

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MARCH 10, 2016 – 7 PM.
ACADEMY BUILDING
MINUTES

The joint meeting of the ZBA and Planning Board was called to order by Planning Chair Wayne Ogni at 7:10 PM.

ZBA Members attending: Elizabeth Hackett, Mike Teunessen, Nate Abbott, & Vicky Fournier.

Member not attending: Perry Onion,

Also in attendance: Planning Board members, Ogni, Buttrick, Caldron, Jean, Weston, Martindale, & Mahoney, and Land Use Administrator Annette Andreozzi,

NEW BUSINESS

Joint Public Hearing Case # 2016-00006 Pensco Trust Co Custodian, owner, Henry Vigeant, applicant: requests a special exception from Zoning Ordinance Article IV Table 1 to change use in an existing building to include a restaurant. Property is .44 acres located at 518 Province Road, Map/Lot# 137/37 in the Village zone.

The ZBA Chair made introductions and explained the ZBA procedures.

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

Annebelle Henry-Dean introduced herself as the owner of the property, and said Mr. Vigeant her business partner would be speaking for her.

Mr. Vigeant said he wanted to proceed with 4 members, and he was present to answer questions.

The planning board had no questions.

Ms. Hackett asked if the business would now be a restaurant and not sell store items.

Mr. Vigeant said some store items, fresh produce, and take out would be sold, but it would not be a convenience store. Rachele Vigeant said there would be more farm fresh products.

Ms. Hackett stated that the applicant was before the ZBA because the business was changing use.

Mr. Abbott asked how many employees would be manning the store at one time.

Mr. Vigeant said he would be doing most of the cooking. On weekends he might bring in another person. He would have a couple of employees.

Ms. Hackett stated that Mr. Ogni had talked to the police, and they have no problem with street parking.

Ms. Fournier asked if alcohol would be served.

Mr. Vigeant said he would like that as a future option.

Ms. Hackett asked where the apartment was located; it was not identified on the Board's

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drawing.

Ms. Henry-Dean said the three bedroom apartment was behind the store and the former one bedroom apartment was above the store, which will become the store office.

Ms. Hackett stated that if the change of use is granted the former one bedroom apartment must remain an office not return to being an apartment.

Mr. Eisenmann applauded the applicant for the family like concept. He said some of the changes could impact him as an abutter, such as alcohol sales and hours of operation. The present owner may sell and then the building could become a bar. Outdoor seating will affect his property. All the properties surrounding the Slice are for sale, except his. There were twelve people at the site walk; some people were double parked at the pumps, and all the spaces down the street were full. On Saturday nights there could be upwards of 4 cars just for seated patrons. The business' septic is 100 feet from his well. How big will the dumpster be, and where is it going to be? The former store morphed over time, and never had public hearings for changes. If the purposed business concept changes he wanted to know how he would be affected. The intersection is dangerous. He knew of at least a dozen accidents. When the Tavern wanted to open a gallery they had to show proof of parking. The Slice should be held to the same standard. Before, the employees were also the building residents.

Ms. Hackett stated that the ZBA would be putting conditions on the application that will be recorded and those conditions will stay with the property.

Mr. Abbott had Mr. Vigeant clarify that the hours of operation would be: Sunday-Thursday 11AM-9PM, Friday-Saturday 11AM-10PM.

Mr. Martindale said there would be no alcohol now, but the applicant says he wants to have it in the future. He felt alcohol should be limited to packaged goods, as opposed to drinking on the premises.

Mr. Vigeant said he wanted to have the ability to serve alcohol.

Mr. Abbott moved to close Public Hearing Case #2016-00006 Pensco Trust Co Custodian, owner, Henry Vigeant, applicant.

Seconded by Ms. Fournier. **Motion passed unanimously.**

Motion to recess by Ms. Hackett seconded by Mr. Abbott.

A recess was called for the ZBA to reconvene in a separate meeting room.

ZBA reconvened at 7:50PM.

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DELIBERATIVE SESSION:

Case # 2016-00006 Pensco Trust

Ms. Hackett stated that the property was a general store with a residence, and now there will be one apartment and a deli/restaurant. The Board had heard concerns. The hours of operation have changed from what was in the application. The hours requested are 10AM -10PM seven days a week. There will be a minimum of 2 employees, possibly four. She stated that Mrs. Griffin, who lived down the street had stated she was in tune with that.

Mr. Abbott stated that there was no doubt in his mind that the Corners needed its store, but Mr. Eisenmann had raised some key concerns. The Board has to deal with a change of impact from a convenience store to a restaurant. In the middle of February local businesses are quiet, but in the middle of summer they can be very busy. The Board might need to allow the operation for some time, then have the applicant come back to the Board to reevaluate the conditions.

Ms. Hackett said that when it was a store, the store closed at 8PM, but it would be nice if one could go by later than 8PM and pick up something. Where the dumpster will be located was a concern. Her real concern was the septic.

MOTION:

Mr. Abbott moved to grant a special exception for Case# 2016-00006 Pensco Trust Co Custodian, owner, Henry Vigeant, applicant: from Zoning Ordinance Article IV Table 1 to change use in an existing building to include a restaurant. Property is .44 acres located at 518 Province Road, Map/Lot# 137/37 in the Village zone.

- a. **The site is appropriate for the use because the Board has received evidence that the public desires this use;**
- b. **The use as developed will not adversely affect the neighborhood because it is similar enough to the previous traditional use of the property that the impact should be minimal;**
- c. **Adequate & appropriate facilities will be provided for the proper operation of the proposed use in that appropriate modifications to the property will be made for the serving of food, on site bathrooms, appropriate septic, appropriate trash disposal, and adequate parking;**
- d. **There was no evidence that a nuisance or hazard will be created.**

CONDITIONS:

1. **Copy of a current NH food service class D license shall be provided to the Land**

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Use Administrator.

- 2. The applicant will acquire a NHDES septic approval for operation, covering the restaurant, office, and three bedroom apartment, OR provide to the Town a NHDES construction approval for replacement septic plans along with proof from a certified septic system evaluator enlisted with the Granite State Designers & Installers Association, that the present system will support the restaurant, office, and three bedroom apartment.**
- 3. Receipt of a Town building department certificate of completion for all work, signed by the building inspector.**
- 4. No more than four employees, managers, and/or owners may work on the premises at one time.**
- 5. Only one apartment may be in the building with no more than the maximum number of bedrooms allowed by the NHDES approved septic system.**
- 6. There will be no exterior seats or tables.**
- 8. The number of interior seats is limited to 23.**
- 9. No ancillary business opportunities can be run in the building without coming back to the Zoning and/or Planning Boards for permission (i.e. babysitting or selling of other types of goods (i.e. solar panels, siding)).**
- 10. A reapplication must be made to the ZBA, for amendment to this approval, before any alcoholic beverages can be sold.**

Seconded by Ms. Hackett.

There was a discussion about dictating hours, the intersection being dangerous, and alcohol consumption.

Vote was unanimous for the motion.

Ms. Hackett explained that there was a 30 day window for appeals to the ZBA decision.

There was a short break while the ZBA decision was relayed to the Planning Board.

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Public Hearing ZBA Case #2016-00005 Alan & Janet Zani, owner, Justin Caldon, applicant: requests a variance from Zoning Ordinance Article IV Table 2 to build a foundation under existing structure in the 75' lake setback. Property is .13 acres located at 92 Loon Pond Road, Map/Lot# 136/25 in the Rural zone.

Ms. Hackett stated that there was a letter on file giving Mr. Caldon authority to act on behalf of the property owners.

Mr. Caldon stated that they want to put a foundation under the existing house, keeping the same building footprint, having no more impact on the property. He has applied for a full Shoreland permit because of the amount of soil disturbance.

Mr. Abbott asked about the present condition of the house.

Mr. Caldon said it was on piers, block, rocks, and jacks. The sill is lower at one part than the pond. Near the road the sill wood is touching ground.

Ms. Hackett stated that the neighboring house is up high and off to the left, so their sightline will not be impacted.

The Gilmanton Conservation Commission had indicated they have no objection to the application as long as a Shoreland permit is granted.

Ms. Sanville, abutter, asked about a cellar.

Mr. Caldon said the total foundation will be 6' deep; it already is about 4' and will be raised about 2'.

Ms. Sanville stated there is a blind corner, and wanted to know what would be done about safety at the corner during construction.

Mr. Caldon said he will talk with the road agent. They will need more space at one end of the building to do the work which is why application was made for a more intense Shoreland permit. All the equipment will be parked on the site. All debris will be removed from the site.

Mr. Abbott moved to close Public Hearing Case #2016-00005 Alan & Janet Zani, owner, Justin Caldon, applicant.

Seconded by Ms. Fournier.

Motion passed unanimously.

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DELIBERATIVE SESSION:

Case #2016-00005 Alan & Janet Zani

MOTION:

Mr. Teunessen moved to grant a variance in Case #2016-00005 Alan & Janet Zani, owner, Justin Caldon, applicant, from Zoning Ordinance Article IV Table 2 to build a foundation under existing structure in the 75' lake setback. Property is .13 acres located at 92 Loon Pond Road, Map/Lot# 136/25 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 increase to the building size;
- c. By the granting of the variance substantial justice will be done because the applicant will not be changing footprint of the structure;
- d. The Board saw no evidence presented that granting the variance would create diminution of value to the surrounding properties, and value to the current structure will increase;
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property namely the house was positioned on the lot before the current zoning ordinance, which distinguishes it 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 the Zoning Ordinance seeks to prevent further crowding on the lake, not to keep owners from enjoying existing residences

AND

- ii. the proposed use is a reasonable one because it is an upgrade in the current structures' appearance

CONDITIONS:

1. The project must receive approval from DES Shoreland.

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2. The foundation space is to be used for storage and utilities only, not as living space.

Seconded Ms. Fournier.

Motion passed unanimously.

APPROVAL OF MINUTES – February 18, 2016, meeting

MOTION: Mr. Abbott moved to approve the minutes of the February 18, 2016, meeting as amended. Seconded by Mr. Teunessen. Motion passed unanimously.

OTHER BUSINESS

Ms. Hackett said that Zanna Richards spoke to her about possibly becoming a member of the ZBA.

Ms. Andreozzi reported that after researching ZBA Case #13-2005, the decision on the case was worded so poorly and in such a way as to make it impossible for the Town to enforce tearing down the small red house at 19 Province Road.

There was discussion about taking care with future decision wording so that the ZBA's thoughts can be enforced.

ADJOURNMENT: Motion was made by Mr. Teunessen and seconded by Mr. Abbott to adjourn. Vote passed unanimously.

Meeting adjourned at 9:18 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator