

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, JUNE 21, 2012 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:10 PM
Members attending: Elizabeth Hackett, Paul Levesque, Perry Onion, &
Nate Abbott(arrived at 7:46 pm).

Also in attendance: Annette Andreozzi, Land Use Clerk.

The Chair made introductions and explained the ZBA procedures.
The Chair stated that there were only 3 Board members present and the applicant could
ask to continue until there were 5 members. Three positive votes would be needed for
any motion to pass.
She asked the applicants to speak up if they wanted to continue their hearing for a future
date.

NEW BUSINESS

Public Hearing Case # 2012-00006 – Richard Bakos, owner: requests a
variance from Zoning Ordinance Article IV Table 2 to place a 10' x 10' storage
shed 62' from Sawyer Lake, which is less than the 75' setback requirement.
Property is .42 acres, across the street from the owners residence located at
315 Hemlock Dr., Map/Lot# 122/87-88, in the Residential Lake Zone.

Mr. Bakos said that he had requested from DES/Shoreland to put in one long dock on his
property, but they required 2 decks. Because of DES requirements the proposed shed
will now be 67' from the water. There will be less disturbance of the land if the shed is
put at the end of the deck than if it is moved back to the 75' mark. He plans to
greenscape the property, like he did with his house lot.

Ms. Hackett asked if the building was going to be only a shed and not used as living
space.

Mr. Bakos said that it was only to store stuff for the boat.

Mr. Levesque moved to close Public Hearing Case #2012-00006 – Richard Bakos,
owner. Seconded by Mr. Onion. **Motion passed unanimously.**

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Public Hearing Case # 2012-00007 – Robert Grimard, owner: requests a variance from Zoning Ordinance Article IV Table 2 to place a 4' x 8' storage shed on cinder blocks 60' from the lake & 18' from the side property line. Property is .17 acres located at 107 Lakeshore Dr., Map/Lot# 132/1, in the Rural Zone.

Mr. Grimard stated that a variance was granted last year with a condition to remove the temporary shed[carport]. He felt the "temporary" should not have been part of the decision.

Mr. Levesque asked if he have received a building permit to put up the carport/shed.

Mr. Grimard said it was there when he bought the property. Mr. Levesque said that the former variance included getting rid of the illegal carport/shed, which has never had a permit.

Mr. Grimard said the property is meticulously maintained; he chose the green color for the carport so it would blend in with the landscaping. The new shed would be for shovels and stuff. The carport is temporary. He is asking for the condition to be removed and the variance allowed.

Ms. Hackett stated that the variance that had been granted in 2010 was only good for 1 year. The length of time a variance is good has changed to 4 years, and if it had been granted last year it would still be in effect and he would be unable to reapply to the ZBA. Since Mr. Grimard's variance has expired, he was able to apply again with the same request. The purpose of the condition was for safety; to not have anything too close to the roadway. The carport wasn't temporary because it has been there a long time. Since the Zoning Ordinance was put in place by the voters of Gilmanton, anything put up on a property has been required to have a permit. The carport never had a permit. **The board is concerned only with the use of the property not the look.** She indicated that the property was maintain wonderfully, which she appreciated, but maintenance is not the Board's concern. She reminded him that he had had 30 days to appeal the former decision if he had felt the condition was not valid. He did not appeal.

Mr. Grimard showed a picture of how his lawn looks. He complained that a Selectman told him he had 2 years to appeal the variance decision.

Mr. Levesque asked what the other shed [not the carport] on the property was used for. Mr. Grimard said it held stuff for the boat.

There was a discussion about what is temporary. It was stated that anything structural put on a property requires a building permit, whether portable, fixed, or temporary.

Ms. Hackett mentioned that a variance granted to the property in 2000, required removal of a shed before putting up the deck. That variance was recorded with the deed. The owners before Mr. Grimard never took the shed down. The record shows that the shed should have been removed. She wondered if the abutters were comfortable with the carport in the setback.

Ms. Hackett read an abutter letter from Don Maki dated in 2010 given to her by Mr.

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Grimard, saying that Mr. Maki supported the placement of the new small shed.

Mr. Levesque moved to close Public Hearing Case #2012-00007 – Robert Grimard, owner . Seconded by Mr. Onion. **Motion passed unanimously.**

Public Hearing Case # 2012-00008 – Mike & Teresa Mitsch, owners: request a variance from Zoning Ordinance Article IV Table 2 to place a 32'x 34', 1½ story house 10' from the lake and a 20'x19' carport a few feet from the road. Two sheds are already on the property. Property is .31 acres located at 9 Tepi Lane, Map/Lot# 131/26, in the Rural Zone.

Mr. Mitsch said that the dimensions on the new house would not increase from the old house and the deck will have the same total square footage as the old deck. Since they are rebuilding the house after a fire, they wanted to move the house to meet the side setback. They did not know they needed a permit for the carport, but they would like to rebuild it with the same dimensions. There is a discrepancy in the way the road is on the town map and Mr. Noddin's drawing submitted with the application. Where the road would be is another 20' away.

Ms. Hackett said that the Board had Mr. Noddin's drawing. The Mitschs are staying in a trailer on the property, just until the house is finished. They want to rotate the house to face differently then the way it did before the fire. It will be 42' from the roadway. If a 20' x 19' carport is placed there it will not be set back far enough from the roadway.

Mr. Mitsch said he understood that the carport would be in the setback.

Ms. Hackett said she had issue with the carport location, but personally liked turning the house.

Mr. Abbott arrived at 7:46.

Ms. Hackett said that on the drawing the sheds that were built last year do not meet the setbacks.

Mr. Mitsch pointed to the Google Earth picture, saying it shows that the sheds are not in the setbacks, and the building inspector checked them. He said that he didn't make sure that the sheds were placed correctly on the plan, just the house.

Ms. Hackett stated that the deck on the original house, according to ZBA decision, was supposed to be not wider than 7', and it was built 8' wide. She reminded the applicants that the house can be no more than 35' tall, and only have 2 bedrooms.

Mr. Levesque asked how the deck is reached.

Mr. Mitsch said steps would be off the left side of the house going away from the lake and the neighbor.

Mr. Abbott asked how big the deck was going to be. Ms. Hackett said they would like a

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10' wide deck, that would be 15' from the lake; a few feet further away than previously. She said the applicants want one part of the deck screened in. She told the applicants that would mean screens not windows or living space. Mr. Mitsch agreed.

David Delaney stated that he was in favor of moving the Mitsch house further from his house.

Karen Walton said she lived across the street and was in favor of the Mitsch plan. Ms. Hackett thanked the neighbors for taking the time to come in.

Ms. Hackett said that the plan submitted shows that the sheds are non-conforming. The testimony is that the building inspector verified the placement. She suggested that the building inspector re-verify the placement.

Ms. Andreozzi wanted to make it clear to the Board that according to the person hired by Mr. Delaney the 'road', Tepi Lane, is on the Mitschs' property; if this was not a fire rebuild the Mitschs would have had to go through a great many more steps to try to get permission to build on this piece of property. The neighbor, Mr. Delaney drives across the Mitsch property to get to his house. Mr. Delaney verified that a few years back he spent some money to try to figure out where the property lines and road were. The corner stake is up the rock ledge.

Mr. Levesque moved to close Public Hearing Case #2012-00008 – Mike & Teresa Mitsch, owners. Seconded Mr. Onion. **Motion passed unanimously.**

DELIBERATIVE SESSION:

Case # 2012-00006 – Richard Bakos, owner

Ms. Hackett said that the shed will be 67' from the water, though the application said 62'. The shed will be for storage only.

Mr. Abbott was concerned about no greenscaping being on the plan. He said that a condition of approval should be that all DES permit conditions must be met.

MOTION:

Mr. Levesque moved to grant a variance in Case #2012-00006 – Richard Bakos, owner: from Zoning Ordinance Article IV Table 2 to place a 10' x 10' storage shed 67' from Sawyer Lake. Property is .42 acres, Map/Lot# 122/87-88, in the Residential Lake Zone across the street from the owners residence located at 315 Hemlock Dr.,.

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- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection and DES has approved the application;
- b. The spirit of the Ordinance is observed because there are no other structures on the lot;
- c. By the granting of the variance, substantial justice will be done because moving the shed to meet the setback would cause more surface area to be disturbed;
- 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 seeking it owing to the special conditions of the very steep property, and that this was 2 non-conforming lots that the owner has merged into one bigger one distinguishing it from other properties in the area;
 - i. no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because the ordinance was designed to keep pollution and crowding from the lake and,
 - ii. the proposed use is a reasonable one because the shed will increase the maintained look of the property.

CONDITIONS: The building cannot house any plumbing which could create other uses of the building. The shed cannot be used as living quarters. The conditions of DES permit # 2011-02538 must be met.

Mr. Abbott seconded. **Motion passed unanimously.**

The applicant was reminded that there is a 30 days appeal period before a building permit can be issued.

Case #2012-00007 – Robert Grimard, owner

Ms. Hackett stated that Mr. Grimard was looking to put up a shed. In 2010, Don Maki, an abutter had written a letter stating that he had no objection to the shed. No appeal was made to the ZBA 2010 decision, and a building permit was not granted because the ZBA condition that the carport be removed was not met. The carport is secured to the ground with screwpins, and a building permit is required by the International Residential Building

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Code, and was not applied for. Mr. Grimard objected to the removal condition that was placed on his variance; he stated that the carport was there when he bought the property. In 2000 the carport was to be taken down before putting up the deck, which was built.

Mr. Abbott asked what the justification would be for reversing an earlier ZBA decision. Ms. Hackett said the Board was concerned because there are safety issues with the carport.

Mr. Levesque stated that when backing out of the carport one cannot see down the road. The carport wasn't permitted and should have been removed. The lot is so small that the absorption of rain water is reduced.

Ms. Hackett said that rain water might just go down the road.

Mr. Onion looked at the property, and did not think anyone would notice the new shed because it is on the side of the house. He wanted to know if the ZBA would allow the new shed if there was no carport, and if they were using this to make Mr. Grimard take the carport down.

Ms. Hackett said that if the non-conforming, un-permitted carport didn't come down then should the applicant be allowed to build more buildings.

Mr. Onion said the remedy should be that the building inspector makes the carport come down.

Mr. Levesque said the remedy is to apply for a permit for the carport and get denied or granted.

Ms. Hackett said the carport is near trees and blends, its not an eyesore, the owner says it has been there 12 years. It is a non-conforming structure. The question is whether to address it like the previous board did, or not.

Mr. Onion wanted to know if a court of law would allow the linking of the two.

Mr. Levesque said that by law the carport should have been removed before the deck and shed were built.

Mr. Abbott said there is a justification to linking a request with removing non-conforming structures, because it brings the property to conform more with zoning, and the spirit of zoning is to control density & protect the environment. New structures can be a trade off for old non-conforming structures. The prior owner chose to go against the ZBA decision of 2000. The 2010 ZBA came to the same conclusion that the non-conforming structure needed to be removed because of the increased non permeable surface area. The area is dense with structures, and the property is close to a body of water. To deny the application would be punitive. Granting with the condition to remove the carport is reasonable.

Mr. Levesque stated that there are a lot of the unpermitted so called temporary carports. Maybe the code enforcement officer should be taking a ride out there. The Zoning Ordinance should be enforced.

Mr. Abbott stated that it is the duty of the Selectmen to enforce the zoning rules. It has been the Selectmen's habit to enforce as a result of complaints. The cost of enforcement makes it a hard decision.

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MOTION:

Mr. Levesque moved to grant a variance in Case #2012-00007 – Robert Grimard, owner: from Zoning Ordinance Article IV Table 2 to place a 4' x 8' storage shed on cinder blocks 60' from the lake & 18' from the side property line. Property is .17 acres located at 107 Lakeshore Dr., Map/Lot# 132/1, 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 the present owner did not erect the carport, and the shed is not that big and will be on cinder blocks so flow of water is not impeded**
- c. By the granting of the variance, substantial justice will be done because they probably need the shed;**
- 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 due to special conditions of the property being the slope of the land, that distinguishes it from other properties in the area; and no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because even though it increases the structures on the property it is far enough from the water.**

Mr. Onion seconded. **Motion passed unanimously.**

Ms. Hackett reminded the applicant that there is a 30 day period before an building permit can be applied for, and that the carport is still not in compliance.

Case #2012-00008 – Mike & Teresa Mitsch, owners

Ms. Hackett stated that the applicants wish to replace a house that burned. The drawing submitted shows the deck placed 10' from the lake, but it will be 15 ' from the lake. The carport is really further from the property line than it appears on the submitted drawing because that section of the "road " is a driveway on the applicants property. The sheds on the property do not appear in the correct place on the submitted plan. The applicant has been informed that the height limit for buildings in Gilmanton is 35'. The trailer that is there now will be removed when the house is completed. The stairs from the deck will be on the left of the house so they do not impose on the abutter.

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MOTION:

Mr. Onion moved to grant a variance in Case # 2012-00008 – Mike & Teresa Mitsch, owners: requesting a variance from Zoning Ordinance Article IV Table 2 to place a 24' x 32 house with a 10' x 32' partially screened in deck', and a 20' x 19' carport, in placement as noted on plans submitted at least 15 feet from the lake. Property is .31 acres located at 9 Tepi Lane, Map/Lot# 131/26, 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 the side setback will now be met;**
- b. The spirit of the Ordinance is observed because Article VII-B-4 allows rebuilding of a structure destroyed by fire;**
- c. By the granting of the variance, substantial justice will be done because the owners can resume living on their property;**
- 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 seeking it owing to special conditions of the property distinguishing it from other properties in the area, which is that the placement of the septic system causes the house to be placed on the part of the property which has less distance from the lake than other lots;**
 - i. no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because an existing house was destroyed by fire****AND**
 - ii. the proposed use is a reasonable one because it allows the property to continue to be used as it was before the fire.**

CONDITIONS: Rebuilding must commence within one year of this date.
No additional structures or additions may ever be built in the setbacks.
The screened in porch will not be used as living space.
The conditions of DES permit #2012-01391 must be met.

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

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APPROVAL OF MINUTES

MOTION: Mr. Abbott moved to approve the minutes of the May 17, 2012 meeting as amended. Seconded by Mr. Levesque. **Motion passed unanimously.**

OTHER BUSINESS

There was a discussion about the lack of information coming from the Planning Board. There had been no notification to ZBA members or clerk about the July planning meeting.

ZBA members would like an identification badge to facilitate going to view applicants' property.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. Onion to adjourn, vote passed unanimously. Meeting adjourned at 9:10 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Clerk