

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, JANUARY 19, 2012 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7 PM.

Members attending: Elizabeth Hackett, Israel Willard, Paul Levesque, Ron LaBelle.

Also in attendance: Annette Andreozzi, Land Use Clerk.

The Chair made introductions and explained the ZBA procedures, and that there were only 4 Board members.

Public Hearing Case # 2012-00001 – Danielle Bellerose, applicant, MacKenzie Trust, owner: request a special exception from Zoning Ordinance Article IV Table 1 to place a 150 site family campground with five not-for-profit cabins, and three owner homes on 83.75 acres. Property located on NH Rte. 140, Map/Lot# 414-73 in the Rural Zone.

Ms. Hackett Indicated that the property's trustee has given permission for the applicant to act on her behalf.

Ms. Bellerose and her parents, Mr. & Mrs. Morin, were proposing the campground. She read their proposal, that was included with their application.

Mr. Morin stated that they were proposing an upscale family resort type campground, a destination, not where people come and go. People would cook their own food.

Generally 1/3 or half of the sites would be in use. Campers would leave at staggered times and could go out toward Alton or Interstate 93.

Mr. Levesque stated that most campgrounds have check out times so people do go out at the same time. That will create traffic because 50 will leave at one time and they will be going in and out all day. Mr. Levesque lives on Route 140, and would not be able to get out of his driveway.

Mr. Morin said that his personal experiences with campers is they do not all leave at the same time. The majority would be seasonal and would not have check out times.

Judy Field, who said she was representing the Morins, stated that they were open to input from the town on the rules & regulations.

Mr. Levesque stated he has tent camped for many years and it was peaceful. Then RVs started coming in with radios blaring and loud playing music; the grounds deteriorated from that. Children yell and scream, and drinkers party all night long.

Mr. Morin stated that there would be no noise or camp fires after 11 PM. He does not want loud or undesirable people because he would be living there. The camp will have a 200 foot buffer from Route 140. He felt there would not be much increase in traffic on race or bike weekends because regulars stay away during those times, and those events are only 2 weekends during the year.

Mr. Willard stated that the camp sites near the brook might have accidents or drain their tanks on to the ground.

Mr. Varney, engineer, showed on the plan that all camp sites were at least 50 feet from the brook and all wetlands. The beaver pond is only partly on the property and there are

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no plans for developing anything around the pond. The land is gently sloping. With the 200' buffer on Route 140 the entrance is all that would be seen from the road, nothing else. The plan shows everything they want to do on the land. The details would be fine tuned at the Planning Board if the special exception is granted. The grounds will typically open in spring and close in late fall. Each residential house would have a separate septic & well, and the camp sites will have sewer lines piped to 3 leach fields. There would be State approval for septic and water supply.

Ms. Hackett clarified that the 3 houses would be permanent homes for the family members.

Mr. Morin said the camp sites would be 30' x 80' or 30' x 100', not crowded. Each camp site will be connected to the sewer and a 30-50 amp hook up. Some tent sites might not be connected to sewer; there will be 2 or 3 bath houses.

Ms. Hackett read 3 letters into the record, these are included in the application file.

A series of questions was asked by Mr. Schmidlin, abutter. Mr. Morin answered by saying that the site would be upscale; they would not be babysitting kids. The grounds would never be completely full; in his 35 years of camping on grounds with 140 sites there were never more than 150 people on the grounds at one time. He has operated his own business and investigated campgrounds in preparation for owning this one. The family will be living on the property.

Ms. Bellerose stated that her foundation was in the process of getting all its paper work.

Ms. Field said there is no intention nor would it be possible for the entire site to be granted a tax waiver. Mr. Morin said the camp rules would state no firearms, staggered leaving times, and noon check-in. Ms. Field said that they are asking for town input on the camp rules, therefore the rules are not yet established. Ms. Bellerose indicated that 25 percent of the sites would be for transients and not seasonal.

Mr. Schmidlin said he felt campers would go flying down the steep grade, miss seeing the camp sign, and use his driveway to turn around, and there would be a potential for accidents. There are many campgrounds in the area; he did not see the need for another.

Kathy Jones spoke for Lorian Brown; Ms. Brown owns an interest in an abutting property. Ms. Jones said her family has been in Gilmanton since 1933. She stated that over the years she has been approached by firms to use property, but she wanted it to be pristine. She liked the 5 nonprofit cabins that were being purposed, but was concerned about the impact on the land of the camp sites. She stated that there is a camp site in Loudon with 155 camp sites but they have 66 more acres. She did not want Gilmanton to be like Loudon.

Mr. Schmidlin said that the zoning ordinance states that campers cannot be left on property year round. He wanted to know if the applicants were asking for an exemption.

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Ms. Field stated that the applicants are not looking for any exemptions, just a special exception for the use. Ms. Hackett stated that the leaving of campers may not be a ZBA issue. Mr. Willard said he would look into it.

Bruce Mallery said that he was not an abutter but a neighbor. He wanted the Board to consider the quality of life and the social and environmental impact. The Town should support growth for tax revenue, but the proposal did not seem to do that. He was concerned about the impact on the environment and traffic. He is opposed to the proposal.

Amy Manzelli, attorney on behalf of Lorian Brown, abutter, presented a letter [now in the file]. She stated the proposal had serious legal inadequacies, and the application did not contain all the elements.

Perry Onion said that once the applicant leaves the meeting they can change their rules, he asked the Board not to base their decision on what the applicant says; the town shouldn't expect a tax payment, the owners could ask for tax exempt status now or later. He said the State would deal with the septic systems, but not with people dumping. He had an issue with taking that much water out of the ground, and making the water table go down in town.

Mr. Schmidlin said that there might be a potential increase of income from the campground, but he moved here because there was only 1 house per lot in the rural setting. The potential is for 500 neighbors a week at a time; he would have moved to a city if he wanted that many people. There is another campground being built in Alton. He is concerned about land and the environment, and was against the plan. The spirit of what the applicants are going for is great. There is not enough detail on the plan to determine if the use as develop will effect the neighborhood.

Ernest Holt spoke for his mother, an abutter, saying it was a high impact proposal. He stated he would loose the ability to farm her land because the petroleum run off will effect organic farming. The land will be poisoned by cigarettes and oil. The cause is good, but he wanted to know how they could get away with putting 600 people next to where he farms. He was also concerned for the beaver pond, and how he would protect his mother's property from the violence caused by the motorcycle gangs. Andrew Holt said the impact on farms is detrimental and asked to deny the motion.

Mr. Willard moved to close Public Hearing Case # 2012-00001 – Danielle Bellerose, applicant.

Seconded by Mr. LaBelle. Motion passed unanimously.

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Appeal from Administrative Decision – Case # 2012-00002 –Kevin Gannon, owner:
appeal the code enforcement officers garage permit denial based on interpretation of ZBA Case # 3-98. Property located at 120 Varney Rd., Map/Lot# 106-39 in the Rural Zone.

Ms. Hackett explained that there was only a 4 member board, but there were presently no other members.

Mr. Gannon stated that he wished to proceed; he would like to build a garage. He had to get a variance in 1998 to build his house. It was always his intention to have a garage. Having a garage has become more necessary because his family has grown. He did not realize at the time that he received the variance, that the decision meant nothing else could be built on the property.

Mr. Levesque stated that when the ZBA makes a decision it is spelled out so Mr. Gannon must have at least hear it.

Ms. Hackett stated that at the time the zoning ordinance may have stated that there must be a certain amount of “green, non buildable” space on each property. Mr. Gannon did not recall that. Ms. Hackett said that the zoning ordinance can change each year. There were no statements saying why the variance was granted the way it was.

Mr. Gannon stated he wants to put a family room in his basement, not a bedroom or bathroom.

MOTION

Mr. Levesque moved to close the hearing for appeal Case # 2012-00002 –Kevin Gannon, owner.

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

MOTION

Mr. Levesque moved to deny the appeal in Case# # 2012-00002 – Kevin Gannon, owner Property located at 120 Varney Rd., Map/Lot# 106-39 in the Rural Zone. The decision of the Building Inspector to not allow the building of a garage on this property is consistent with the wording of the ZBA Notice of Decision Case # 3-98 condition “f”. The Building Inspector had no choice.

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

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Public Hearing –Case # 2012-00003 – Kevin Gannon, owner: request a variance from ZBA Notice of Decision Case # 3-98 condition “F”. Property located at 120 Varney Rd., Map/Lot# 106-39 in the Rural Zone.

Mr. Gannon stated that the zoning ordinance has changed; under the current ordinance he would be able to build the garage, having met all the setbacks. His family has outgrown the house, but they do not want to move. The house next door had to have a variance to build and that variance has the same sentence as “f”, but the neighbor was able to build a garage because a few years ago no one checked the previous ZBA decision.

Ms. Hackett clarified that Mr. Gannon wants to get the stuff out of his basement to make a family room; he does not intend to put in any more bedrooms or bathrooms.

Mr. Gannon stated that the family grew by twins, and the twins are getting bigger.

Ms. Hackett stated that the setbacks, including wetlands, on Mr. Gannon’s plan met all the zoning requirements.

Mr. Gannon stated that Eric from Probuilt custom homes would build the garage and a surveyor would pin the footing to make sure the building meets the setbacks.

Ms. Hackett stated that the Board has found that people make bedrooms out of their added space. She asked if he would have a problem with a condition on the garage that it only be used for storage.

Mr. Gannon said he would not have a problem. Stairs to the upper storage area would be inside the building. There would be a door on the side and a door out of the second level to the hillside.

Mr. Levesque moved to close Public Hearing Case # 2012-00003 – Kevin Gannon, owner.
Seconded by Mr. LaBelle. **Motion passed unanimously.**

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DELIBERATIVE SESSION:

Case # 2012-00001 – Danielle Bellerose, applicant, MacKenzie Trust, owner:

request a special exception from Zoning Ordinance Article IV Table 1 to place a 150 site family campground with five not-for-profit cabins, and three owner homes on 83.75 acres. Property located on NH Rte. 140, Map/Lot# 414-73 in the Rural Zone.

Ms. Hackett stated that there was substantial abutter input regarding their belief that the application would impact the beaver pond, traffic, and that it was a large project. There was concern that the application was only an overview and had no specific info on septic systems and wells.

Mr. Willard said the application was incomplete and should not have been accepted.

MOTION: Mr. Willard moved to reopen and continue the public hearing in two months, March 15, 2012, to give Mr. Varney and the applicant time to answer questions posed by the public.

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

Ms. Hackett informed the applicants that the motion was not a denial, but they are being given time to see if issues that had been brought up can be addressed.

Case# 2012-00003 – Kevin Gannon, owner: request a variance from ZBA Notice of Decision Case # 3-98 condition “f”. Property located at 120 Varney Rd., Map/Lot# 106-39 in the Rural Zone.

Ms. Hackett mentioned that because Mr. Gannon’s neighbor had the same statement “f” on his zoning variance, it may have been that the ordinance at that time had a provision that you could build on only so much of your land, so that there would be open space. No one spoke against allowing the garage.

Mr. LaBelle stated that his only concern was that every time the ZBA approves a garage something else happens; someone puts a bedroom or bathroom in the building. Whether the ZBA places conditions or not, other people decide that they can. In a

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recent case the code enforcement officer said the condition was not worded correctly so he allowed the applicant to do whatever they wanted. So even though this applicant has the space, even through it would be permitted under the current ordinance, he was inclined to deny the variance.

Ms. Hackett reminded the Board that she asked the applicant if he would agree with a condition that the space be used for storage and nothing else, and he had agreed.

Mr. LaBelle said that it didn't matter, because other people could decide that the applicant can do what every he wants, because they can change the interpretation of the ZBA's condition.

There was discussion about possible wording to make a condition stronger and more specific.

MOTION:

Mr. Levesque moved to grant a variance in Case # 2012-00003 – Kevin Gannon, owner from ZBA Notice of Decision Case # 3-98 condition "F". Property located at 120 Varney Rd., Map/Lot# 106-39 in the Rural Zone

- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection, and other lots, no bigger, in the area have garages;**
- b. The spirit of the Ordinance is observed because the present zoning ordinance would allow the building of a garage on this property;**
- c. By the granting of the variance, substantial justice will be done because the owner will be abiding by the present ordinance;**
- d. There was no evidence presented that granting the variance, would create diminution of value to the surrounding properties;**

CONDITIONS:

The garage and/or any loft space can be used only for storage and repair of personal vehicles.

Ms. Hackett seconded. **The vote was 2 in favor – 2 opposed. Because 3 positive votes are needed, this motion did not pass.**

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MOTION:

Mr. LaBelle moved to deny a variance in Case # 2012-00003 – Kevin Gannon, owner from ZBA Notice of Decision Case # 3-98 condition “F”. Property located at 120 Varney Rd., Map/Lot# 106-39 in the Rural Zone

- a. The granting of the variance would be contrary to the public interest because in the past conditions have been place on properties and they have not been adhered to;**
- b. The spirit of the Ordinance is not observed because the Zoning Ordinance of the past placed a condition on the property that was substantial, that no other building could be built on the property;**
- c. By the granting of the variance, substantial justice will not be done because the property owner agreed to the condition.**

Seconded by Mr. Willard.

Ms. Hackett stated that the Board had a 2-2 vote on the approval, which indicates it did not pass; now the board would vote on a denial. If the vote was to be 2-2, it also means the vote does not pass. An additional board member would need to be convinced either way. Her concern was that when the previous variance was granted it was limited to the house only, not a garage, but currently in the ordinance building the garage would be allowed if set backs were met, which they are.

There was a discussion about what might happen if there was another 2-2 vote.

Ms. Hackett said her concern was that when it was denied before is was contrary to the ordinance, but it is not that way right now. It would be a conforming building. She asked Mr. LaBelle if his concern was that the applicant had been told that he could not have a garage, and even though zoning has changed he should not have a garage. Mr. LaBelle stated that the applicant had agreed to the conditions. Ms. Hackett verified that Mr. LaBelle thought that it was no different than one of the pervious cases before the ZBA.

Mr. Willard said that the restriction had been placed by a previous ZBA; the applicant accepted that decision. Now because the ordinance has changed the Board could have a 100 cases come before it because the zoning has changed and will continue to change until it is done away with and have only the Planning Board. He stated that it was still a non conforming lot, which the applicant knew when he bought it.

Mr. Levesque said that there were so many lots that the Board has allowed a garage to

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be built on, with conditions. Zoning has changed, but there was a condition placed with the variance. The applicant accepted that condition; he should live by it. The Board can't be doing one time one way and another time another way; this was set up to be done that way. Mr. Levesque said that he changed his mind; it was a condition and it should stay a condition.

Ms. Hackett was concerned if it goes to court, because the zoning has changed it would be over ruled.

Mr. Willard stated the changed zoning states that as long as all set backs are met building can occur; he did not feel that it read building could occur if the lot was non conforming. It was a matter of interpretation.

Mr. LaBelle said based on Mr. Lock's case there should be no more discussion, the Board must stick by the condition.

Vote 3 in favor of denial - 1 against. Motion passed.

APPROVAL OF MINUTES November 17, 2011

Ms. Hackett explained to Mr. Willard the details on the November 17 minutes, as he was not in attendance. He did not understand why there was a discussion regarding the requirement of a State approved septic design with a ZBA application. Mr. Willard stated the attorneys' information in the minutes was incorrect.

The was additional discussion about septic designs and rules.

Ms. Hackett stated that the minutes referred to the information she had received from the attorney and passed on to the Board.

Mr. Willard disagreed with the information received from the attorneys relating to the ZBA clerk speaking at ZBA meetings.

MOTION: Mr. LaBelle moved to approve the minutes of the November 17, 2011 meeting as amended. Seconded by Mr. Levesque.

Vote - 3 yes, Mr. Willard abstained because he was not at the meeting.

Motion passed.

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OTHER BUSINESS

Ms. Hackett stated she sent a note to Nancy Girard, that she was upset that the Planning Board was having a meeting that dealt with zoning, and the meeting wasn't planned with the ZBA. She had a number of questions. Planning is not a quasi-judicial board. Planning cannot take away the purview of the ZBA. She understood why Planning wants to change the telecommunications ordinance, because it was found to have a problem. Ms. Hackett has questions relating to the Planning Board changes. The clerk let the Board know that there was no evidence that any emails had been sent to the ZBA in relation to planning's amendments before January 13, 2012 and there was nothing available online.

Ms. Hackett pointed out the letter, that was in the packet, from Attorney Mitchell regarding the right to know law. It stated that if a non-public session was because of consultation with the lawyer, the lawyer must be present or on the phone.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. LaBelle to adjourn, vote passed unanimously. Meeting adjourned at 10:02 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk