

TOWN OF GILMANTON PLANNING BOARD
THURSDAY, JANUARY 17, 2008
APPROVED MINUTES OF MEETING
ACADEMY – 7 p.m.

Present: Chairperson Nancy Girard, Vice-Chair John Funk, Felix Barlik, Doug Isleib, Alternate Members Pam Fecteau, Marty Martindale and Monica Jerkins; and Planning Administrator Lynne Brunelle.

Absent: David Russell, Dan Hudson, Selectmen’s Representative Don Guarino

Chair N. Girard opened the meeting at 7:05 p.m., introduced the Board members and appointed Alternate Members P. Fecteau and M. Martindale as full voting members. The review and acceptance of minutes was deferred until later in the meeting.

PUBLIC HEARING – Amendments to the Zoning Ordinance:

Purpose: To Amend Article VII of the Gilmanton Zoning Ordinance regulating Non-Conforming Uses, Lots & Structures by clarifying provisions relating to (i) the increase or enlargement of a non-conforming use or structure; (ii) the repair, rebuilding or replacement of a non-conforming structure that is destroyed by fire or rendered unusable by an act of nature may be repaired, rebuilt or replaced; and, (iii) the building of structures on non-conforming lots.

N. Girard explained the purpose of the proposed amendment is due to a request by the Zoning Board of Adjustment (ZBA) to review the language under Article VII.B.4. as it pertains to the replacement of a non-conforming structure within the “existing footprint” of the building. The issue that the ZBA and/or Code Enforcement Officer is grappling with is the way the ordinance is currently written, an applicant could replace and/or rebuild a non-conforming structure within the same footprint and go up an additional one or two stories without ZBA approval. The Board is considering replacing the term “same footprint” with “same dimensions” or “same gross floor area” to clarify that any expansion beyond the existing living space would require a building permit and/or Zoning Board approval.

In the proposed amendment, the Board also wants to address the minimum height requirement in accordance with Article III.E. of the Zoning Ordinance as it applies to the character of the neighborhood. For example, if the buildings in the vicinity do not exceed 25’ and the applicant is requesting an additional story to be 35’, which may also block the abutters’ view of the lake, then the ZBA may restrict the height to that of the surrounding buildings.

Another factor for the Board to take into consideration is that the State of NH DES has updated the Comprehensive Shoreline Protection Act (CSPA) making the requirements more stringent effective April 1, 2008. This will affect non-conforming lots, uses and structures and the Board has considered incorporating language into the proposed amendment referencing the updated regulations.

**Town of Gilmanton Planning Board
Minutes of Thursday, January 17, 2008**

Building Inspector/Code Enforcement Officer Bob Flanders was in attendance and stated that he recently attended a workshop pertaining to the updated CSPA. He conveyed that the State has not yet finalized the rules and procedures, i.e. whether the applicant should obtain a variance from the town first, then a building permit before applying to the State, etc. Nonetheless, Bob will require that State approval be obtained before submission of a Zoning application and/or issuance of a building permit. He continued that the State is hiring additional staff to process the CSPA applications and the State permitting fees will be in the thousands.

J. Funk asked Planning Administrator L. Brunelle about the timeframe for posting the next public hearing. Lynne informed the Board that according to statute, the final public hearing must be held on or before Tuesday, February 5, 2008. This would require a ten-day posting prior to the hearing as well as a few days to meet the newspapers' deadlines. Therefore, the notice and proposed language would need to be posted by Friday, January 25, 2008.

Lynne also conveyed that she had requested Town Counsel's review and comment on the proposed draft language. Regarding the reference to the CSPA, Attorney Laura Spector suggested that paragraph VII.D. include: "Any construction within 250 feet of a water body must also comply with State law, and specifically with RSA 483-B." She also recommended that the Board consider including language referring to meeting the requirements of RSA 674:41 pertaining to the issuance of building permits on Private and/or Class VI Roads.

D. Isleib made reference to last year's proposed amendment to Article III.A. when the Board had similar discussion whether to reference a specific statute, and the Board chose not to include it. J. Funk agreed and contemplated whether it should simply state that it must comply with State laws and regulations. On the other hand, if the reference is made it will alert the applicant that they must comply with the CSPA and puts them on notice.

Discussion occurred regarding the updated CSPA restrictions and how they would apply to pre-existing non-conforming structures, the replacement of a structure, no disturbance and/or digging 50' from the waterfront and restricts construction 250' from a water body.

B. Flanders referenced the Town's height restriction and asked whether the maximum height of 35' and/or a reference to Article III.E. should be incorporated into the proposed language. J. Funk suggested that the Board consider including language that would allow some discretion depending upon the height of other structures in the surrounding area.

Pete Pinckney from Places Mill Road was in attendance and asked if the CSPA will appear on the Town Meeting ballot? N. Girard explained that the CSPA is regulated by the State and will therefore not be on the Town ballot.

**Town of Gilmanton Planning Board
Minutes of Thursday, January 17, 2008**

She continued that the specific language of the proposed amendment to Article VII, which may reference the CSPA, will be posted. The “purpose” description will appear on the ballot as a Zoning Article.

F. Barlik conveyed that historically, the more complicated the description, the less likely it will pass. He continued that the Town can adopt regulations to be more stringent than the State regs, but not less. D. Isleib gave an example that the State requires a 50’ setback from water bodies but the Town requires a 75’ setback.

Discussion occurred regarding the zoning amendment adopted in March 2000 that increased the minimum required frontage in the Rural Zone from 150’ to 200’. Article VII.D. currently states: “Grandfathered Conforming Lots: Notwithstanding anything to the contrary set forth in Sections A, B and C of Article VII, any lot that conforms with the 150’ frontage requirement in the Rural District in effect immediately prior to the date of the enactment of this amendment, March 14, 2000, shall be treated as a conforming lot for purposes of this Ordinance.” The language currently being proposed includes “*if the lot existed prior to the adoption of the Zoning Ordinance on March 10, 1970*” and it was pointed out that there have been many changes in the zoning districts and minimum frontage requirements since 1970. Therefore, it was the general consensus of the Board to exclude this statement from the proposed language.

Mr. Pinckney asked if this applies to new construction, for pre-existing non-conforming lots, or for non-conforming structures? J. Funk responded that it would apply to all lots. Mr. Pinckney stated that building permits are currently being denied for pre-existing non-conforming lots that should be considered as “grandfathered” because they are conforming structures on non-conforming lots. He continued that in reading the proposal closely, it conflicts with paragraph C.3. He gave an example of a building permit application to build a deck onto an existing home located on 100 acres with 50’ of road frontage that was denied because it required a variance. Mr. Pinckney asked if the proposed amendment would change the inconsistency because at this time people don’t know what to expect when they apply for a building permit.

B. Flanders disagreed with Mr. Pinckney and stated that he has been consistently enforcing the ordinance since June 2005. Nonetheless, he supports the proposed amendment to Article VII.

J. Funk suggested that the Board hold another Work Session to consider the input received this evening and finalize the proposed language to be posted for the February 5th public hearing. The Work Session was scheduled for Tuesday, January 22, 2008 from 7 to 9 p.m.

Motion: F. Barlik moved to close the public hearing, seconded by D. Isleib. Vote passed unanimously.

**Town of Gilmanton Planning Board
Minutes of Thursday, January 17, 2008**

PRELIMINARY PLAN REVIEW – Ronald A. Johnson, L.L.S.: Review Preliminary Plan to Subdivide Town Tax Map/Lot #408-01, of 46 acres, property of Joseph and Dorothy Bellush located on Mountain Road in the Rural Zone.

Ron Johnson, Licensed Land Surveyor, was in attendance on behalf of Mr. Bellush and presented a preliminary plan to subdivide 46 acres, located on Mountain Road with frontage on Crystal Lake, into four lots. Approximately 17 acres of the property is wetland. If the wetlands were removed from each lot, he is sure that at least two acres of buildable area could be achieved. Mr. Johnson conveyed that the applicant is interested in placing a conservation easement on the property, specifically along the waterfront. He measured approximately 600' from the waterfront as a starting point to establish the easement area. They will be contacting the Gilmanton Conservation Commission to address this issue in the near future.

D. Isleib lives right across the lake from this property and would be happy to see this type of development versus many small lots or condos. He inquired about driveway access to the lots, would they be shared and would they be off Mountain Road?

Mr. Johnson conveyed that on the subdivision plan, approved by the Gilmanton Planning Board on 10/10/85, there is a restriction which states "It is a condition of approval that no driveway access points shall be within 400' of the intersection of Lots B & C on Mountain Road". The Board agreed that access issues should not be a problem.

Mr. Johnson thanked the Board for their time and will return with a formal application.

EXCAVATION PERMIT RENEWAL – A. E. Mitchell: Request to Renew Excavation Permit for Map/Lot #412-25 located on NH Route 106 in the Business Zone; PB#1798.

Planning Administrator Lynne Brunelle informed the Board that she invited Mr. Mitchell to the meeting but had not heard whether he would be attending. She provided the Board with a copy of his letter dated 12/5/07 which indicates he excavated approximately 500 cubic yards (cy) in 2007 and estimated 500 cy will be excavated in the year 2008. The most recent Notice of Intent to Excavate submitted to the State of NH Department of Revenue (DRA) indicates a total of 650 cy for the tax year 2007/2008.

D. Isleib asked if the Town receives any revenue from this, because he has been unable to locate it in the Town Report. Lynne informed him that the Assessing Clerk processes the form after the Selectmen sign it, so she will ask her where to locate this information.

**Town of Gilmanton Planning Board
Minutes of Thursday, January 17, 2008**

J. Funk asked when was the last time the Board was on site? Lynne informed him that she and the Code Enforcement Officer were out there in 2005, but the Board has not taken a site walk in almost ten years. She thinks it would be very beneficial for the Board to take a Site Walk in the spring, all agreed. In the meantime, the Board felt comfortable renewing the permit pending a site inspection.

Motion: J. Funk moved to renew the Excavation Permit for A. E. Mitchell Corporation located on NH Route 106 for the year 2008, pending a Site Inspection to occur in the spring. F. Barlik seconded, motion carried 5-0.

ACCEPTANCE OF MINUTES: The Board reviewed the minutes from the 12/18/07 meeting and corrections were made. **Motion:** J. Funk moved to accept the minutes of 12/18/07 as amended. D. Isleib seconded, motion carried 5-0.

ADMINISTRATOR'S REPORT

Benson Site Plan: Lynne reported that Ryan Benson hired Cynthia Balcius, CWS/CSS, to walk the site of the Contractor's Yard conditionally approved by the Board on 10/11/07 located on NH Route 140 to locate and identify wetlands. Ms. Balcius forwarded a report and sketch to the Planning Office, which indicates encroachment on the wetlands. Lynne forwarded the report to the Conservation Commission for review and comment, and it was their recommendation that the Planning Board require a survey with wetlands delineated. At this time, the Board members reviewed the report and accompanying sketch and agreed that a survey with wetlands delineation is necessary. Lynne will invite Mr. Benson to attend the next Planning Board meeting.

2007 Town Report: Lynne informed the Board that the final draft of the annual report is in their folders for their review and comment before it is submitted to the printer.

Albee Subdivision Plans: Lynne informed the Board that the final plans for the Albee Subdivision on Stone Road have been received, reviewed and are ready for signature.

Work Session: Lynne reminded the Board of the Work Session that is scheduled for Tuesday, January 22, 2008 at 7 p.m. and the Public Hearing scheduled for Tuesday, February 5, 2008 at 7 p.m.

ADJOURNMENT: On a motion made by F. Barlik and seconded by J. Funk, vote passed unanimously. Meeting adjourned at 9:35 p.m.

Respectfully submitted,

Lynne R. Brunelle

Minutes were approved by majority vote at the 3/13/08 Planning Board meeting.