APPROVED

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

Chair Elizabeth Hackett called the meeting to order at 7:01PM
Members attending: Elizabeth Hackett, Perry Onion, Mike Teunessen, Nate Abbott, & Vicky Fournier.
All members were in attendance.
Also in attendance: Annette Andreozzi, Land Use Administrator

The Chair made introductions and explained the ZBA procedures.

NEW BUSINESS

Public Hearing Case # 2016-00007 Deborah Byron & Jon Franklin, owners: requests a variance from Zoning Ordinance Article IV Table 2 to enclose an existing porch and extend roof over existing deck, existing area is within the 75' lake setback. Property is .22 acres located at 476 Crystal Lake Road, Map/Lot# 107/17, in the Rural zone.

Mr. Franklin said he wants to enclose the existing screen porch and put a roof over the existing deck.
Ms. Hackett asked him if the Board where to make a restriction that the improvement could not be made into living space, would the applicants be ok with that.
Mr. Franklin said that Ms. Andreozzi told them that might be a condition, and they would accept it.
Ms. Hackett read a letter of support from an abutter named Susan Maher. Ms. Hackett then stated that the project would be going no closer to the lake.
Mr. Franklin stated that the Shoreland permit had been granted.

Mr. Teunessen moved to close Public Hearing Case #2016-00007 Deborah Byron & Jon Franklin, owners. Seconded by Mr. Onion.
Motion passed unanimously.

Ms. Hackett stated that the next two cases were the same property so the Board would hear the input for both together.

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Public Hearing Case # 2016-00008 Dennis Zonas, owners: request a variance from Gilmanton Zoning Article IV Table 2 to allow a 30' 9" setback from the property line at the road where 35' setback is minimum. Property is .23 acres located at 116 Valley Shore Drive, Map/Lot# 131/77, in the Rural zone.

Public Hearing Case # 2016-00009 Dennis Zonas, owners: request a variance from condition 2 of previous ZBA decision dated October 23, 2014, that there can be no additions to the house of any kind. Property is .23 acres located at 116 Valley Shore Drive, Map/Lot# 131/77, in the Rural zone.

Mr. Durbin, attorney representing Mr. Zonas, said there was a correction to the memo he sent: the overhang in the front is one foot. He stated that in 2014 the former owner of the property was granted several variances, one of which was for a foundation of a certain size. The current owner, Mr. Zonas, has tried to design a plan in keeping with that variance. The size of the requested foundation will be smaller. They want a deck that makes the overall footprint bigger. The location will be varied slightly so they will need to be in the road set back by 4 1/4', but the foundation will be two feet further from the lake. Condition #2 to case # 2014-00014 stated there could be no additions of any kind to the house the former owner proposed. In Mr. Zonas' plan the foundation will not be expanded. The 85' overhangs are in the plan presented. Mr. Durbin wanted to be overly inclusive because there was no house design for the previous variance.
Ms. Hackett stated that on the proposed house plan it looks like there is an additional 6' of steps, which would make the end of steps 18' from side property line.
Mr. Zonas said the 6' coming out is a deck, and steps would be from the road side. The line Ms. Hackett was looking at was a dimension line for the deck, which is included in the footprint. The steps are on the road side.
Mr. Durbin stated that 85' is larger than the previous footprint, but the foundation will be smaller.
Mr. Abbott said the request is a variance from condition #2 that no additions be placed on the footprint. He asked if Mr. Durbin was considering the increase of the outside dimensions as an addition. Then he stated that if the Board grants the variance, it might still say that future owners cannot put on an addition.
Mr. Durbin said he would be fine with a new condition based on the drawing now presented.
Ms. Hackett stated the prior conditions that there be no additions or new buildings on the property were recorded with the Registry of Deeds.
Mr. Abbott felt that the ZBA can't constrain future Boards from making new decisions.
Mr. Durbin said that was true, but a future owner would still have to come before the ZBA to vary a condition, so the condition wording should be clear.
Mr. Teunessen asked about the Conservation Commission's statement that building on this site would not be positive.

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Ms. Hackett stated that the ZBA was given all information in the file, and the Conservation Commission is an abutter.
Mr. Onion was concerned about runoff toward the lake and toward the Conservation Commission land.
Ms. Hackett stated that the ZBA had already granted a variance to build on this property.
Mr. Zonas said the roof run-off will go into crushed stone. The Shoreland Program has made some conditions.
Mr. Durbin stated that in relation to the variance criteria, the proposed construction will not be contrary to the public interest or the spirit of the ordinance because it will have no impact on the public or nearby property owners. There were letters of support from two abutters. There is no public benefit served by denying the applicant. A letter from a realtor stated the home would be an improvement to the lot, therefore there would be no diminution of value. Relating to hardship, the lot is undersized even to other undersized lots, and it would be impossible to develop without relief. Setbacks are for light, air, space, and protecting water quality.

Mr. Onion moved to close Public Hearing Case #2016-00008 Dennis Zonas, owners and Case # 2016-00009 Dennis Zonas, owners.
Seconded by Mr. Abbott.
Motion passed unanimously.

DELIBERATIVE SESSION:

Case # 2016-00007 Deborah Byron & Jon Franklin, owners

MOTION:
Mr. Teunessen moved to grant a variance Case # 2016-00007 Deborah Byron & Jon Franklin, owners: requesting a variance from Zoning Ordinance Article IV Table 2 to enclosed an existing porch and extend the roof over an existing deck, existing area is within the 75' lake setback. Property is .22 acres located at 476 Crystal Lake Road, Map/Lot# 107/17, 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 the footprint of the current structure is not being increased;

c. By the granting of the variance substantial justice will be done because allowing the applicant to enclose the porch and put a roof over an existing deck will allow their use during inclement weather;

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, namely that the proximity of the structure to the lake, being inside the setback, existed prior to zoning being established in Gilmanton, and that 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 improvement will enhance the value,
AND
ii. the proposed use is a reasonable one because the improvement will allow the applicant to better enjoy the lake.

CONDITIONS:
1. The deck cannot be modified further.
2. The porch must remain as a porch.
3. The improvements are never to be used as living space or bedrooms.

Mr. Abbott seconded the motion.

Mr. Onion was concerned with using an undersized lot as the reasoning for special conditional of the property, when every lot in the area is undersized.
Mr. Abbott said that the district as a whole has large lots as well as undersized ones. The lots were developed before zoning so that is what makes it a hardship. As the court has indicated, the hardship must lie in the land. Some of the lots in the area are impacted and others are not.
Mr. Onion asked if that could be invoked by anyone who had a small lot.
Mr. Abbott said it can't if the person wants to subdivide into small lots. If a house is already on a small lot, there is a hardship of its condition.
Ms. Hackett stated that the applicants are not building an addition. They want to make the

deck better, and they are not going closer to the lake.
Mr. Abbott said the proximity of the deck to the lake preexisted zoning.

Motion passed unanimously.

Case # 2016-00008 Dennis Zonas, owners

MOTION:
Mr. Abbott moved to grant a variance in Case # # 2016-00008 Dennis Zonas, owners: requesting a variance from Gilmanton Zoning Article IV Table 2 to allow a 30' 9" setback from the property line at the road where 35' setback is minimum. Property is .23 acres located at 116 Valley Shore Drive, Map/Lot# 131/77, in the Rural zone.

a. **The granting of the variance would not be contrary to the public interest because the applicant has made a judicious trade-off in choosing the design of the building and environment, in that it is slightly larger, but further from the lake;**
b. **The spirit of the Ordinance is observed because an effort was made to live up to the spirit of the prior approval, and the Board finds no adverse impact with the change;**
c. **By the granting of the variance substantial justice will be done because the applicant will be able to make use of the property in the way intended under the prior Board approval;**
d. **The Board saw no evidence presented that granting the variance would create diminution of value to the surrounding properties, in fact an opinion was presented that surrounding values would improve;**
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 that the dimensions provided in the prior decision were tight, and a plan for a home had not been developed, so latitude was needed for good home design, which was provided by the applicant, distinguishing 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 applicant has made a successful effort to conform to norms and conditions of the surrounding neighborhood,**

and make the property fit in,

AND

ii. the proposed use is a reasonable one because a variance had been granted on the property to construct a single family home, and a suitable design has been presented that is consistent with the previous granted proposal.

CONDITIONS:

1. The house be built according to the plan presented with the application, exhibit D, with no dimensional additions.
2. Drainage must be as established with the construction as presented by applicant during the public hearing, including crushed stone around the perimeter.

Ms. Fournier seconded.
Motion passed unanimously.

Case # 2016-00009 Dennis Zonas, owners

MOTION:
Mr. Abbott moved to grant a variance in Case # 2016-00009 Dennis Zonas, owners: requesting a variance from condition 2 of previous ZBA decision dated October 23, 2014, that there can be no additions to the house of any kind. Property is .23 acres located at 116 Valley Shore Drive, Map/Lot# 131/77, in the Rural zone.

a. The granting of the variance would not be contrary to the public interest because the applicant has made a judicious trade-off in choosing the design of the building and environment, in that it is slightly larger but further from the lake;
b. The spirit of the Ordinance is observed because an effort was made to live up to the spirit of the prior approval, and the Board finds no adverse impact with the change;
c. By the granting of the variance substantial justice will be done because a prior decision was made regarding a hypothetical building design;
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, namely that a dimension was applied to the property without a concept for the house, that 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 prior condition was based on a hypothetical design,

AND

ii. the proposed use is a reasonable one because it does not differ in substance from the original application.

CONDITIONS:

1. The house be built according to the plan presented with the application, exhibit D, with no dimensional additions.
2. Drainage must be as established with the construction as presented by applicant during the public hearing including crushed stone around the perimeter.
3. There can be no additional structures added to the lot.
4. No future additions can be made to the house.
5. The surveyed plan submitted to the ZBA will be recorded at the Belknap County Registry of Deeds.
6. Minimum Shoreland protection standards, specifically NH-RSA 483-B:9 and 484-B:9 V(a) Maintenance of a Waterfront Buffer, shall be followed.

Ms. Fournier seconded.

Mr. Abbott said that the hypothetical house represented by the box that was going to be built had conditions that there could be no additions. This new variance is keeping those conditions in place.
Ms. Hackett stated that the design for the house has some different dimensions.

Motion passed unanimously.

REVIEW OF INTENT

The question was proposed that if the ZBA approved the building of an open-air pavilion with the condition that the buildings may not be expanded, can the owner close-in the building (walls, doors, & windows) without returning to the ZBA?

Ms. Hackett said that her opinion was that an open air pavilion was approved, and that was the way it must be built.
Ms. Fournier asked about if the owner wanted screens not walls.
Mr. Onion said if sides were put on it is a different building.
Mr. Teunessen said that if it was an open deck then enclosed, it could become living

space.
Mr. Abbott said a pavilion is open. It does not have walls. That would be something else.

APPROVAL OF MINUTES – March 10, 2016, meeting

MOTION: Mr. Abbott moved to approve the minutes of the March 10, 2016, meeting as amended. Seconded by Mr. Teunessen. Motion passed unanimously.

OTHER BUSINESS

Discussion of NEW wording for Article III-A Sanitary Protection

Bill Tobin, building inspector, came in to let the ZBA know about the controversy related to Article III-A in the Zoning Ordinance. He said that he had approved a building permit before considering the zoning ordinance. There was a lot of input related to this at Monday night's Selectmen's meeting. The question was what the words in the zoning ordinance meant. He said that if he had an explanation from the Planning Board, since it was their ordinance, he might approve the permit. He received a letter from the Planning Board vice-chair, and at this point there is no longer a problem. The letter explains what the Planning Board meant the zoning ordinance to say. If there is conflict of interpretation everyone involved should get together. Ms. Andreozzi does an excellent job; attention to detail wouldn't exist without her. If there are major questions in the future he will be available to help if he can.
Mr. Tobin left the meeting.

Mr. Teunessen went down to the Zonas property and saw a mobile home in use across the street with no septic on the lot.
Mr. Tobin said the ordinance covers a trailer on a sight where none has been in the past.
Ms. Andreozzi explained the procedure for a complaint.
Mr. Tobin was asked if the town controls the rules for septic systems. He said it comes under state laws.
Mr. Abbott asked if the Planning Board was considering a change in the sanitary zoning amendment.
Mr. Martindale, member of the Planning Board, said they were.
Ms. Hackett thanked Mr. Martindale for the letter of the Planning Board's intent, but stated that by state law, once a zoning ordinance is voted approved by the town, the ZBA is the only board that determines the intent of the ordinance.

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Mr. Martindale said that he felt if the applicant didn't apply for an appeal of administrative decision there was nothing to bring before the ZBA for interpretation, so it could still fall on the building inspector.
Ms. Hackett said interpretation is not for the building inspector, but is for the ZBA.
Mr. Martindale said he would be interested to hear how town counsel feels. As far as building codes go, the code says the building inspector has final authority. He thought the building inspector felt that he had the authority.
Ms. Hackett stated that historically, when Planning makes amendments to the Zoning Ordinance the ZBA hasn't been included in the discussion. The Selectmen want both boards to review any coming changes. The ZBA hears cases so they have the background with case decisions.
Mr. Martindale said the ZBA and the previous building inspector had an agenda in their interpretation. It can be cleaned up. The Planning Board has charged Ms. Knee and Ms. Andreozzi with bringing new language to the Planning Board.

Ms. Hackett stated that she went before the Selectmen and brought up the aspect of fining people who take actions without the proper permits. The Selectmen said they will look into that.

ADJOURNMENT: Motion was made by Mr. Teunessen and seconded by Mr. Abbott to adjourn. Vote passed unanimously. Meeting adjourned at 9:38 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator