

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, SEPTEMBER 15, 2011 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:04 PM
Members attending: Elizabeth Hackett, Israel Willard, Paul Levesque, & Ron LaBelle
Absent member: Wayne Gray (alternate)
Also in attendance: Annette Andreozzi, Land Use Clerk.

The Chair made introductions and explained the ZBA procedures. She explained that any applicant may request to continue their hearing if they wish to have a 5 member board because 3 positive votes are required for every decision motion.

Rehearing of Case # 03-2011 GMR Holdings of NH LLC, applicant,
Christopher Hottel, owner; rehearing of 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.

Steve Grill, an attorney representing the applicant, stated they will proceed with 4 Board members. He did not wish to repeat everything that had been presented at prior meetings because it was included in the file, but would if the Board requested. He stated that the Law provides special status for wireless facilities, and Towns have to give companies a reasonable chance to provide service. There is a coverage gap in the part of Gilmanton that the applied for tower will cover. The site is the only feasible site for this coverage. Peter Cook, representing the applicant, showed the area on the map the company will be leasing and stated that this site minimizes the visual impact of the tower. Mr. Grill thought the big issue for the ZBA was the tower fall zone. The ordinance as he understood it allows the Planning Board OR Zoning Board to wave a percentage of the fall zone. The tower is built in sections; it is designed to fall in sections if it fails. Since the fall zone is designed to prevent damage to a neighboring property and the "neighbor" in this case is the same as the owner Mr. Grill felt that all set backs were met. Twenty percent of US homes do not have land lines so technology has become a necessary public benefit. The Gilmanton Police department will be able to have their antenna on the tower. The specific criteria for the special exception are detailed in the information provided to the Board.

Mr. Levesque asked what the new information was.

Mr. Grill contended that there was an error made by the Zoning Board in that the waiver issued by the Planning Board should have been sufficient to grant the applicant the special exception, and that under Federal statute the Board is required to make their decision more specific.

Mr. Willard said that the fall zone is 29' short; the tower could be moved so that would not be the case.

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There was a discussion about a technology that would guarantee that the pole would not fall on the abutting property and the number of poles that have fallen. A person representing the applicant stated that the pole will only fall on the property on which the pole is located; it will fall within 72' of its base. The property line is 150' away.

Ms. Hackett read a letter of support for the record which is in the file.

MOTION:

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

Seconded by Mr. Levesque. **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

Ms. Hackett asked the applicant if they wanted to continue with a 4 member board.

Ms. Goulet said that they wished to continue, and that the last time they were before the Board there was a question about test pit approval. Mr. Varney would speak to that. Tom Varney said that he did the septic design on the 2 lots and the test pits, since the septic designs were approved by the state the test pits were included.

Mr. Willard stated that the design plans have expired.

Ms. Goulet reminded the Board that at the last meeting they had said they would accept test pit data. Mr. Varney said that the test pits were done in 2007 and are good forever.

Mr. Willard said that the test pits expire after 4 years.

MOTION:

Mr. Willard moved to close Public Hearing Case #08-2011 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners.

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

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Rehearing of Case # 07-2011 Brandon Deschuitneer, owner: rehearing of 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 asked the applicant if he wanted to continue with a 4 member board.

Mr. Deschuitneer said that he wished to continue.

Ms. Hackett pointed out to the Board the additional information.

Mr. Varney showed a projected plan of the business on the property; they will not be selling any products. They plan to take down a shed and meet the requirements of the Planning Board, which they will have to go to if the ZBA grants the special exception. Mr. Deschuitneer stated that he has a small business with a few trailers in the yard; most of the equipment is within the buildings. He is looking to stay a local small company. He is asking for the privilege to operate a business in Gilmanton. He stated that Buzzy has a yard down the road with full size equipment.

Buzzy French said that he likes Mr. Deschuitneer because he helps people. Mr. French would like to see Mr. Deschuitneer's business stay. He stated that his contractor's yard is just up the road.

MOTION:

Mr. Levesque moved to close Public Hearing Case # 07-2011 Brandon Deschuitneer, owner.
Seconded by Mr. LaBelle. **Motion passed unanimously.**

Public hearing Case # 16-2011 – Lisa Landry, owner: requests a variance from Article VII C-1b to rebuild a residence requiring a reduction of the setback from the wetlands. Property located at 9 Warbonnet Lane in the Rural Zone, Map/Lot# 132-71.

Ms. Hackett asked the applicant if she wanted to continue with a 4 member board.

Ms. Landry said she would like to continue. There is an existing burnt home on her lot; she would like to remove it because it is an eyesore. She would like to build a smaller home than what is presently there and a deck facing Lakeshore Drive. She indicated that she would be willing to move it from where it is on plan if the Board wished. She stated that the builder will not have to go into the wetlands. There were variances approved for previous property owners, but those owners did not take any action. She plans to start as soon as a building permit is approved. The lot already has a 2 bedroom state approved septic.

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Ms. Hackett read for the record a letter of approval from an abutter. She asked about the deck access.

Ms. Landry said the plan is to access the deck through the house. There is a one car garage underneath. The whole existing house will be removed.

There was a discussion about possibly enclosing the deck and the requirement of exterior stairs.

MOTION:

Mr. Willard moved to close Public Hearing Case # 16-2011 – Lisa Landry, owner.

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

DELIBERATIVE SESSION:

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

Ms. Hackett stated that the Board had the additional information that the tower was collapsible and would fall within the fall zone. And that the Board could not prohibit cell towers but could put on conditions.

Mr. Willard stated that his problem had been with the fall zone, which hadn't been explained as well. The tower apparently would not fall on another lot.

MOTION:

Mr. Levesque 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. 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 area 4;**
- b. **The use as developed will not adversely affect the neighborhood because the fall zone will be within accepted area;**
- c. **Adequate & appropriate facilities will be provided for the proper operation of the proposed use as overseen by the Gilmanton Planning Board;**

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d. No nuisance or hazard, will be done.

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

Case # 08-2011 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners

MOTION:

Mr. Willard moved to deny a variance in Case # 08-2011 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners: from Article IV Table 2 to create two buildable lots. Property located on 117 Crystal Lake Road in Gilmanton, in the Rural Zone, Map/Lot # 415-29

- a. The granting of the variance would be contrary to the public interest because in the past we have required a septic design;**
- b. The spirit of the Ordinance is not observed because it is wetlands; if we grant building permits now they don't come back before us;**

Mr. LaBelle seconded.

Mr. Willard said that the perk test is over after 4 years.

Mr. LaBelle & Mr. Levesque said that the Board did not get the info required.

Ms. Hackett stated that Mr. Varney said the test pits were not expired, but Mr. Willard said that test pits do expire.

Mr. Willard said that it doesn't matter about the test pits because the ZBA requires septic designs.

Motion passed unanimously

Case # 07-2011 Brandon Deschuitneer, owner

Mr. Willard said he was against it, but he did some research.

MOTION:

Mr. Willard moved to grant a special exception in Case # 07-2011 – Brandon Deschuitneer for a contractor's yard in the Rural Zone. Property is 2.32 acres at 296 Sargent Road in Gilmanton, Map/Lot # 405/64.

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- a. The site is appropriate for the use because it is presently operating with no reported problem and there is another contractor's yard in the vicinity;
- b. The use as developed will not adversely affect the neighborhood as evidence by the stated support of neighbors and abutters;
- 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 has been shown to being created.

CONDITIONS:

The shed that is presently there will be torn down.

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

Case # 16-2011 – Lisa Landry, owner

Ms. Hackett stated that the Board is always concerned with wetlands. The house appears to have been set in such a place that would be in the best interest of everyone.

Mr. Levesque said it would be an improvement and further away from the wetlands.

MOTION:

Mr. LaBelle moved to grant a variance in Case # 16-2011 – Lisa Landry, owner: from Article VII C-1b to rebuild a residence requiring a reduction of the setback from the wetlands. Property located at 9 Warbonnet Lane in the Rural Zone, Map/Lot# 132-71.

- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection and the site would be improved;
- b. The spirit of the Ordinance is observed because care will be taken to not impact the wetland and the wetland set back will be improved;
- c. By the granting of the variance, substantial justice will be done by allowing the owner use of her property;
- d. There was no evidence presented that granting the variance, would create diminution of value to the surrounding properties; they would increase, and add to the Town's taxes.
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to the fact that there is a limited area on the lot to place even a small house
 - i. a fair & substantial relationship exists between the general public purposes of the ordinance & specific application to this property because an approved septic system is already in place

AND

- ii. the proposed use is a reasonable one because the fire damaged building will

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be replaced.

CONDITIONS:

The deck will never be winterized, and it's steps will not be outside the deck footprint.

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

APPROVAL OF MINUTES

MOTION: Mr. LaBelle moved to approve the minutes of the August 18, 2011 meeting as amended, seconded by Mr. Willard. Motion passed unanimously.

OTHER BUSINESS

Ms. Hackett discussed information received from the LGC class relating to cell towers and building on a class 5 road. She passed out copies to the Board.

There was a discussion on the definition of bedroom.

ADJOURNMENT: Motion made by Mr. Mr. Willard and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 8:50 PM.

Submitted by,

Annette Andreozzi, Land Use Clerk