

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 13, 2016 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:04PM.
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 applicant could ask to continue until a future meeting. Three positive votes would be needed for any decision to pass.

Continued 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 called the office asking for a continuance since the surveyor was not able to complete his job.

MOTION:

Mr. Onion moved to continue public hearing case #2016-00015 until November 17, 2016 at 7PM. Seconded by Ms. Fournier
Motion passed unanimously.

NEW BUSINESS

Public Hearing Case # 2016-00018 Richard Dunphy, owner: requests a variance from Zoning Ordinance Article IV Table 2 to build a porch on the front of the house that extends into the road setback. Property is .14 acres located at 14 Rose Ave., Map/Lot# 120/42, in the Residential Lake zone.

Ms. Hackett said that the applicant wanted to build a deck on to the front of his house which is already in the setback and only 26' from the road. She noted that he had a side deck which had been removed for a few years then replaced in the setback. The drawing submitted showed that he wanted to put a deck across the length of the house and steps

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intruding into the side setback.

Mr. Dunphy said he may shorten the porch width so the steps do not extend past the end of the house edge.

Ms. Hackett asked for a copy of the building permit of when the side deck was put on because if the lot is 60' wide and the house is 32' there isn't 20' on both sides of house for the setbacks.

Staff stated that the house decks and steps were put in setbacks without a building permit.

Mr. Onion said the new deck in front will not extend further than the house.

Ms. Hackett stated that was not what the present drawing showed.

Mr. Dunphy said he took the old side deck down.

Mr. Onion said the total depth coming out from the house would be 7' 6".

Mr. Abbott confirmed that the neighbor, who wrote the letter of support to the ZBA, was up the hill from the applicant.

Ms. Hackett read the neighbor's letter for the record.

Mr. Dunphy's wife has problems with her legs. She wants to sit out in the shade in the front.

Mr. Dunphy said the MA state code does not have hard and fast rules.

Mr. Onion moved to close Public Hearing Case #2016-00018 Richard Dunphy, owner
Seconded by Mr. Abbott. **Motion passed unanimously.**

DELIBERATIVE SESSION

Case # 2016-00018 Richard Dunphy, owner

MOTION:

Mr. Abbott moved to grant a variance in Case # 2016-00018 Richard Dunphy, owner: requesting a variance from Zoning Ordinance Article IV Table 2 to build a deck on the front of the house **NO CLOSER THAN 18' FROM THE ROAD PROPERTY LINE.** Property is .14 acres located at 14 Rose Ave., Map/Lot# 120/42, 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 has been no stated objection;
- b. The spirit of the Ordinance is observed because the house is made safer and more livable by addition of the deck while not impacting surrounding residences;
- c. By the granting of the variance substantial justice will be done because

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- the owner will be able to utilize his property and his family will find a safer and healthier egress to the house making better use of his property;
- 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 building was built with the door well off the ground and needs a deck for egress 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 safety and enjoyment of the residence is enhanced,
- AND**
- ii. the proposed use is a reasonable one because it extends the owners ability to use the property.

CONDITIONS:

1. The deck shall never be covered, enclosed, or expanded.
2. The deck shall not incur further into any other setback.

Seconded by Ms. Fournier.

The discussion that refined the motion to the above included:

Mr. Onion's statement that the decision goes with the property and it shouldn't make special reference to a disability that may not be there with a future property owner.

Mr. Abbott said he believes that Gilmanton is better off with properties that are built for a society with disabilities. The town should be more aware of mobility issues.

Mr. Onion said he did not object to this case, but the principal is for future cases.

Mr. Abbott stated that this subdivision was developed with very small lot sizes. The variances are going to be in effect in the future and need to be more liberal because of the specific context of the application.

Mr. Onion said the front door was built with a small deck for egress.

Motion passed unanimously.

APPROVAL OF MINUTES – September 15, 2016, meeting

MOTION: Mr. Abbott moved to approve the minutes of the September 15, 2016, meeting as amended. Seconded by Mr. Onion. Motion passed unanimously.

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OTHER BUSINESS

Staff explained that Mr. Gibbons, Case #2016-00013, was going to have to angle his stairway to not exceed the setback the ZBA determined. Staff felt the angled stairway would meet the spirit of the ZBA decision, but wanted the ZBA approval since it would be built differently than the drawing originally submitted with Mr. Gibbons' application. Ms. Hackett said she reviewed the new drawing for the stairway. The consensus of the Board was that the angled design was in line with the ZBA decision.

Mr. Klish, case # 2014-00001, had asked staff if he could turn his shed into a residence without applying to the ZBA. Staff referred the question to the ZBA.

Ms. Hackett noted the minutes of Mr. Klish's last meeting with the ZBA.

Mr. Abbott reviewed the minutes and remembered the case.

Mr. Abbott asked if the Klish lot was residential.

Staff stated that it was a non-conforming building on a non-conforming lot.

Mr. Abbott said that Mr. Klish needed to go to the ZBA and get all necessary variances.

Ms. Hackett commented that folks get conditions to their ZBA approvals and they ignore the conditions. Mr. Klish applied for a 2 story shed, which the ZBA granted. If he makes a change then he has to come back.

Mr. Abbott remembered he was getting a trailer permit and living out of both the trailer and the shed. He said there was nothing wrong with doing that. The ZBA has no powers of enforcement so they need to ask the Selectman to issue a cease and desist until all conditions of any variance are met. The Selectmen could have a penalty. He heard Mike's frustration at the last meeting.

Ms. Hackett said the ZBA minutes state that Mr. Klish can't convert his building to a residence.

The consensus of the Board was that he must come before the ZBA for a variance.

Ms. Hackett stated that normally she is asked what the ZBA budget should be for the next year. Last year their request got turned down.

Mr. Abbott stated the Board could use a few more hours of staff time.

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Mr. Onion asked about having penalties for bad behavior when a person does not follow the decision the ZBA made. He agreed that the Board should take an applicant's bad behavior into account during future decisions.

Mr. Abbott said a resident had come to him with surveys relating to the Mederios case, #2015-00015. He declined to see the surveys because he felt that all parties should be able to speak.

Ms. Hackett stated that ZBA members do not talk with applicants individually.

Mr. Abbott said he would tell the resident to come to the meeting.

Mr. Onion said that someone came to him also.

Ms. Hackett said no one on the Boards should talk individually with anyone about a possible case.

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

Respectfully submitted,

Annette Andreozzi, Land Use Administrator