

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

Chair Elizabeth Hackett called the meeting to order at 7:01 PM.
Members attending: Elizabeth Hackett, Paul Levesque, Perry Onion, & Nate Abbott.

Also in attendance: Annette Andreozzi, Land Use Clerk.

The Chair made introductions and explained the ZBA procedures.

Public Hearing Case # 2012-00004 – Stephen & Tracy Lemoine, owner:
request a variance from Zoning Ordinance Article III-E to exceed the height limit in order to place a cupola on the barn/house. Property is 23.2 acres; located at 39 Bingham Road, Map/Lot# 419-53 in the Rural Zone.

The Chair stated that there were only 4 members on the Board and the applicant could postpone to wait for 5 members. Three positive votes would be needed for any motion to past.

Mr. Lemoine wished to continue the public hearing. He stated that he was requesting a variance, because the cupola, only, of their building would exceed the Zoning Ordinance height limit. He owns the lot adjacent to where he plans to build. The building's cupola serves the function of bringing light & air into the building, which will serve as a barn as well as a house. He noted that the barns in the area all have cupolas. Mrs. Lemoine said that the property was farmland and they wanted the building to look like a farm. Heidi Walton, a neighbor & the representative from the abutters, said that she and the abutters approved of allowing the cupola. One abutter sent a letter of approval, which Ms. Hackett read to the Board.

Mr. Lemoine said that almost every barn has a cupola that exceeds the 35' height limit, and the Zoning Ordinance states that if the building is just a barn it is exempt from Zoning Article III-E, height limit.

Ms. Hackett stated that the height of the building ridge line is 34' 9"; only the cupola exceeds the height limit.

Mr. Levesque asked if the windows in the cupola would open. Mr. Lemoine said the windows will open for ventilation, and he had an architect draw the cupola so it would look right for the building.

There was a discussion related to the height and look of the cupola and if the ZBA should be involved in making design decisions.

Mr. Levesque moved to close Public Hearing Case #2012-00004 – Stephen & Tracy Lemoine, owner. Seconded by Mr. Onion. **Motion passed unanimously.**

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DELIBERATIVE SESSION:

Case #2012-00004 – Stephen & Tracy Lemoine, owner

Ms. Hackett said she thought the building with cupola would be a beautiful addition to the land. She commented that the applicants had done their homework, and submitted everything the Board needed to make a decision, which applicants don't always do. She didn't have any issues with the application.

There was some discussion by Mr. Onion about making the cupola look better if it was taller.

Ms. Hackett stated that the public notice did not indicate a possibility of a taller design, and it wasn't the Board's purview to redesign. She & Mr. Abbott agreed that the Board needed to stay with the way the application was presented. It was unknown what an abutter would have said if the application was different.

MOTION:

Mr. Levesque moved to grant a variance in Case # 2012-00004 – Stephen & Tracy Lemoine, owners: from Zoning Ordinance Article III-E to exceed the height limit in order to place a cupola on the barn/house. Property is 23.2 acres; located at 39 Bingham Road, Map/Lot# 419-53 in the Rural Zone.

- a. **The granting of the variance would not be contrary to the public interest because there has been no stated objections and there was one letter in agreement;**
- b. **The spirit of the Ordinance is observed because only a small area will exceed the height limit;**
- c. **By the granting of the variance, substantial justice will be done because the look of the house/barn will be improved and more air and light will be available to the residents; there is a need for ventilation;**
- 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 owing to the property is in a rural/agricultural area where barns & cupolas exceed the 35 foot height limit; no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because if the building were only a barn the ordinance would allow the requested height, the building is a barn that is also a house.**

CONDITIONS: The cupola would not exceed more than 45' in height.

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There was no second to the motion.

MOTION:

Mr. Abbott moved to grant a variance in Case # 2012-00004 – Stephen & Tracy Lemoine, owners: from Zoning Ordinance Article III-E to exceed the height limit in order to place a cupola on the barn/house. Property is 23.2 acres; located at 39 Bingham Road, Map/Lot# 419-53 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;**
- b. The spirit of the Ordinance is observed because only a small area will exceed the height limit;**
- c. By the granting of the variance, substantial justice will be done because the look of the house/barn will be improved and more air and light will be available to the residents;**
- 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 owing to the property is in a rural/agricultural area where barns & cupolas exceed the 35 foot height limit, and no fair & substantial relationship exists between the general public purposes of the ordinance provision and the specific application in this instance because if the building were a barn only, the ordinance would allow this height, and specific application to this property is that it is a barn that happens to be part of a house.**

Ms. Hackett seconded the motion, which had no conditions.

Mr. Abbott stated that he was nervous about going off the page. He felt that any condition to a decision should be that an applicant has to meet some requirement prior to being granted a building permit. If the Board grants a higher limit than applied for the application would go in the opposite direction. Consideration of the architectural design of the building, including more height, should have been done before coming to the ZBA. Mr. Levesque asked if something was seen that would enhance the situation, shouldn't it be done.

Mr. Abbott felt that would be dangerous to do; the ZBA does not have the direction to enhance applications. Height over 35' was not allowed by the Ordinance; the Board has to decide to allow what was applied for, or not. The public hearing notice was just for what was in the application; it was not the Board's job to change the application.

Ms. Hackett agreed that it was not the Board's job to change structure and/or layout; the Board's concern was the use of the property.

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Mr. Onion stated that he did not understand what constituted a condition the ZBA would have.

Mr. Abbott said an example of a condition would be the requirement of a state approved septic. A condition is something the applicant would be required to do.

Motion passed unanimously.

APPROVAL OF MINUTES

MOTION: Ms. Hackett moved to approve the minutes of the March 15, 2012 meeting as amended. Seconded by Mr. Levesque. **Motion passed unanimously.**

OTHER BUSINESS

Ms. Hackett thanked the new Board members for their participation, and stated they were valuable additions to the Board.

She stated her concern with the lack of communication from the Selectmen.

Ms. Hackett stated that there had been a email sent directly to ZBA members from Ms. Tumas on April 9, about Planning board discussion of the Zoning Ordinance Table of Uses. The email seemed to indicate the discussion would be on May 10. As it turned out the meeting was April 12, possibly to continue on May 10.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. Onion to adjourn, vote passed unanimously.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk