

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 18, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:03PM
Members attending: Elizabeth Hackett, Israel Willard, Paul Levesque, Ron LaBelle, and Wayne Gray (alternate).
Also in attendance: Annette Andreozzi, Land Use Clerk.

Wayne Gray was seated as full voting member for this session.

The Chair made introductions and explained the ZBA procedures.

Vote on application for Rehearing of Case # 03-2011 GMR Holdings of NH LLC, applicant, Christopher Hottel, owner:

Requests a rehearing under RSA 677:2, of Gilmanton ZBA Case # 03-2011, decision made on May 12, 2011, regarding a Special Exception 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. LaBelle asked if something needed to be said about why the special exception had been denied. The denial was related to the fall zone.

Ms. Hackett stated that in the future when a vote is a denial because a motion does not have a least 3 votes, a new motion needs to be made to deny with the reasons stated. The ZBA did not have the info about the collapsible tower. The Gilmanton Zoning Ordinance states that both Planning and Zoning can give a waiver.

MOTION:

Mr. Gray moved to grant a rehearing for Case# 03-2011 GMR Holdings of NH LLC, applicant, Christopher Hottel, owner to clarify exactly why it was denied the first time.

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

Continued Public Hearing –Case # 08-2011 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. Property located on 117 Crystal Lake Road in Gilmanton, in the Rural Zone, Map/Lot # 415-29

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Ms. Goulet bought the property in 2002 and Mr. Rague was working to subdivide. Everything the Planning Board and the State required was done. The owners realized that there was too much wetlands and ledge to do the subdivision that they wanted. They felt that the only thing they could do is create 2 buildable lots so the partners can divide the property. They did put in a well-built driveway. The Goulets have no plans to do anything with their section at present. They have spent a lot of money on the project that is not going anywhere.

Ms. Hackett stated that there were 38 acres and the applicants were looking to make 2 buildable lots, possibly with a house on each.

Ms. Goulet stated that they may do more agriculture, as they already have Christmas trees on the property.

Mr. Willard asked if there was a septic design.

Ms. Goulet said that test pits have been done.

Mr. Willard stated that the applicants were looking for 2 building lots, and how would they know if they could put in a septic system. The application requires a septic design.

Ms. Tumas, Planning Board staff, said that given the size of the lots, the State does not require any more than test pits. Test pits have been done on both lots. There is no local or state regulation that requires a septic approval for a subdivision.

Mr. Willard & Mr. Gray insisted that the ZBA application requires a septic design that has been approved by the state.

There was a discussion on where the test pits were on the plan, when they were done, and if they were out of date.

Mr. Willard asked if Ms. Goulet would accept a condition that no houses be put on the lots. She said no.

Ms. Hackett reiterated that the application was to create 2 buildable lots.

There was a discussion on what was presently on the lot.

Ms. Tumas read from the Planning Board minutes of September 13, 2007, that the firm of Hoyle Tanner did oversight on the plan for the original multi subdivision, including the test pits.

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Ms. Hackett indicated that information indicated that the test pits would still be valid now.

Mr. Willard stated that the application was incomplete.

Mr. Levesque said that the applicants are asking for 2 buildable lots with less than 200 feet of frontage; not to build a house. The Board is not granting permission to build a house.

There was a discussion about if a house could be built under the present Zoning Ordinance. Mr. Gray said the Board would be granting 2 building lots without all the information. Ms. Tumas asked the Board to remember that before a building could be built, a building permit would have to be obtained, the building inspector would not grant that before a septic design had been approved by the State. There was a discussion between Ms. Tumas and Mr. Gray and Mr. Willard relating to septic requirements.

Ms. Hackett stated that maybe the ZBA application form needed to be revisited.

MOTION:

Mr. Willard moved to continue Case # 08-2011 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners until September 15 and that the appropriate paper work be submitted with the application including a septic design approved by the State or valid test pit documentation.

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

Vote on application for Rehearing of 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 stated that the additional information received was a letter from Varney Engineering and the map showing another contractor in the area.

Mr. Willard said there are many cases in the past where someone came in and said my neighbor has so and so, and I want the same thing. He did not believe that there was a contractor yard on file for Busy French [the other contractor in the area].

Ms. Tumas stated that Planning Board application #2803 was a site plan for Mr. French

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on Sargent Road on September 18 2003.

Mr. Willard moved to grant a rehearing in Case # 07-2011 – Brandon Deschuiteneer for a contractor's yard in the Rural Zone on September 15, to show that the decision made was not unreasonable.

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

Continued Public Hearing Case# 12-2011 – David & June Matthews & Bay Timber & Conv Bldg Co, owners: request a special exception from Article IV Table 1 for a use to put a campground in the Rural Zone. Property located on Mountain Road at the Alton town line in the Rural Zone, Map/Lot# 105-14 & 15.

Ms. Hackett read into the record a letter dated June 22, 2011, a petition, and an email relating to the case. All are included in the case file.

Ms. Matthews said that the applicants would like to put up 7 yurts with no electric and no plumbing. There should be plenty of room for parking where the old building is presently located. The applicants will live next door, supervising the campground. They did not want loud parties or drugs.

Mr. LaBelle asked if there would be one per family in each yurt. Ms. Matthews said there would be a limit of 6 people per yurt. Mr. LaBelle said that could be 6 vehicles per yurt. Ms. Matthews offered to put a limit on the number of vehicles. There would be no motorized vehicles outside the parking lot, with the exception of a service vehicle and to groom the trails.

There was a discussion on what would be available for people to do if they stayed at the campground. Discussion continued on how showers, cooking, and composting toilets would work. Ms. Matthews said that there would be a grey water treatment planter for each yurt.

George Greathead said he was not in favor; the area is residential; yurts are a commercial enterprise closer to a hotel. There would be problems with grey water. One of the yurts is closer than 50' from the wetlands. People will stray into other peoples' land. There is not a good access point on the road. It will change the flavor of the area. It is not desirable.

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Elaina Ball stated that what is printed at the top of the petition covers the concerns of most of the people in the room. Mr. Ball said that during the summer Crystal Springs Condo becomes active and the Boy Scout camp, which add to the traffic; he objects. Mountain Road is only 20' wide with lots of curves; there will be an increase in traffic, trash and requests for services.

Eva Thurston was opposed because she walks with her daughter on the road, which is already bad in summer; she would like it to be a quite neighborhood.

Beverly Kindred was opposed because the grey water will go in the stream, which ends in Crystal Lake. She felt is would be a place for kids to get away and drink. Roger Kindred has walked in the area for years and loves the peacefulness; would hate for it to be spoiled.

John McCarther was concerned about open campfires, lighting, & noise pollution. He said that some yurts would only be 15 ' from his property line, and people would be on his property. He was concerned about septic, and having 42 people as neighbors. Sandy McCarther said that the stream runs though their property and people will come down stream to their property; they bought their property for privacy.

John Anderson was concerned with a portapotty in the parking lot, and people bathing in the brook.

Brian Fernadez said that there is not enough sun in the winter to power an outhouse. He had concerns about traffic. Michelle Fernadez wanted quietness, and was concerned about cutting down most of the trees, and the traffic.

Dave Wake was concerned about the short walk from their Association's beach.

Ms. Matthews stated that DES and town regulations were used for the placement of the yurts on the plan. The outhouse is only for people when they just arrive and cannot wait. She would be willing to post property limits, and would consider a lesser number of yurts. She would post rules and regulations. She wasn't sure how long it would take until the composting toilets could be up and running. They planned to only put 4 yurts up at first.

Mrs. Ball said the owners presently do not live in NH. Ms. Matthews stated that they own the house next to the campground property, where they would be living.

Ms. Hackett explained that the zoning ordinance allows campgrounds in the rural zone by special exception, which is why the owners are before the Board. The ZBA's concern is the use. If the use was granted the plan would go before the Planning Board where all the details that people were concerned about would be considered.

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George Greathead stated that if it was granted a commercial enterprise would be in the rural area.

John McCarther asked what would happen if it was granted, then the owners sell.

Ms. Hackett explained that anything granted would be recorded with the property's deed.

MOTION:

Mr. Levesque moved to close Public Hearing Case # 12-2011 – David & June Matthews & Bay Timber & Conv Bldg Co

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

Public Hearing Case# 13-2011– James N. Locke, Trustee

applicant, Lee Trust, owner: requests an appeal from an administrative decision by the Building Inspector, that the second story of a garage cannot be converted to residential purposes. Property located 41 Whispering Pines Road in the Rural Zone, Map/Lot# 106-13.

Mr. Locke told about the lot's history with the ZBA. A garage/ barn was built on the property and used as it was built, but things change. A septic system was already on the property because he has a toilet and sink in the garage. The top floor is under a gable, but they would like to put in dormers. He would like to put in a caretakers apartment because he can't do as much as he would like to. His attorney's office represented by Jen Hoover said that the building inspector denied the conversion but Mr. Locke meets the dimensions in Article IV Table 2. The inspector also denied it because it was on a private road and the ZBA had placed a restriction on the property that it could not be used as a residence. She stated that the ZBA could not put that restriction on the property so the inspector could not deny it. The property is on a private road where a new structure cannot be built, but this is not a new structure, and the inspector cannot use Article VII C-1 to require frontage on a class 5 road.

Ms. Hackett said that the existing structure was well built. Her understanding was that the former application was because Mr. Locke wanted a garage to house his toys and the restriction for no residence was because Mr. Locke had a house across the street.

Mr. Locke said that his house was on a water front lot, but he decided to put his garage on his other lot because it was small.

Ms. Hoover stated that there are no proposed changes to the existing structure.

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MOTION:

Mr. Willard moved to close Public Hearing Case # 13-2013 - James N. Locke
Seconded by Mr. LaBelle. **Motion passed unanimously.**

Mr. Levesque said that he felt the inspector made the correct decision, but the Board should review their decision to restrict Mr. Locke from creating a residence.

Ms. Hackett stated that the restrictions are there.

Mr. Willard agreed that Article VII C-1 was properly used by the inspector, and he felt that the only reason Mr. Locke had been granted a variance to build a garage was that Mr. Locke had stated that he didn't want living quarters in the garage.

Ms. Hackett said that the restriction was put in the ZBA variance because the Board wanted Mr. Locke to be able to use the lot but it was too small to grant a variance for living space.

MOTION:

Mr. Levesque moved to deny the appeal in Case# 13-2011– James N. Locke, Trustee applicant, Lee Trust, owner . **The decision of the Building Inspector to not allow the second story of the garage to be converted to residential purposes was correct based on the restriction on the property.**

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

Case # 15-2011 James N. Locke, Trustee applicant, Lee Trust, owner: Requests variance from the ZBA decision of 2/19/2004 to make a residence on the second story of the garage. Property located on Whispering Pines Road in the Rural Zone, Map/Lot# 106-13.

Mr. Locke wanted to make sure it was understood that they were not criticizing the building inspector; they didn't happen to agree with him; he was just doing his job.

Ms. Hoover stated that they would like relief from the existing ZBA restriction prohibiting a residence in the present garage. Mr. Locke wants to renovate the existing structure into a 2 bedroom single-family residence; there is already a septic on the property. Single-family residences are permitted in the zone. The area covenants limit uses to single-family residences only. The impact will be minimal. The building is already there. It is on

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a well-maintained road with adequate access. Building permits have been granted for other non-conforming lots on the road. The building in question is not attached to the Locke residence; it is across the street. Mr. Locke's health is an issue, so they would like living quarters for someone to care for him. By restricting the use of the property the ZBA would be tying it to the house and not allowing its separate sale.

Mr. Locke said that there are a number of these types of units already in Gilmanton. He is not going to rent it. He has a small house and did not want a caretaker living in the house if at all possible. The renovation would not be a big project.

Ben Love, the builder, said that he would put 2 dormers off the front on the existing building and one in the rear for egress. Mr. Levesque stated that the plan shows a deck. Mr. Locke said that was a safety thing. Mr. Willard stated that the footprint would change because a deck or dormer with steps is being added. Mr. Love said that there could be another type of second egress if a deck was not allowed. Ms. Hackett stated that the Board was looking at the plan as if there was an intention to build.

Greg Downing, abutter, was concerned that there was too much development on the road. He has seen a lot of changes on the road. If the garage was developed into an apartment, in the future a bigger road would be made. He feels it will be a full residence in the future, and someday the property will be sold to another person. There will be more traffic and more trash. Mrs. Downing expressed worry about what would be going in and out of the building, and the building itself.

Ms. Hoover stated that the existing restriction makes the lot of no value. Mr. Locke said it comes down to his constitutional rights, according to statutes the road meets requirements, the septic is already there. He did not feel it was the former Board's intent to restrict him from ever changing his mind.

Ms. Hackett said that speaking for herself the restriction was put on because Mr. Locke wanted a garage; it was not his residential area. She stated that his intended use has changed.

MOTION:

Mr. LaBelle moved to close Public Hearing Case 15-2011 James N. Locke, Trustee applicant, Lee Trust, owner.

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

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Public Hearing Case#14-2011 James N. Locke, Trustee applicant, Lee Trust, owner from Article VII Section C-1a to make a residence on a private road. Property located 41 Whispering Pines Road in the Rural Zone, Map/Lot# 106-13.

Ms. Hoover stated that Whispering Pines Road has been approved for building permits; there are 12 houses on the private road, adequately maintained by the Whispering Pines Association. The renovation is purposed for an existing building and consistent with the surrounding buildings. Clearly the Board's concerns about safety were covered in the past.

Mr. Locke stated that he has maintained the road personally. He has a proposal before the Association to upgrade the road, clean the ditches and berms. The Association can only fund so much of the road maintenance. There is a commitment from the Association for a certain amount of money for 3 years.

Ms. Hoover said that there is no other access to the neighborhood but Whispering Pines Road.

Mr. Downing said that all of his concerns for case 15-2011 are the same as for this case.

MOTION:

Mr. Willard moved to close Public Hearing Case 14-2011 James N. Locke, Trustee applicant, Lee Trust, owner

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

DELIBERATIVE SESSION:

Case# 12-2011 – David & June Matthews & Bay Timber & Conv Bldg Co, owners:

Ms. Hackett stated that as long as she has been on board she has never seen as many concerned people show up for a hearing. The ZBA needs to consider only the proposed use of this property and the impact that use will have.

Mr. LaBelle said that it is hard not to consider all the negative abutters.

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Mr. Willard said the information presented was lax. He stated that he needs more water than 5 gallons at his camp, that there isn't enough parking, and there is not enough information for a decision. There were 24 residents on Mountain Road that spoke against it. Questionable on the wetlands.

Mr. Gray said none of the above was of concern to him, that is building inspector and Planning Board issues. The lot is too narrow for the purpose of a campground. The neighborhood is saying that the campground will not fit in. The spirit of the ordinance is not to affect the neighborhood. It can't fit on the lot without effecting the neighbors. An exception is being asked for that affects the land and neighborhood. Not a good use for the land; it is too wet, too narrow, and neighbors are opposed.

MOTION:

Mr. Levesque moved to deny a special exception for Case# 12-2011 – David & June Matthews & Bay Timber & Conv Bldg Co, owners: from Article IV Table 1 for a use to put a campground on Mountain Road. It would seriously affect the neighborhood. Case in point, there are many people on the road that would be affected that have voiced their opinion against it. Adequate & appropriate facilities have not been provided for the operation; there are a lot of missing things. All the problems that will come up have not been addressed. The Board is not convinced that their homework has been done. There will be a nuisance and hazard probably created. The applicant can't tell the ZBA what kind of people will come and stay or what they will do to the environment. There are too many structures for the small lot. Parking has not been addressed adequately. If the applicants are successful there will be too many cars and too many people for the area.

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

Case # 15-2011 James N. Locke, Trustee applicant, Lee Trust, owner from the ZBA decision of 2/19/2004 to make a residence on the second story of the garage. Property located 41 Whispering Pines Road in the Rural Zone, Map/Lot# 106-13.

MOTION:

Mr. Gray moved to deny a variance in Case # 15-2011 James N. Locke, Trustee applicant, Lee Trust, owner because the owner, himself, agreed to this, therefore

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the spirit of the Ordinance will be adversely affected if the Board overturns this. As concerning to restricting the value of the property and the use of it, do not see how that can happen as there are other neighbors that would like to own a barn with a bathroom in it with waterfront property. Do not believe granting this variance will substantially improve the neighborhood; will adversely effect the neighborhood with more traffic by adding another house to an existing private road.

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

Case#14-2011 James N. Locke, Trustee applicant, Lee Trust, owner
from Article VII Section C-1a to make a residence on a private road. Property located 41 Whispering Pines Road in the Rural Zone, Map/Lot# 106-13.

Ms. Hackett said her concern was in Article VII C-1 for a new residence. In this case a new building is not being created, but the applicant wants to create a new residence.

Mr. Gray stated the Mr. Locke made the decision to accept an earlier ZBA's decision at that time, so he restricted the use of his property, not the ZBA.

Ms. Hackett said that Mr. Locke is not being restricted from having a residence on Whispering Pines Road; he has one. Mr. Locke wants to create a second residence; they currently have a 3 bedroom 2 bath home. The 2 properties can be sold separately. Mr. Gray said that the remodeling of the storage barn to a residence will change the impact of the rural charm by adding another family, and Mr. Locke said that maybe his granddaughter will use it.

Ms. Hackett was concerned with where the new residents would park.

Mr. Gray stated that the previous variance was granted because Mr. Locke agreed to restrict the use of the property. If the Board approves the variance the drawing in the new application would be legal (including the expansion of the footprint).

MOTION:

Mr. LaBelle moved to deny a variance in Case # 14-2011 James N. Locke, Trustee applicant, Lee Trust, owner from Article VII Section C-1a to make a residence on a private road. Property located 41 Whispering Pines Road in the Rural Zone, Map/Lot# 106-13.

- a. The granting of the variance would be contrary to the public interest because it would add to over crowding of the private road;**

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- b. The spirit of the Ordinance is not observed because he was willing to agree to the restriction of not having a residence there for the sole purpose of having a storage barn built so he could place his toys in it;
- c. By the granting of the variance, substantial justice will not be done because abutters are concerned with parking, more people, and changing the overall private association;
- d. There would be no unnecessary hardship to the property owner because he already has a residence;
- e. There would be no injustice to the property owner because he already agreed to the previous variance and restrictions.

Mr. Gray seconded. **Motion passed unanimously.**

OTHER BUSINESS

Ms. Hackett pointed out the copies of the ZBA current year expenditures. She addressed the letter from the selectmen indicating the Board cannot make there own appointments. She called the LGC and got the same answer.

Mr. Gray inform the Board that he was resigning for personal principle, but that he was willing to show up for all the continuing cases that he has sat on so far.

Submitted by,

Annette Andreozzi, Land Use Clerk