APPROVED

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, SEPTEMBER 15, 2016 – 7 PM.
ACADEMY BUILDING
MINUTES

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

The Chair made introductions and explained the ZBA procedures.

NEW BUSINESS

> **Public Hearing Case # 2016-00015 Jeffrey Medeiros, owner:** requests a variance from Zoning Ordinance Article IV Table 2 to build a porch on the roadside of his house which is already in the road setback. Property is 86 acres located at 4 Governors Road, Map/Lot# 414/51, in the Rural zone.

Mr. Medeiros said the house is a log cabin on the first floor which is damaged by rain and splash back at the block foundation. Mr. Medeiros' house is set back from the road but not the town border.
Ms. Hackett asked how far the house was set back from the stone wall.
Mr. Medeiros said 18', but that wall was not original, it has different stones. He wanted to build an 8' porch 10' from the line.
George Roberts said he didn't look at the proposed plan. He was concerned that the applicant had made no effort to talk with him as church director. The church had a survey done for purposes of creating a subdivision. There were stakes that show what would need to be done to stay within the regulations. Surveys show the stone walls. The previous owner changed the stone wall. The Church is concerned that they will follow setbacks for the new lots, which will be 4 houses set back 35', then the applicant's house will pop out and detract from the appearance of his subdivision. He talked about the architecture and about no pins being set. He asked the ZBA to reject the application.
Ms. Hackett confirmed that Mr. Roberts said the Church is against the variance. If a variance is granted new house builders will want to ask for a variance. There is no structural reason for a variance. Ms. Hackett said the porch comes out 8' from the front and 8' from the side. The side setback is more than 50'. The road takes a nosedive after Mr. Medeiros's house.
Mr. Medeiros stated that the big stone that sits between the wall and the road is from the original stone wall and is 35' from the house so the porch would only intrude 8'.

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Ms. Hackett indicated that minutes of the 1987 ZBA decision didn't go into detail.
Mr. Abbott asked the applicant if he would like another month to gather more information because of the adverse input.
Mr. Medeiros stated that he would like a decision made.

Mr. Teunessen moved to close Public Hearing Case #2016-00015 Jeffrey Medeiros, owner
Seconded by Mr. Onion.
Motion passed unanimously.

Public Hearing Case # 2016-00016 James & Colleen McCann, applicant, Robert Dudley, owner: requests a variance from Zoning Ordinance Article IV Table 2 to subdivide a lot making it non-conforming, but making the adjoining lot less non-conforming. Property is 1 acre located at 4 Sagamore Avenue, Map/Lot # 119/211, in the Residential Lake zone.

Mr. McCann who owns the lot adjacent to Mr. Dudley was representing Mr. Dudley. They were proposing a boundary line adjustment. Test pits were dug on Mr. McCann's property from last month, and the percolation test was not good. He wanted to put the septic in a different location so he asked Mr. Dudley if he could have some of his property. The end result will be only 2 buildings on the block.
Mr. Abbott said the new lot would meet the ordinance in all respects except total acreage.
Mr. Teunessen said that all around that property are non-conforming and smaller lots.
Rich Bakos as the Sawyer Lake treasureer, supported the application because having the new septic would be better for the lake.

Mr. Teunessen moved to close Public Hearing Case #2016-00016 James & Colleen McCann, applicant, Robert Dudley, owner.
Seconded by Mr. Onion.
Motion passed unanimously.

Public Hearing Case # 2016-00017 Marshall Bishop, owner: requests a special exception from Zoning Ordinance Article IV Table 1 to have a restaurant in an existing building (interior alterations). Property is 8.8 acres located at 528 Meadow Pond Road, Map/Lot # 420/103, in the Rural zone.

Mr. Bishop stated that the town has always been good to him. Up until 2 months ago he had no idea he hadn't been approved by Planning. He has a letter stating that everything would be ok once the site plan was submitted, which it was. Apparently the site plan never got to the Planning Board. The plan doesn't say restaurant but says function room, which is the same. He thanked Mrs. Currier for pointing out that the town is not functioning. According to the RSA if there is an approval by the Planning Board it does not need to go to the ZBA. He talked to the person that was Planning Board Chair at the time when he first applied, who told him he hadn't come back to the Planning Board, but the Planning Board didn't tell him to come back.
Ms. Hackett stated that the applicant had never had a case before the ZBA. The applicant relied on information from the Planning Board.
Mr. Bishop said the town administrator and the fire department always gave a letter for state licenses.
Ms. Hackett said that the town administrator has said that the applicant was good to go.
Henry Vigeant said that when he took over the Corner Store there had been no fire extinguisher since 1986, so he could see where Mr. Bishop got a letter saying he was good to go.
Mr. Bishop said that during that time Mr. Currier and Mr. Guarino were Selectmen. They didn't have a clue what had been done because the question never came up. The tax payers need to fix the town office.
Mrs. Currier gave some info to Board members, but not a copy for the record. She said she highlighted a motion by Mr. Russell in the Planning Board minutes of 2011 to approve Mr. Bishop's plan as complete & the presentation needed to meet general conditions. That Mr. Bishop needed to meet before the Planning Board for signing and recording. Since that wasn't done, it was not approved. What was requested was not a restaurant, but a winery and function hall. She asked why a special exception fits this case, and was told that the building was an existing structure. She felt the property had never had a restaurant prior to Mr. Bishop so Mr. Bishop needed a variance. Since the winery didn't go to the ZBA Mrs. Currier felt the Board needed to consider what was on the property before the winery. She asked that the application be done correctly.
Mr. Vigeant asked how long the winery had been in business, and was told 4 years. He felt that since it had a health department license and would have a special exception, that should allow Mr. Bishop to move ahead as an existing restaurant.
Jean Gallant said she is a big tax payer and her property abuts all of Mr. Bishop's. The winery is an asset to the town, an asset to Gilmanton, and doing the town a service. Please don't turn him down. She would be the first to come forward if Mr. Bishop was doing something wrong.
Mrs. Currier said the meeting was not about if it is your neighbor, it is about the rules voted on.
Ms. Swanson stated that she was not on one side or the other, but if there were rules the Corner Slice had to meet, there are rules for all. If a mistake was made, say so and bring it to compliance.

Mr. Bishop said part of what Mrs. Currier said was right, if he had not become a Selectman this would not have come up. If he had been told to go to the ZBA he would have. This is personal. Don't stop a business that has been going for 4 ½ years. He questioned why the Planning Board didn't ask him to come back, and why didn't the Selectman also.
Mr. Guarino said the business couldn't go from a 20 seat to bigger. He was concerned about setting a precedent. He wasn't against the application, he just wanted to know what the end product would be.
Zana Richards said she was not an abutter, she has been reading in the paper and she felt someone has an agenda. The town should encourage people in the rural zone for businesses in the home. She was in support of the applicant.
Ms. Hackett stated the Board understood all of the concerns. Any non-permitted change of use on property has to come before the ZBA. She did not know why the Planning Board didn't consult the ZBA. They rarely do.
Mr. Roberts said that from a historical perspective he didn't have issue with the case.
Mr. Abbott stated that there was a letter submitted to the ZBA by Mrs. Currier, which he needed to address. At another meeting he had stated a situation where Mr. Currier had been granted leeway, and because of this statement Mrs. Currier wanted Mr. Abbott to recuse himself on Mr. Bishop's case. Mr. Abbott apologized stating that he had been wrong. He was upset because of the desire to shut down a business when no one had come forward with a grievance. He asked Mr. Bishop to state if he had bought anything from Mr. Abbott or was planning to hire him. Mr. Bishop said no. Mr. Abbott indicated that Mr. Bishop's "no" meant Mr. Abbott could not benefit from any decision made by the ZBA so there was no need to recuse himself. Mr. Abbott stated that all things in the Table Of Uses assume you aren't already doing the use. For a restaurant there are two options, build one on a piece of land or take an existing building to convert. The two types have different impacts on the town.
Mrs. Currier started to say what Nancy Girard had told her.
Mr. Abbott objected to hearsay about what the former planning chair, not in the room, might have said.
Mr. Bishop said if he didn't have permission to have a restaurant, then why did the Planning Board state he could serve two full meals a day five days a week. He stated he is paying taxes for what he is doing on the property as evidenced by the fact his taxes have gone up considerably in the last 5 years. It is not a restaurant for 200 plus people, but he can have functions like meetings for 200 people.
Mr. Bakos said the winery has an assembly permit for 275 people from the fire department. The site plan does not justify parking for 275.

Mr. Onion moved to close Public Hearing Case #2016-00017 Marshall Bishop, owner.
Seconded by Ms. Fournier.
Motion passed unanimously.

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The Board took a 10 minute break.

DELIBERATIVE SESSION:

Case # 2016-00015 Jeffrey Medeiros, owner

Ms. Hackett stated that the applicant was looking to build a porch onto the road side of his house.
Mr. Onion said the Board was missing information that it needed. He felt that if the big rock was the property line the house might be 35' from the road. The rock is in line with the stone wall that comes down the hill away from church, only 100 yards are missing. He would like the information on a survey before making a decision.
Mr. Abbott stated the property is not in the historic district but that needs to be considered.
Ms. Hackett said the Board should move to continue so the applicant can get more information.

MOTION:
Mr. Onion moved to continue the public hearing until October 13, 2016 at 7PM because the Board would like to have a surveyed map of the road and the portion of the lot showing Mr. Medeiros' house.
Ms. Hackett seconded.
Motion passed unanimously.

Case # 2016-00016 James & Colleen McCann, applicant, Robert Dudley, owner

Ms. Hackett stated that the applicant was looking to purchase a piece of Mr. Dudley's property to make his lot more conforming.

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MOTION:
Mr. Abbott moved to grant a variance in Case # 2016-00016 James & Colleen McCann, applicant, Robert Dudley, owner: requesting a variance from Zoning Ordinance Article IV Table 2 to subdivide his lot making it non-conforming, but making the adjoining lot less non-conforming. Property is one acre located at 4 Sagamore Avenue, Map/Lot # 119/211, in the Residential Lake 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 & there was testimony that it would be consistent with the public interest;

b. The spirit of the Ordinance is observed because a nonconforming lot would be made less nonconforming while not impacting the use of the adjacent lot;

c. By the granting of the variance substantial justice will be done because the neighbor will be able to make better use of his property in placing his septic system and building a home more suitable to the district;

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 that an adverse structure within the setbacks sits on the property in dilapidated condition 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 boundary line adjustment will improve the disposition of the two residences without creating any additional environmental impact

AND

ii. the proposed use is a reasonable one because it does not change the existing use.

Seconded by Mr. Teunessen.
Motion passed unanimously.

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Case # 2016-00017 Marshall Bishop, owner

Ms. Hackett stated that the Board had heard much testimony. The application for a winery started in Planning although it was a change of use that allowed a dining function hall, which has turned into a restaurant. This is a request for a special exception for a restaurant in an existing building in the rural zone.
Mr. Onion said it would be helpful to separate the issue of what the Planning Board meant when they created the zoning ordinance Table Of Uses by "restaurant interior alterations" and "restaurant new construction", and the issue about should there be a restaurant on the property at all. The Table Of Uses lists what uses are allowed in each zone. He believed the table read that anyone in the rural zone could turn their house into a restaurant if they received a special exception. If that use is to change in the future the Planning Board is the body that starts the change.
Ms. Fournier agreed with Mr. Onion. She added that interior alterations does not mean adding on to the building.
Mr. Onion said that in the rural zone the use table was meant to be in opposition to doing new construction for restaurants.
Mr. Teunessen said that according to the application to the Planning Board, restaurant is crossed out. The applicant never went back to Planning. He felt it was time for the ZBA to stop letting people do things after-the-fact then come to the ZBA for permission.
Ms. Hackett stated that the ZBA has stopped people from building and required removal of all work that had been done.
Ms. Andreozzi clarified for the members that the Planning Board would meet on the restaurant application if the ZBA granted a special exception.
Ms. Hackett stated that the application before the ZBA was for a special exception. She was concerned about how the ZBA would grant a special exception for a restaurant that hadn't been permitted but already existed.
Mr. Abbott said the Board had heard a lot and there was more at the Planning Board meetings. One could choose to think that the applicant has attempted to duck the Board to get some unlawful benefit, or that no one referred him to the ZBA for whatever reason. He heard no one say that the applicant was told to go to the ZBA. He preferred to think that this was a simple case. The applicant has a structure that at one time was not a restaurant. Then it was internally configured to be a restaurant. The applicant is asking for that space to be used as a restaurant. If he has built new space he will not be able to use that space for the restaurant. If we grant the special exception he must use only what was the existing structure. There were mistakes made, but the business has been a benefit to the town not deleterious. The Board needs to be open to the possibility that the applicant felt he went to the town. He had a residence that wasn't a restaurant, a special exception should be granted.
Mr. Onion stated that the Planning Board said ok then didn't tell the applicant or remind him to come back.
Ms. Hackett stated that it should be like the Corner Slice, give him 90 days to comply.

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The ZBA is playing catchup. The Planning Board didn't send the applicant to the ZBA.
Mr. Abbott said that in the regulations it doesn't say to treat applicants that are in violation different from other applicants. It doesn't say penalize them, that is not the ZBA's job.
Mr. Onion asked the difference between a special exception and a variance
Ms. Hackett stated that a variance must meet the 5 conditions in the RSA. In the Zoning table a new restaurant is not permitted in the rural zone. She stated for the record that she didn't agree with a Planning Board CUP(conditional use permit) because the Planning Board could give permission without the ZBA, so why have a ZBA.
Mr. Onion stated that the language of Section IV, Table 1 was not clear.
Ms. Hackett was concerned with how would the ZBA give a special exception to a restaurant that wasn't a restaurant that had become one by the Planning Board. The Planning Board didn't have ZBA approval, and the use of land is the ZBA's purview.
Mr. Teunessen asked if the application could be sent to the Planning Board.
Ms. Hackett said no. The applicant needs an approved use before he can go to the Planning Board. The ZBA could deny the special exception and tell the applicant to come back for a variance. The Board cannot change an application which was for a special exception to one for a variance.
Mr. Abbott said the Board owed it to the applicant to make a decision. If the Board grants a special exception the applicant will have to limit his use of space.
Mr. Onion clarified that the Board was not voting on a variance.

MOTION:
Mr. Teunessen moved to deny a special exception for Case## 2016-00017 Marshall Bishop, owner, requesting a special exception from Zoning Ordinance Article IV Table 1 to have a restaurant in an existing building (interior alterations). Property is 8.8 acres located at 528 Meadow Pond Road, Map/Lot # 420/103, in the Rural zone

a. The site is not appropriate for the use as it is a residential area demonstrated by the abutters,
and
b. The use as developed will adversely affect the neighborhood because there will be an increase in traffic and possibly noise,
and
c. Adequate & appropriate facilities have not been shown to be provided for the proper operation of the proposed use
and
d. There will be a nuisance or hazard created by increased traffic and noise affecting the neighbors of the property.

There was no second on the motion; **so it failed.**

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MOTION:
Mr. Onion moved to grant a special exception for Case# 2016-00017 Marshall Bishop, owner requesting a special exception from Zoning Ordinance Article IV Table 1 to have a restaurant in an existing building (interior alterations). Property is 8.8 acres located at 528 Meadow Pond Road, Map/Lot # 420/103, in the Rural zone

a. **The site is appropriate for the use because it has demonstrated its appropriateness over the past few years it has been operating as a restaurant, and it encourages additional uses related to farm land;**

b. **The use as developed will not adversely affect the neighborhood because the site will be overseen by the Planning Board as it develops, and the abutters have not expressed concern;**

c. **Adequate & appropriate facilities will be provided for the proper operation of the proposed use as a license from the state is required to be renewed and an approval for septic construction is on file in event of septic failure;**

d. **There has been no evidence presented that there will be a nuisance or hazard created.**

CONDITIONS:
1. The applicant must apply for and receive a variance to expand the restaurant/event space into the new construction.
2. The approval for construction of a septic must be kept up to date.

Seconded by Mr. Abbott.

Vote was 4 in favor, 1 opposed, motion passed.

APPROVAL OF MINUTES

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

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OTHER BUSINESS

Ms. Hackett mentioned the shooting range case decision had allowed electricity for opening overhead doors. The owner has put in outlets and lights, which they weren't supposed to need because they weren't allowed to be shooting during dark.
Mr. Teunessen said he could understand needing lights.
The consensus was they could keep interior lights only, no outlets, and the administrator would notify the applicant.

ADJOURNMENT: Motion was made by Mr. Teunessen and seconded by Mr. Abbott to adjourn. Vote passed unanimously. Meeting adjourned at 11:20 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator