

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 18, 2016 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:02 PM.
Members attending: Elizabeth Hackett, Mike Teunessen, Nate Abbott, Vicky Fournier.
Member not attending: Perry Onion
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 # 2016-00012 James & Colleen McCann, owners: request a variance from Zoning Ordinance Article VII-C-1a to build a new residence on a private road. Property will be .25 acres located at 9 Walnut Avenue, Map/Lot# 119/209 & 208, in the Residential Lake zone.

Mr. McCann stated that he merged two lots into one. The one lot has a shack on it, which is not in good shape. The existing roof is flat and leaking. He wants to tear it down, and would like to get a building permit to build a 28' x 28' new structure that will meet the setbacks. He will put in a complete septic and a proper well. The house will be used all four seasons.

Ms. Hackett verified that the house would meet setbacks. She thanked him for buying two lots and not asking to squeeze a house on one tiny lot.

Mr. McCann said it will be three bedrooms and 2 baths. He was not sure about the height, about 30'.

Mr. Teunessen ask about the current septic.

Mr. McCann said that was unknown; maybe there is a tank.

Mr. Abbott was concerned that an abutter up Walnut Avenue would have his view blocked.

Mr. McCann said the house will not block anyone's view.

There is a letter for the record from Sawyer Lake Association, stating that Walnut Avenue is maintained.

Mr. Teunessen moved to close Public Hearing Case #2016-00012 James & Colleen McCann.

Seconded by Mr. Abbott.

Motion passed unanimously.

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Public Hearing Case # 2016-00013 Terrence Gibbons, owner: requests a variance from Zoning Ordinance Article IV, Table 2 to build stairs & deck in the lake setback. Property is .3 acres located at 63 Leatherstocking Lane, Map/Lot # 133/43 in the Rural zone.

Mr. Gibbons would like to make it safer to exit the rear of his house and approach the lake, which is a two foot drop. A new lower deck will be below the existing upper deck. He has a NH Shoreland notification permit.

Ms. Andreozzi noted to the Board the contour map of the site she had acquired for the Board.

Ms. Hackett restated what the applicant wished to do by pointing to the pictures included in the application. Ms. Hackett read an abutter support letter that is in the file. She indicated that the building's steps would be another 8' closer to the lake.

Mr. Abbott said the nearest point of the steps to the lake would be about 42', but he did not see that as causing any problems.

Mr. Abbott moved to close Public Hearing Case #2016-00013 Terrence Gibbons.

Seconded by Ms. Fournier
Motion passed unanimously.

Public Hearing Case # 2016-00014 David Whitehouse, owner: requests a variance from Zoning Ordinance Article IV, Table 2 to subdivide into 2 lots that do not have 200' of road frontage, and one lot may not be 2 full acres. Property is 5.73 acres located at 59 Allens Mill Road, Map/Lot # 413/26 in the Rural zone.

Mr. Whitehouse said he has 2 houses on his property. He needs to subdivide and wants to use the existing stone walls for the property line which might make the smaller lot a little less than two acres. The driveway would be split between the properties.

Ms. Hackett stated that this is the property where the barn was turned into a house for the daughter & son-in-law.

Mr. Abbott asked if Mr. Whitehouse had consulted with Ms. Andreozzi to make sure he knew what else he had to do to subdivide in addition to coming before the ZBA.

Mr. Whitehouse said Ms. Andreozzi had been very helpful.

Mr. Teunessen pointed out that the existing lot is irregular.

Ms. Hackett stated that when Mr. Whitehouse applied to the ZBA to keep two houses on one lot he was turned down.

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Mr. Teunessen moved to close Public Hearing Case #2016-00014 David Whitehouse.
Seconded by Ms. Fournier.
Motion passed unanimously.

DELIBERATIVE SESSION:

Case # 2016-00012 James & Colleen McCann

Ms. Hackett stated that Mr. McCann was looking to tear down the structure on the lot and build a 28' x 28' house. He has merged the lot next door into his.

MOTION:

Mr. Abbott moved to grant a variance in Case # 2016-00012 James & Colleen McCann, owners: requesting a variance from Zoning Ordinance Article VII-C-1a to build a new residence on a private road. Two Properties have recently been merged and the one lot is now .25 acres located at 9 Walnut Avenue, Map/Lot# 119/209 & 208, in the Residential Lake zone.

- a. The granting of the variance would not be contrary to the public interest because the Board found evidence that the existing property was a detriment to the environment and to the neighborhood;**
- b. The spirit of the Ordinance is observed because the density of residences in the block will not be increased, potential density will be reduced;**
- c. By the granting of the variance substantial justice will be done because a permitted residence will be improved to an extent to bring it in conformity with current standards;**
- d. The Board saw no evidence presented that granting the variance would create diminution of value to the surrounding properties, actually the Board's consensus was it would increase values;**
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property, that the existing building is no longer livable, that distinguish it from other properties in the area,**

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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 remedy an apparent deficiency between the applicant's property as compared to the surrounding properties,

AND

ii. the proposed use is a reasonable one because it matches the exiting use but conforms better to setbacks in the ordinance.

CONDITIONS:

- 1) A NHDES septic system, less than 20 years old, rated for the number of bedrooms must be approved for operation before a certificate of occupancy is granted.
- 2) A final plan consistent with testimony must be submitted to the Zoning Administrator for filing with the town.

Ms. Fournier seconded.

Motion passed unanimously.

Case # 2016-00013 Terrence Gibbons

Ms. Hackett stated that Mr. Gibbons wants to add a deck and put steps where there is a two foot drop. The steps would come an additional 8' closer to the lake.

MOTION:

Mr. Teunessen moved to grant variance Case # 2016-00013 Terrence Gibbons, owner: requesting a variance from Zoning Ordinance Article IV, Table 2 to build stairs & deck in the lake setback according to plan presented. Property is .3 acres located at 63 Leatherstocking Lane, Map/Lot # 133/43 in the Rural zone.

- a. The granting of the variance would not be contrary to the public interest because the Board found no evidence presented that it would be contrary;
- b. The spirit of the Ordinance is observed because safe use of the decks will be increased;
- c. By the granting of the variance substantial justice will be done because a safe egress from the upper level will be added & a safer approach to the beach;

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- 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, the lot is small & decks were built due to slopes that are subject to erosion & difficulty when walked on, this 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 granting the variance would maintain the condition of the environment and improve the use of the property, and increase safety,
- AND**
- ii. the proposed use is a reasonable one because the applicants can live more safely & comfortably.

CONDITIONS:

- 1. The decks and stairs shall never be covered, enclosed, or expanded.
- 2. The nearest point to the water shall not be closer than 44’.

Mr. Abbott seconded.

Mr. Abbott expressed concern about the possibility the distance of the steps was misjudged.
Ms. Hackett stated the applicant will not be able to be closer than 44’.
Mr. Abbott said they could change the angle of the steps.

Motion passed unanimously.

Case # 2016-00014 David Whitehouse

Ms. Hackett stated the applicant was looking to subdivide his property into 2 parcels, neither would have 200’ of frontage. The present driveway would be divided between the two parcels.

MOTION:

Ms. Fournier moved to grant variance Case # 2016-00014 David Whitehouse, owner: requesting a variance from Zoning Ordinance Article IV, Table 2 to subdivide into 2 lots

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that do not have 200' of road frontage according to plan presented with one lot only approximately 2 acres. Property is 5.73 acres located at 59 Allens Mill Road, Map/Lot # 413/26 in the Rural zone.

- a. The granting of the variance would not be contrary to the public interest because the Board found no evidence presented that it would be contrary;
 - b. The spirit of the Ordinance is observed because there are already 2 separate single family dwellings on the lot, and each house would be on its own lot with lot lines following existing landmarks;
 - c. By the granting of the variance substantial justice will be done because each single family dwelling would be on a separate lot;
 - 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, the lots in the area are very irregular, this property has little frontage, but is deep & wide in the center, this 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 ordinance requires each separate single family dwelling to be on an individual lot
- AND**
- ii. the proposed use is a reasonable one because 2 single family dwellings already exist.

Mr. Teunessen seconded.

Motion passed unanimously.

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OTHER BUSINESS

Case #2016-00006

Ms. Hackett said the conditions the ZBA placed on the Corner Slice included that there be an approved NH Public Health Department class D license. At this time the Corner Slice only has a conditional license. Also the septic system doesn't meet the literal conditions, though it kind of meets the spirit, but not exactly. The Slice is presently operating. The paper Mr. Buttrick presented for the septic does not meet the ZBA conditions.

Mr. Teunessen stated the existing septic may or may not be up to the operations that are being done in the building. Mr. Buttrick is a septic designer not an evaluator. He wanted to know if Mr. Buttrick was qualified to evaluate a septic system.

Ms. Hackett stated the septic design is for booths, not seats in the restaurant. There are no booths, but seats in the Slice. The applicant stated to the newspaper that the ZBA was a frustrating hurdle because the ZBA is calling his business a restaurant. The applicant has referred to the business as a restaurant in every newspaper article. The ZBA is concerned with use, and the use of a sit down restaurant was the ZBA's concern. The Slice is operating, and has only a conditional license.

Mr. Abbott looked up Granite State Designer & Installer, and stated that it is an association of professionals. Mr. Buttrick is not on their list. The State doesn't have a list of evaluators. In his opinion it is not a smart thing to operate with an old septic when the use is different. The ZBA can be lenient or hard nose; they don't want to shut the place down. It is not the fault of the ZBA if the business was put in a building not suited for it.

Ms. Hackett said the Board could shut the business down if there is no paper work in 90 days.

Mr. Teunessen asked if the ZBA has to send a statement to the Selectmen to get the decision enforced.

Mr. Abbott said the town has to develop consistent practices for restaurants.

MOTION:

Mr. Abbott moved that a letter be written to the Selectmen and copied to the Code Enforcement Officer & Mr. Vigeant stating:

- 1) The ZBA would appreciate receiving a copy of the NH Division of Public Health Services food service class D license once it has been granted. Please watch for its submission which is supposed to be within 90 days of August 10, 2016.**
- 2) In addition the ZBA requires a document certifying the septic system on the property can handle a total load covering the apartment, office and 23 seat restaurant. This document to have a correct evaluator stamp from an evaluator enlisted with the Granite State Designers & Installers Association.**

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Seconded by Mr. Teunessen.

Mr. Teunessen stated that the letter to Mr. Vigeant should be sent by certified return receipt.

Motion passed unanimously.

The Board asked that the letter go out by next week.

APPROVAL OF MINUTES

MOTION: Mr. Abbott moved to approve the minutes of the May 19, 2016, meeting as amended. Seconded by Ms. Fournier. Motion passed unanimously.

UPDATE

Ms. Hackett mentioned the NHMA law lectures. Members need to sign themselves up, then submit their receipt for reimbursement.

Ms. Hackett mentioned zoning ordinance changes will be going to the planning board. She said a Selectmen's meeting agenda said there was a complaint of the ZBA. She found out that someone didn't apply to the ZBA. She had been assured by the Selectmen that all other Boards would notify her when something related to the ZBA was pending.

Mr. Abbott stated that Ms. Andreozzi is doing her best with her abbreviated hours, but he needs to get the ZBA packet earlier. The Selectmen should know that the packet needs to get to members the Thursday before the ZBA meeting.

Ms. Hackett agreed.

ADJOURNMENT: Motion was made by Mr. Teunessen and seconded by Mr. Abbott to adjourn. Vote passed unanimously. Meeting adjourned at 9:15 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator