

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, JANUARY 21, 2016 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:10PM
Members attending: Elizabeth Hackett, Perry Onion, & Nate Abbott, Vicky Fournier.
Member not attending: Mike Teunessen
Also in attendance: Annette Andreozzi, Land Use Administrator

The Chair made introductions and explained the ZBA procedures.
The Chair stated that there were only 4 Board members present and the applicants could ask to continue until a future meeting. Three positive votes would be needed for any decision to pass.

NEW BUSINESS

Public Hearing Case # 2016-00001 Kimberly Dussault, owner: requests a variance from Zoning Ordinance Article IV Table 2 to expand an existing one story garage so that it is approximately 16-20' from the road. Setback in the zone is 50'. Property is .43 acres located at 329 NH Route 140, Map/Lot# 127/28, in the Light Business zone.

Roger Dussault spoke on behalf of Kimberly Dussault, who was present. He said they wanted to add 8' to the garage building so they could park two cars. They built a different style of house on the lot than first intended and now the garage building can't be connect to the house.

Ms. Hackett asked if the garage was originally attached to the former trailer as a shed. Mr. Dussault said his dad attached the building on to add space to the trailer.

Ms. Hackett said the garage presently is 24' from NH Rte.140 so the building would be 8' closer to the road, making it 16' from NH Rte. 140.

Mr. Dussault pointed out on the drawing where the addition would be.

Ms. Hackett asked if there was a problem with making the addition closer to the house.

Mr. Dussault said the septic was there.

Ms. Hackett indicated once a building is removed, there isn't any grandfathering which would allow one to put something back in that space.

Ms. Fournier asked where the front of the garage would be.

Mr. Dussault said he wanted the door to face NH Rte. 140.

Mr. Abbott moved to close Public Hearing Case #2016-00001 Kimberly Dussault, owner
Seconded by Ms. Fournier. **Motion passed unanimously.**

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Public Hearing Case # 2016-00002 David & Laurie Whitehouse, owners: requests an after the fact variance from Zoning Ordinance Article III Section P to put a detached residential unit on a lot where a single family residence already exists in zone where only one residential building is allowed per lot. Property is 5.73 acres located at 59 Allens Mill Road, Map/Lot# 413/26, in the Rural zone.

Mr. Whitehouse stated that they have a building built as a barn several years ago, which they transformed into a house. His daughter's husband gets deployed, and she uses it. Now the husband is back and the family is using it.

Ms. Hackett asked if he wanted to put a basement under the barn house.

Mr. Whitehouse said the building inspector came out to look at an addition on his house and noticed the barn conversion.

Ms. Hackett stated that the permit to originally build the barn was with no electric and no plumbing. She said that a septic had been put in, but the applicant had not gone to planning, zoning, or building for permission to convert the barn.

Mr. Whitehouse said he thought he just needed a septic with no other permissions.

Ms. Hackett said the zoning in his area is for one house per lot. There is enough property to subdivide into 2 lots. Now there are 2 houses on one lot. There is 177' of frontage; 400' are needed for subdivision so a variance would be needed for not having enough frontage. She asked if the town checked when notified about a septic. She was told it did not. She asked about the minimum flow septic design.

Mr. Whitehouse said they have had no problem.

Mr. Abbott said he understood the motives for the second residence, but asked if he had discussed his options with the staff.

Mr. Whitehouse said he was notified by the staff, and was given options to subdivide and apply to the ZBA.

Mr. Abbott said it would seem like a difficult variance to grant since it would set a horrible precedent. Everyone with five acres would expect to be able to have 2 houses on their lot. The people of the town voted that they did not want more than one house on a lot. There is an avenue through the planning board to subdivide so the 2 houses can exist.

Mr. Onion stated that the applicant has been taxed as if his building was a barn. The town has not received the proper taxes.

Kathy Brooks stated that she was an abutter who is in favor of granting him the variance.

Mr. Onion moved to close Public Hearing Case #2016-00002 David & Laurie Whitehouse, owners

Seconded by Ms. Fournier.

Motion passed unanimously.

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Public Hearing Case # 2016-00003 Kathleen Brooks, owner: requests a variance from Zoning Ordinance Article IV Table 2 to allow a subdivision where one lot will have 17' less frontage than the required 200' for each, so the lots can share a driveway. Property is 106 acres located at 224 NH Route 140, Map/Lot# 413/95, in the Rural zone.

Ms. Brooks was asking to subdivide about 2.5 acres from her lot to create another lot. The two lots would share a driveway. She wants to build a smaller house for herself so she can downsize.

Ms. Hackett said she looked at the lot, and pointed out on the map where the driveway was, and where the proposed subdivision line was.

Mr. Onion asked Ms. Brooks to point out her present house on the map.

Ms. Brooks pointed out that she has frontage in two places on NH Rte. 140, so the two places total almost 400' of frontage on NH Rte. 140.

Mr. Abbott moved to close Public Hearing Case #2016-00003 Kathleen Brooks, owner

Seconded by Ms. Fournier.

Motion passed unanimously.

DELIBERATIVE SESSION:

Case # 2016-00001 Kimberly Dussault, owner

Ms. Hackett said the application was to add on 8' to the 3-sided shell that is presently on the lot to make a bigger garage. That section of NH Rte. 140 is a 30 mile per hour speed zone, which changes to 40 MPH.

Mr. Onion said that now there is a shed on a foundation that is going to stay, but doesn't have one wall. Putting up a wall will be a plus.

Mr. Abbott said the owner didn't put a new trailer on the property she built a house. She should have a garage.

MOTION:

Ms. Fournier moved to grant a variance in Case #2016-00001 Kimberly Dussault,

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owner: requesting a variance from Zoning Ordinance Article IV Table 2 to expand an existing one story garage so that it is approximately 16-20' from the road. Setback in the zone is 50'. Property is .43 acres located at 329 NH Route 140, Map/Lot# 127/28, in the Light Business zone.

- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection and no evidence presented that it would be contrary;
- b. The spirit of the Ordinance is observed because the property would be improved;
- c. By the granting of the variance substantial justice will be done because the homeowner will be allowed better use of the garage;
- d. The Board saw 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 being that the removal of the trailer left a unfinished building, which distinguishes the property from other properties in the area,
 - i. a fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because this allows the completion of the ongoing improvement of the property,

AND

 - ii. the proposed use is a reasonable one because it poses no more safety and health concerns being close to the road than the trailer that was there before.

CONDITIONS:

- 1. Structure cannot be used as living space, storage only.
- 2. The structure can be extended no more than 8' as proposed in the application.

Mr. Onion seconded.

Motion passed unanimously.

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2016-00002 David & Laurie Whitehouse, owners

Ms. Hackett stated there is an existing residence on the lot, and a barn that has been converted to a residence without permits. The owner is looking to make that legal. She said the ZBA can grant a variance for the barn as a second residence, or suggest that the owner subdivided the property, which would mean he will need to come back for a variance, not having enough feet of frontage. He has enough acres for a subdivision. Mr. Abbott stated the ZBA was bound to deny the variance on the spirit of the ordinance. The fact that the second house was built made no difference. Ms. Hackett said the Board has denied two residences on one lot in the past. Mr. Abbott stated that there were ways the applicant could make it work. Ms. Hackett said the ZBA could rule that the second residence could not be used until there is a subdivision, but the Board has not done that in the past. Mr. Onion stated that the Board can only deny the application or not deny it. Ms. Hackett indicated that the applicant might be able to appeal whatever decision the ZBA might make.

MOTION:

Mr. Abbott moved to deny a variance in Case #2016-00002 David & Laurie Whitehouse, owners; requests an after the fact variance from Zoning Ordinance Article III Section P to put a detached residential unit on a lot where a single family residence already exists in zone where only one residential building is allowed per lot. Property is 5.73 acres located at 59 Allens Mill Road, Map/Lot# 413/26, in the Rural zone.

The granting of the variance would be contrary to the public interest because the town zoning has maintain a one residence per lot in this zone for many years and to the Board's knowledge a variance has not been granted for two separate residences on one lot;

The spirit of the Ordinance would not be observed because it would go against the ordinance as created;

By the granting of the variance substantial justice would not be done because others have had to subdivide their lots;

Literal enforcement of the ordinance would not result in unnecessary hardship to the property owner seeking it owing to no special conditions of the property were demonstrated, and there is no fair & substantial relationship between the general public purposes of the ordinance & the specific application to this property as demonstrated by the existence of a fair and ready pathway to the applicants objectives through the land use boards.

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Mr. Onion seconded.

Motion passed unanimously.

Case # 2016-00003 Kathleen Brooks, owner

Ms. Hackett said that there are 106 acres and the applicant wants to make two parcels with a shared driveway so she can build a downsized house.

MOTION:

Ms. Fournier moved to grant a variance in Case ## 2016-00003 Kathleen Brooks, owner; requesting a variance from Zoning Ordinance Article IV Table 2 to allow a subdivision where the total frontage of both lots will be 17' less frontage than the required 200' for each lot, so the lots can share a driveway. Property is 106 acres located at 224 NH Route 140, Map/Lot# 413/95, 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 no evidence presented that it would be contrary;**
- b. The spirit of the Ordinance is observed because there will be no additional driveways, so 200' of frontage is not needed for safety;**
- c. By the granting of the variance substantial justice will be done because the property can be subdivided, allowing the owner to build another house;**
- d. The Board saw 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 being that the property has 655' of frontage on Allens Mill Road that cannot be used for the driveway because of wetlands and another 140' on NH Rte.140 in a separate section, which distinguishes it from other properties in the area which have all their frontage in a contiguous piece on NH Rte.140,**
 - i. a fair & substantial relationship exists between the general public purposes**

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of the ordinance provision & the specific application to this property because it allows the owner to subdivide without making an additional driveway,

AND

- ii. the proposed use is a reasonable one because the owner can make better use of her property without creating new safety issues.

CONDITIONS: There may be no additional driveways in the section on NH Rte.140 where the present driveway is located on this property.

Mr. Onion seconded.

Motion passed unanimously.

Ms. Hackett explained that Ms. Brooks will go to planning for subdivision approval, but did not have 400' of frontage on NH Rte.140. That was different from Mr. Whitehouse's application because he already has 2 residences on one property, which is totally contrary to the zoning ordinance. He can apply to the planning board for a subdivision, but since he doesn't have the necessary 400' of frontage he would have to come back to the ZBA for a frontage variance. He could appeal the present ZBA decision if it was found that a point of law was not applied properly.

Mr. Abbott stated that the ZBA was an independent board where a person comes when there is a land use problem anywhere else.

APPROVAL OF MINUTES

MOTION: Mr. Abbott moved to approve the minutes of the October 15, 2015, meeting as amended. Seconded by Ms. Fournier. Motion passed unanimously.

ADJOURNMENT: Motion was made by Mr. Onion and seconded by Mr. Abbott to adjourn. Vote passed unanimously. Meeting adjourned at 8:55 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator