris, owner: Requests Variance from Article IV Table 2 to construct a single family residential dwelling on a non-conforming lot of 5.22 acres with 325 feet of frontage on a class 5 road. Conservation Zone requires 10 acres & 400 feet of frontage. Property located on Middle Route, in Gilmanton, in the Conservation Zone, Map/Lot# 405-19.

The clerk explained to the Board that under the new Zoning Ordinance the amount of frontage is not in question for this application.

Mr. Willard & Mr. Gray recused themselves. Ms. Hackett explained, that a minimum of three Board members were required to hear a case.

Mr. Farris asked the Board if they had everything that they required to hear the application.

Mr. Willard suggested that a map with the well placement must be submitted to the ZBA.

There was an interruption by a man, who did not identify himself, stating that the case

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should not be before the ZBA because the ordinance allowed building on non-conforming lots.

Ms. Hackett explained that no information could be taken by the Board relating to a case that the Board was not in the process of hearing.

Mr. Gray stated that the man should take his complaint to the Board of Selectmen or the Planning Board.

Public Hearing – ZBA Case #10-2011 Ralph Lavin, owner: Request Variance from Article IV Table 2. A barn was built in 2004, with a Building Permit, within the 50' wetland setback. Property located at 753 NH Route 140, Gilmanton, in the Rural Zone, Map/Lot# 414-5.

Mr. Lavin said he would go with a four member board. He stated that the Planning Board has requested changes in his plan so that even the one he presented was not complete. He explained his history with the Planning Board, and that he has a conditional approval for running a sawmill out of his barn. He talked about those conditions.

Mr. Willard said the ZBA did not need to hear about the wood processing, but whether the barn was too close to the wetlands. He noted that the former building inspector signed off on the barn.

Ms. Hackett asked if the barn was within 50' of the wetlands.

Mr. Lavin answered yes; the barn was about 25' from the wetlands, but that his wood processing was not going to additionally affect the wetlands.

Mr. Gray asked how close the wood processing area was to the wetlands.

Mr. Lavin said that the area was more than 50 feet away from the wetlands.

There was no one from the public that wished to speak to the case.

MOTION:

Mr. Gray moved to close Public Hearing Case #10-2011 Ralph Lavin, owner. The motion was seconded by Mr. LaBelle. **The motion passed unanimously.**

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DELIBERATIVE SESSION:

Case # 03-2011 GMR Holdings of NH LLC, applicant, Christopher Hottel, owner

Ms. Hackett stated that the Fire Chief had concerns about the driveway, but he and the applicant came to an agreement. The ZBA was concerned that the fall zone did not meet the standards of the ordinance in relation to property lines.

Mr. Gray stated that the ZBA was only concerned with the setbacks, everything else was the concern of the planning board. The questions were why couldn't the tower pole be moved or the property line between the 2 lots be moved. He stated that the owner had many reasons why he did not wish to take the ZBA's concerns into account. After looking at the map for the Hottel's other lot, Mr. Gray said he understood that they wouldn't want to move the lot line because the other lot has little frontage.

Mr. LaBelle said that Mr. Cook said if the tower was moved to meet the fall zone it would be closer to properties on Copp Road. Mr. Willard didn't think it would be closer to anyone except the Hottel's building lot.

Mr. Gray said the Hottel's are asking for the waiver and the only reason they don't want to move it is they feel that they have one piece of property, therefore the exception doesn't apply, and it would interfere with their future use. Ms. Hackett stated that the Hottel's own 2 pieces of property, though the tower enclosure would only be on one lot. Mr. Gray said that it was a legal issue and he must look at it as 2 pieces of property; the Hottels are asking the ZBA to overlook the fact that there are 2 pieces of property; and to treat it as one piece the properties would need to be merged and the lot line removed.

Mr. Cook interjected that the Planning Board had waived the fall zone requirement. Chair Hackett told him that no input could be taken from the public at this time.

There was discussion about the fall zone requirement of the ordinance, and if the ZBA and/or Planning board makes certain decisions, exceptions and/or waivers. The discussion continued about the way the ordinance was written and if the Planning Board could grant a waiver that eliminated the ZBA's determination that "the proposal is in accordance with the general & specific provisions of the ordinance, particularly the district regulations in Section K.4".

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The Clerk reminded the Board that the Federal time clock was running out and a decision needed to be made; the default would be approval for the applicant's application.

Mr. Gray said the ordinance fall zone is to protect an abutting property, and according to the ordinance the application has not met the required fall zone, and the applicant can move the pole or the property line can be moved. Ms. Hackett indicated that a property line adjustment has to go to back to the planning board. Mr. Gray said that the applicant was asked to do that at the first meeting.

Ms. Hackett indicated that if the tower would fall it could fall on the other property that the Hottels own, and there is nothing on the property for it to hit, so what difference would it make if it was moved 30 feet. Mr. Gray said at this moment it would make no difference, but if the abutting lot were to be sold the new owner would have to live with the problem.

Mr. Willard & Mr. Gray stated that they needed a reason why they should approve the fall zone.

Ms. Hackett said the application is being discussed because the site as proposed does not meet all setbacks. That appears to be a make or break deal with Mr. Gray & Mr. Willard.

There was further discussion about the applicant meeting the setbacks, and what would be required if a change was made to the location of the pole.

Desiree Tumas was asked to step in and read the Planning Board's decision. Desiree read from her staff report to the Planning Board about the ordinance and stated that the Board had approved a Fall Zone Waiver, based on Article III K-6i.

There was a clarification about the application meeting the Article IV Table 2 setbacks, but not the fall zone requirements. More discussion took place about which Board could grant a waiver, Article III K 4(6)(c)[3] giving the Zoning Board authority over the fall zone, what would happen if the two Boards vote differently, and the Planning board not waiting for the ZBA decision (which is what is usually done). It was agreed that the ZBA needed to make a decision as if they did not know what the Planning Board decided.

Ms. Hackett said if there is a new owner on the other property, they can put a house anywhere on the large property and avoid the fall zone.

Desiree stated that one of the Planning Board's conditions was that there would be a 150 foot no cut zone around the tower, so no house would be able to be built within the fall zone.

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Mr. Gray said that now the owner of the abutting lot has an even more restricted area in which to access the lot.

MOTION:

Mr. LaBelle moved to grant a special exception in Case # 03-2011 GMR Holdings of NH LLC, applicant, Christopher Hottel, owner to erect a Class 2 Cell Tower in area 4, a 120' multi-tenant monopole wireless telecommunications facility within a 60' x 60' fenced compound area, accessed by an approximately 700' long and 15' wide gravel driveway with hammerhead. Property located at the end of Copp Road in Gilmanton, in the Rural Zone, Map/Lot # 411-27.

- a. The site is appropriate for the use because it will be located in the approved sensitivity zone 1, area # 4 and it is the best site considered;
- b. The use as developed will not adversely affect the neighborhood because the nearest building is over 700 feet away and there will be minimal impact to surrounding properties;
- c. Adequate & appropriate facilities will be provided for the proper operation of the proposed use, as overseen by the Gilmanton Planning Board;
- d. No nuisance or hazard, considered relevant by the Federal Government is being created.

CONDITIONS:

The pole will be constructed grey above the tree line and brown below.

There will be a 150 feet no cut zone.

The requirement for a fall zone is reduced 25 percent.

The motion was seconded by Ms. Hackett. **Vote was 2-2. All applications need 3 votes in the affirmative; therefore the motion is denied.**

Public Hearing – ZBA Case #10-2011 Ralph Lavin, owner

Ms. Hackett stated that a barn had been built by the property owner with permission of the building inspector of the time.

Mr. LaBelle said that someone couldn't be penalized after the building inspector approved.

Ms. Hackett stated, when someone has done something based on a town ok, the RSAs

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allow the Board to grant, what is called, an equitable wavier of dimensional requirements.

Ms. Hackett read aloud a letter from an abutter, which is included in the file.

MOTION:

Mr. LaBelle moved to grant a variance in Case # 10-2011 Ralph Lavin, owner: from Article IV Table 2. A barn was built in 2004, with a Building Permit, within the 50' wetland setback. Property located at 753 NH Route 140, Gilmanton, in the Rural Zone, Map/Lot# 414-5.

- a. The granting of the variance would not be contrary to the public interest because the only stated objection was a letter from an abutter concerned about the logging business, but the variance is about the barn placement;**
- b. The spirit of the Ordinance is observed because barns & sawmills are allowable uses in the rural zone;**
- c. By the granting of the variance, substantial justice will be done because the applicant built the barn with a valid permit and was unaware that there were wetlands in the barn area;**
- 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 owning to the barn has already been built with a valid permit, and RSA 674:33-a allows the ZBA to grant an equitable wavier of dimensional requirements.**

AND

the proposed use is a reasonable one because sawmills are allowed in the rural zone, and the planning board has taken responsibility for seeing that the wetlands are not damaged; the owner has expressed that he will not further encroach on the wetlands with his new business.

The motion was seconded by Mr. Willard. **The motion passed unanimously.**

OTHER BUSINESS

Ms. Hackett expressed concern that the Personal Wireless Communication part of the zoning ordinance (Article III K) allows that both boards have approval to grant the same waivers.

There was a discussion about whether Mr. Farris needed a variance, and if the town vote of March 8, 2011, changed the acreage requirement for non-conforming lots. It was

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agreed that the new wording to Article VII allowed building on non-conforming lots of any acreage as long as they had some frontage on a class V road.

MOTION:

Mr. Willard moved to send Case #09-2011 Jeffrey W. Farris, owner back to the building inspector, referencing Article VII, and to return Mr. Farris's money.

The motion was seconded by Mr. LaBelle. **The motion passed unanimously.**

A request was made to mail all packets of the application information to members of the ZBA Board.

ADJOURNMENT: Motion made by Mr. Gray and seconded by Mr. Willard to adjourn. The vote passed unanimously. Meeting was adjourned at 10:20 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk