

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 20, 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, & Wayne Gray (alternate, arrived at 7:10 PM).

Also in attendance: Annette Andreozzi, Land Use Clerk.

The Chair made introductions and explained the ZBA procedures. She stated that there was a 4 member Board present and 3 affirmative votes were needed for an application to pass. She also explained that a request for a rehearing does not take input from the public at the meeting.

OLD BUSINESS

Re-Hearing Request–Case # 08-2011 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners: Request rehearing of their case for a -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 listed the information the Board received that they hadn't had before.

Mr. LaBelle said that it sounded like test pits do expire and the ones for this lot have expired.

Ms. Hackett stated that Mr. Varney said that they hadn't expired and that he is putting his license on that information.

Mr. Levesque said the Board denied the application because they thought the test pits had expired, but he found out today that they don't expire.

Ms. Hackett indicated that the Board had additional information relating to the test pit logs.

Mr. Willard said that Hinds did a 5 minute perk test, then he did another test to get a 10 minute perk.

Mr. Gray arrived at 7:10PM, and was then made a full voting member for the night.

Mr. Gray pointed out that the application did not state that the applicants want to build a house nor does it say they want house lots.

Mr. Willard said that he had asked the applicant before if they would accept a condition of no houses on the lots, and they had said no. Ms. Hackett verified that from the minutes.

There was a discussion about the jurisdiction of the Planning Board and the ZBA.

Mr. Willard stated that in the past the ZBA had denied applications without a septic design.

Mr. Gray said that sometime in the past the ZBA had approved a lot in order to build a house, then a septic system could not be built on that lot, and the owners claimed they could build without a septic because the ZBA said they could. That is why a septic design is required with the ZBA application.

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Ms. Hackett mentioned that there was some additional written information the board received that night. She also reviewed the letter Mrs. Goulet wrote to the ZBA requesting the rehearing. Mr. Willard showed his Septic Designer and Installer's certification to Ms. Hackett. He said that test pits expire if the designers change.

Ms. Hackett said that she had called DES and was told that test pits were accepted for up to 10 years and if longer that DES would require that they be redone.

Ms. Hackett read the motion from the ZBA minutes, which stated that appropriate documentation be submitted.

Mr. Willard said that the info wasn't submitted at last month's meeting.

Ms. Hackett read the letter addressed to the Goulets from DES.

Mr. Levesque felt the rehearing should be granted.

Mr. Willard said that nothing had changed; the applicant didn't submit the documentation when it was requested. He said that they could subdivide without getting building lots, and come back latter for permission to build.

Ms. Hackett restated that the Board was just determining if a rehearing would be granted.

Mr. Gray wanted to know how many members agree that test pits don't expire. Mr. LaBelle said that they do expire. Mr. Gray said that if they do expire then the Board has no new information. Mr. Levesque said that DES says test pits don't expire. Ms. Hackett said that her source said that they do expire after 10 years, but the test pits on the property were from different engineers. Mr. Gray said they may have done different test pits because they were going to have different amounts of houses. Mr. Willard said that the designer would put the test pits where they would work, and if they just want a subdivision with no building lots he would approve.

Ms. Hackett asked if there was new information or a point of law that the ZBA missed, for the Board to grant a rehearing.

MOTION:

Mr. Willard moved to grant a rehearing in Case # 08-2011 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners on info supplied.

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

Re- Hearing Request- Case# 13-2011- James N. Locke, Trustee applicant, Lee Trust, owner: requests a rehearing of his case of 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.

Ms. Hackett listed the paper work the board received, which is included in the file.

Mr. Levesque stated that he did not feel that it was necessary for the Board to address all three reasons that the building inspector denied the application because any one was enough. He gave the example that if a man killed someone 3 different ways he would only have to be convicted of one killing method.

Mr. Willard agreed the motion the ZBA had made was clear.

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Ms. Hackett stated that the ZBA did include a reason with the motion.
Mr. Gray said that the motion based on one issue made the other 2 issues moot. He had no new info on which to grants a new hearing.
Mr. Levesque said that the ZBA would not have agreed in 2004 to allow the garage on the lot if there had not been the agreement to not make a residence of the garage.

MOTION:

Mr. LaBelle moved to deny the rehearing for Case# 13-2011– James N. Locke, Trustee applicant, Lee Trust, owner, the applicant agreed to the restrictions, no new information was presented, and hardship wasn't shown.

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

Re-Hearing Request -Case# 14-2011– James N. Locke, Trustee applicant, Lee Trust, owner: requests a rehearing of his case for a variance from Zoning Ordinance VII 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 asked if the Board had additional information that should grant a rehearing in Case # 14-2011. She stated that there was a letter from Ms. Richards, but all the points in the letter were discussed at the previous meeting. She went through the list present by Ms. Hoover, and didn't find any new information. She said that she understood that things change, and Mr. Locke was going about the procedure in the correct way.

Mr. Gray stated that the reason for the denial had been based on the 2004 agreement and that there was no hardship.

Mr. Levesque stated that if the Board grants a rehearing it would be contrary to the motion just made on case #13-2011.

MOTION:

Mr. Levesque moved to deny the rehearing for Case# 14-2011– James N. Locke, Trustee applicant, Lee Trust, owner because no new information has been given to allow the case to be reopened.

Mr. Willard seconded. **Motion passed unanimously.**

Re-Hearing Request -Case# 15-2011– James N. Locke, Trustee applicant, Lee Trust, owner: requests a rehearing of his case for a variance from ZBA decision # 4-2004 "structure is not to be used for living quarters". Property located 41 Whispering Pines Road in the Rural Zone, Map/Lot# 106-13.

MOTION:

Mr. Levesque moved to deny the rehearing for Case# 15-2011– James N. Locke, Trustee applicant, Lee Trust, owner based on the previous discussion.

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

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Public Re-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 indicated that there had been substantial discussion.

Mrs. Goulet explained that there had been different proposals over the years for the property, so different test pits had been dug for each. They had spent lots of money, and would like to divide the property so the partners can go separate ways.

Mr. Goulet explained by pointing on the plot where and why multiple test pits were done. He stated that in 3 other states test pits only expire if there are major land disturbances.

Mrs. Goulet said that they were just growing Christmas trees on the property now, but would like to be able to build a house sometime in the future.

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

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

Mr. Gray stepped out because he was not going to be part of any new cases.

NEW BUSINESS

Public Hearing –Case # 17-2011- Edward N. Herbert Assoc., Inc.,applicant, Carol & Robert Knutson, owners: request a variance from Zoning Ordinance VII C-1 and Section IV Table 2 to replace a house on a nonconforming lot, with 21' front setback, 19.4' side setback, 24' from an intermittent stream. Property located at 12 Laurel Avenue, a private road, in the Residential Lake Zone, Map/Lot# 120-31.

Ms. Hackett informed the applicant's representative that there were only 4 voting members and that 3 members would be required for a positive vote.

Wesley Aspinwall, representative for the applicant, stated that he would like to continue with the hearing. He presented an updated copy of the plot plan. He stated that the lot is in a subdivision that was created before there were septic requirements. The existing septic system is right next to the brook. The lot is a little over 5000 sq feet. The lot is similar in dimensions to nearby lots. There is an existing cottage on the property, which is old and small. There isn't room to make a bigger footprint, but they would like to build a new house with a second story. The owners have state approval to put in a new septic with waivers for distance to surface water. The State allows a leach field to be within 5 feet of a house if there is no cellar drain.

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Because the cellar will be raised they are requesting a 5' x 19' porch in the front. The new house will be placed in the best position possible on the lot. There will be no back deck so the total square feet of the footprint of the new house will be less than the present house. The height of building will be 35' or less.

Ms. Hackett asked if they will be taking down trees. Mr. Aspinwall said some trees will have to be removed for the septic and close to the house.

Ms. Hackett asked if there was a plan for any steps exiting in the rear. The builder said there would be a small 4' x 4' deck with steps. There was a discussion about where the deck and steps would be, and if that would make them closer to property lines and the stream.

Ms. Hackett asked if the new house would be a 4 season home. The builder said that the owners are not going to live there full time.

Mr. Day, an abutter, stated that he had no problem with the plan as long as it didn't inhibit him from what he wants to do.

Mr. Aspinwall read the reasons for the 5 variance criteria from his application, and stated that there is not a lot of land and no way to get additional land.

Mr. Levesque stated that foot print of the house will be the same size but not in the same location. He was concerned that the back porch was not drawn on the plan. Mr. Aspinwall stated that the Board could make a condition for a 4' x 4' entry.

Ms. Hackett said that the ZBA might make a condition that the deck can-not be enclosed.

MOTION:

Mr. Willard moved to close Public Hearing Case #17-2011- Edward N. Herbert Assoc., Inc., applicant, Carol & Robert Knutson, owners.

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

DELIBERATIVE SESSION:

Mr. Gray stepped back in for deliberation on Case #08-2011.

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

Mr. LaBelle asked who would decided how big of house could be put on this property. Ms. Hackett said that it would depend on what the owners want and what the lot can hold.

Mr. Gray said that he doesn't have a problem with the project.

Ms. Hackett stated that the ZBA could make a condition that there must be a septic design
ZBA 10/20/11

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submitted before getting a building permit. The Board was looking at 2 sizable lots with tree farms.

Mr. Gray said that the ZBA could not grant approval for a sign, which was requested in the application.

Mr. Willard said that he had no problem with the subdivision, but the Board flip flops with needing a septic design, and he couldn't get behind that.

There was a discussion about needing a septic design with a ZBA application.

Mr. Gray was willing to ok the current application because of the size of the lots and that there had been an approved design. Ms. Hackett agreed with Mr. Gray, the applicants did have approval for a septic at one time so they will probably be able to get one with 18+ acres.

MOTION:

Mr. LaBelle moved to grant a variance in Case # 08-2011 Kurt & Tracy Rague & Sylvain & Carolyn Goulet, owners: from Article IV Table 2 to create two lots allowing each lot to build one residential unit, though neither lot will have the required 200 feet of class 5 road frontage. Property located on 117 Crystal Lake Road in Gilmanton, in the Rural Zone, Map/Lot # 415-29

- a. The granting of the variance would not be contrary to the public interest, because there has been no stated objection;
- b. The spirit of the Ordinance is observed because one lot is 15+ acres and the other is 20+ acres; they have had test pits and septic approved previously;
- c. By the granting of the variance, substantial justice will be done because the owners will be able to separate their interests in the property and maybe be able to do something in the future;
- d. There was no evidence presented that granting the variance, would create diminution of value to the surrounding properties and the value may increase;
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owners seeking it owing to the fact that there are multiple owners for one large lot; they have put in a lot of money and need to separate their interests.

CONDITIONS: there must be an approved septic before a building permit can be granted. Only one residence can be built per lot. Any sign must meet the local ordinance.

Mr. Willard seconded. **Motion passed unanimously.**

Mr. Gray pointed out that in the 2004 minutes from the Locke case. The Lockes had used the ZBA 10/20/11

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same method of requesting 3 different hearings. Mr. Gray then left the meeting.

Case # 17-2011- Edward N. Herbert Assoc., Inc.,applicant, Carol & Robert Knutson, owners

Ms. Hackett stated that there was currently a house on the lot, if there hadn't been she would not be in favor of granting this variance.

There was a discussion about the existing shed which does not meet setbacks.

MOTION:

Mr. LaBelle moved to grant a variance in Case # 17-2011- Edward N. Herbert Assoc., Inc.,applicant, Carol & Robert Knutson, owners: from Zoning Ordinance VII C-1 and Section IV Table 2 to replace a house of about equal size on a nonconforming lot, with 21' front setback, 19.4' side setback, 24' from an intermittent stream. Property located at 12 Laurel Avenue, a private road, in the Residential Lake Zone, Map/Lot# 120-31.

- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection;
- b. The spirit of the Ordinance is observed because no additional residences will be added to the area; one is just being replaced;
- c. By the granting of the variance, substantial justice will be done because the placement of the new house will be less non conforming and meet present building codes and will also improve safety and fire standards;
- d. There was no evidence presented that granting the variance, would create diminution of value to the surrounding properties; it would improve the value of that property;
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property which do not allow the purposed house to meet all setbacks and adding a second floor to the existing house would not be allowed by the zoning ordinance.

CONDITIONS: The house should not be taller than 35 feet. The rear deck will be no more than 4' x 4' with steps extending about 8 feet parallel to the rear of the house; not to encroach into the 19.4' setback. The front and rear decks may never be enclosed.

Mr. Levesque seconded. **Motion passed 3 in favor, 1 opposed.**

APPROVAL OF MINUTES September 15,2011

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MOTION: Mr. LaBelle moved to approve the minutes as amended.
Seconded by Mr. Levesque **Motion passed unanimously.**

OTHER BUSINESS

Ms. Hackett noted the 2012 budget which she had submitted to the Town Administrator.

Ms. Hackett referenced a letter to Ms. Tumas from the LGC related to septic requirements. Ms. Hackett will talk with Attorney Mitchell about the letter. Mr. LaBelle said that he had read the letter 3 times and it sounded different each time.

An announcement was made about the LGC conference that will be held in Manchester, NH on November 16-17, 2011. Ms. Hackett asked the clerk to send the link to all the board members for review. She also asked that if anyone else is interested in going to please let the clerk know so that she could get them registered for the conference.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 10:17 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk