

TOWN OF GILMANTON PLANNING BOARD
THURSDAY, FEBRUARY 12, 2009
MINUTES OF MEETING
ACADEMY – 7 p.m.

Present - Planning Board: Vice-Chair John Funk, Selectmen’s Representative Don Guarino, Dan Hudson (arrived late), Marty Martindale, David Russell, Alternate Member Pam Fecteau, and Planning Administrator Lynne Brunelle.

Present – ZBA: Chair Elizabeth Hackett, Carolyn Baldwin, Ron LaBelle, Israel Willard, Alternate Member Wayne Gray, and Zoning Clerk Annette Andreozzi.

In the absence of Chair Nancy Girard, Acting Chair J. Funk opened the meeting at 7 p.m., introduced the Board members and explained joint hearing procedures. It was noted that the first order of business is typically the acceptance of minutes. This was deferred until later in the meeting to allow the joint boards to conduct their hearing.

JOINT PUBLIC HEARING - ZBA Case #01-2009: Ronald G. & Barbara E. Ferland;
PB Case #0109: Ronald G. & Barbara E. Ferland, Robert J. Green, Kenneth A. Lantz:

Request for Variance from Article IV Table 2 requiring 2 acres in the Rural Zone for Map/Lot #110-43 of 1.06 acres. Applicants are reducing lot size via Boundary Line Adjustment to transfer .46 acre from Map/Lot #110-43, of 1.06 acres, to Map/Lot #110-44, of .15 acre, and transferring .22 acre to Map/Lot #110-45 of .30 acre. Properties located at 41, 45 & 49 Justamere Lane in the Rural Zone.

Applicants Ron & Barbara Ferland, Bob Green and Ken Lantz were all in attendance. Mr. Ferland presented the proposed plan to convey a portion of their “L” shaped lot to abutters Bob Green and Ken Lantz. In doing so, the Ferland’s lot will be reduced from 1.06 acres to .60 acre, which requires a Variance from the ZBA. The abutting lots would increase in size and frontage.

J. Funk conveyed to the Zoning Board members that the applicants had previously met with the Planning Board to present a preliminary plan and discuss the appropriate procedure. The Board had decided that it would be best to present the plan at a Joint Hearing where both applications could be heard concurrently.

D. Russell asked about the status of the 25’ wide private road shown on the plan as abutting the rear property lines.

Dean Soucy, abutter, explained that when the original subdivision was performed in 1958 the intent was to transfer any remaining land, roads, beach, boat ramp, etc. to the association, which was never formed. Therefore this didn’t happen and apparently the road was absorbed into the properties having frontage on Justamere Lane. Consequently, the subject lots do not have frontage on the paper road.

J. Funk stated that the plan may appear complicated but the proposal is quite simple, that is to make two substandard lots more conforming. No new construction is being proposed.

I. Willard referenced the plan depicting “approximate septic locations” and stated his concern is if the septic fails, will there be adequate area for a new septic?

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He continued that the middle lot will lose its well radius and there won't be enough room to locate a new septic. Mr. Ferland responded that there is sufficient area behind the existing house and garage for a new septic/leach field, if needed.

Planning Administrator Lynne Brunelle pointed out that the Ferland's lot is currently an "L" shape and they are transferring acreage to the other two much smaller lots. The middle lot especially will be doubling in size and therefore gaining additional area to locate a new septic, if needed. She continued that there is nothing in the Zoning Ordinance requiring that the septic be upgraded if a pre-existing non-conforming lot is being enlarged.

C. Baldwin asked if all three lots have State approved septic designs? Mr. Ferland is not aware whether he has a certification on file. However, he did have his septic tank pumped last year and knows its location and that it is in good working condition.

W. Gray stated that the ZBA could place a condition on their approval that if the house is upgraded, then the property owner would be required to install a new septic system. L. Brunelle indicated that as per Article III.A. of the Zoning Ordinance, the town can require the property owner to obtain a new septic design in the event that the existing system should fail, but the town cannot arbitrarily require a property owner to install a new system.

Ken Lantz conveyed that the septic was already installed when he purchased his property and has documentation of the State approval, which he would be glad to provide to the Board. J. Funk stated that according to our ordinance, if the owner proposed to add another bedroom to his house located on a substandard lot, he would need to provide proof that a new septic system could be installed if the current system fails.

Dean Soucy indicated that he just built a house on an abutting lot and when he installed the septic system, the soils were well drained and sandy. W. Gray responded that this is an indicator of an aquifer and therefore, the Town needs to be careful about what is placed there. If the property is sold, the potential buyer needs to know that if the house is ever upgraded, then an updated system needs to be installed. Land Use Clerk Annette Andreozzi indicated that the ordinance states that the property owner must provide proof that an upgraded system can be installed on site.

E. Hackett referenced the Ferland's lot and stated that the proposal would make it "less conforming" so if they wanted to build an addition in the future, it would require application to the ZBA. (At this time, Planning Board member D. Hudson joined the meeting.)

J. Funk referenced the recently updated version of Article VII of the Zoning Ordinance pertaining to non-conforming lots, which states: "*A non-conforming lot may be used to enlarge or add to an existing residential structure if: (a) the setback requirement of Article IV, Table 2 are met, (b) if applicable, the owner obtains a NH State approved septic system design without a waiver from encroachment, well setback or slope requirements, and (c) the owner complies with all other requirements and applicable Town and State laws and regulations.* Accordingly, the property owner would have to obtain an approved septic design, but it does not need to be installed.

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D. Guarino stated that if either of the two lots being made larger experiences a septic failure, the procedure would be the same in accordance with the Town Ordinance and State Regulations. So he doesn't see the reason to place an additional restriction on their approval because it is an existing structure. C. Baldwin does not agree because if the property is ever sold, the new owner must perform his or her due diligence. Furthermore, she believes that the ZBA's request is within reason.

Motion: M. Martindale moved to close the public hearing for Planning Board Case #0109, D. Guarino seconded. Motion carried unanimously.

Motion: R. LaBelle moved to close the public hearing for ZBA Case #01-2009, C. Baldwin seconded. Motion carried unanimously. At this time, the ZBA reconvened to another room to deliberate the application.

The Board members reviewed the findings and the waiver request and rendered the following decision.

Motion: M. Martindale moved that the Planning Board make the following findings in Case #0109. The request to reconfigure the larger lot (#110-43) by transferring land for purposes of enlarging two smaller abutting lots (#110-44 & #110-45) and making the larger lot smaller without detriment to its use is beneficial to all three lots and is consistent with good land planning in this area of town. D. Guarino seconded, motion carried 5-0-1. D. Hudson abstained, as he was not in attendance for the entire public hearing.

Motion: D. Russell moved to grant the request to waive Section III.C.1.h. of the Subdivision Regulations requiring that topography, contours and wetland delineation be shown on the plan because the lots are existing/developed and no new development is being proposed. M. Martindale seconded, motion carried 5-0-1. D. Hudson abstained, as he was not in attendance for the entire public hearing.

Conditions to be complied with or secured (as appropriate) prior to the plan being signed and recorded. No site improvements shall commence and no building permits shall be issued until the plan is signed and recorded.

1. Submission of final plans in accordance with the Town Ordinances and Regulations with the exception of any waivers that may have been granted. The final plan shall depict the correct town as the "Town of Gilmanton".
2. Final approval is subject to a Variance granted by the Zoning Board of Adjustment and any conditions set therewith.
3. A compliance hearing shall be held by the Board prior to signing the plans and prior to the approval becoming final to determine if any conditions of approval are beyond administrative in nature or would require further review by the Board or staff.

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4. Final plans will not be recorded until the transferring deeds are also ready for recording.
5. The applicant is responsible for the payment of any fees required by the Belknap County Registry of Deeds for the recording of the approved plan and/or any conditions of approval.

General conditions to be complied with subsequent to plan being signed and recorded:

6. No changes shall be made to the approved plan unless application is made in writing to the Town. Minor changes may be allowed following review by the Planning Board. Major changes may be allowed after review by the Planning Board at a public hearing and abutters shall be notified.
7. Approval is subject to expiration, revocation and changes in the Ordinances under Town Regulations and the State RSAs.

M. Martindale seconded, motion carried 5-0-1. D. Hudson abstained, as he was not in attendance for the entire public hearing.

INFORMAL DISCUSSION – Paul Darbyshire, LLS, for Ernest & Linda Hudziec:

Potential Subdivision of Map/Lot #123-10 of 90 acres into five lots. Property located on Sawyer Lake and Munsey Hill Roads in the Rural Zone.

Paul Darbyshire, LLS, was in attendance to present a preliminary plan to subdivide approximately 90 acres into five building lots with frontage on Sawyer Lake Road. Property owner and applicant, Ernie Hudziec, was also in attendance. There is an existing house currently located on the property accessed off Munsey Hill Road, which will remain with approximately 80 acres. The acreage and frontage of the five building lots will be:

Lot #123-10-01 = 2.315 acres with 217.55' of frontage on Sawyer Lake Road

Lot #123-10-02 = 2.086 acres w/201.98' frontage

Lot #123-10-03 = 2.037 acres w/218.51' frontage

Lot #123-10-04 = 2.022 acres w/250.33' frontage

Lot #123-10-05 = 2.016 acres 2/250.71' frontage

Mr. Darbyshire indicated that all five lots exceed the required two acres and 200' of road frontage with adequate line of site for each driveway. Shared driveways are proposed for Lots #1 & #2 and for Lots #3 & #4. There is also a 50' right-of-way (ROW) being retained between Lots #1 & #2 for purposes of accessing the backland having steep slopes and a potential view lot. A single driveway is proposed for Lot #5. An additional driveway is proposed on Sawyer Lake Road for purposes of accessing backland with adequate site distance; however, State of NH wetlands permitting would be required in order to do so. There is an existing ROW from Sawyer Lake Road to the house. Wetland areas exist on Lot #1 as well as on Lot #5. All soil calculations have been determined and will be shown on the plan. The lots consist of mainly Paxton Soils up to 15% slopes. A request to waive the topos and soils on the backland will be requested, as no development is being proposed at this time.

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D. Guarino noted the contours of Lot #5 and asked why not locate the driveway further up the road? Mr. Darbyshire responded that this location provides the best line of site and added that all proposed driveways meet the required 10% grade as per town regulations. Discussion occurred regarding follow up on conformance with the required driveway grade being met? Lynne conveyed that she will address any driveway grade issues with the Town Road Agent, Code Enforcement Officer and Fire Chief, and at least one of these officials will follow up with her. Additionally, the Code Enforcement Officer will ensure that the driveway grade is met when issuing the Certificate of Occupancy, as will the Road Agent when issuing the driveway permit.

D. Hudson noted that in previous subdivisions, the Board has required that a Driveway Maintenance Agreement be submitted as part of the approval process. Mr. Darbyshire would like to split the driveway as close to the ROW as possible to eliminate any potential problems regarding future maintenance.

Gilmanton Conservation Commission (GCC) Chair Nanci Mitchell was in attendance and stated that the remaining parcel is a lovely large piece of land and she would encourage the applicant to consider a conservation easement. She indicated that the survey references the old soils maps and therefore they are no longer Paxton soils. She suggested the Board update their regulations to require the updated soils maps. Mr. Darbyshire finds the old maps to be more accurate and stated that everything online in reference to the updated soils maps says "preliminary".

Nanci inquired about the proposed 50' ROW off Sawyer Lake Road, which would access the backland/highland. Mr. Hudziec stated that the 50' ROW is to allow his children future access to the backland. He continued that several years ago they did some logging and created trails, and they intend to place some of the backland into conservation.

J. Funk asked if there is the possibility of future development? Mr. Darbyshire responded that there is the potential for an Open Space Subdivision. It was also noted that two abutting parcels owned by the Hudziecs with access from Hemlock Drive are adjacent to two conservation lots.

Mr. Darbyshire intends on submitting a formal application in time for the March meeting.

ZBA DECISION – Ferland Variance – Case #01-2009: Zoning Clerk Annette Andreozzi informed the Board that the ZBA decided to continue their deliberation on the Ferland application until next week's meeting scheduled for Thursday, February 19, 2009 in order to require the applicant to show the 75' well radius and actual septic locations on the plan, as well as provide the State of NH Septic Approvals, if available.

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.

Al Mitchell submitted a request to renew his excavation permit for the upcoming year and stated that the estimated amount of gravel to be removed from the site is 500 cubic yards.

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Last year the Planning Board, Conservation Commission and the Code Enforcement Officer performed a joint site walk, at which time notes and photographs were taken. All were in agreement that the site looked good and was in conformance with the approved Site Plan.

J. Funk asked how the town follows up on the actual amount of material extracted? Lynne informed him that a report is filed with the town and that she could provide the Board with that information at next month's meeting.

Lynne conveyed that Mr. Mitchell had inquired about the possibility of using the site for an affordable housing development. She informed him that the Board's reception would depend upon the specific proposal presented, and the Board members agreed. After further discussion, it was determined that since Gilmanton has a limited area devoted to Business/Light Industrial, the Board concurred that the best utilization of this site would be for a use synonymous with the district.

Motion: D. Russell moved to grant A. E. Mitchell's request to renew his Excavation Permit for 2009. D. Guarino seconded, vote passed unanimously.

ACCEPTANCE OF MINUTES

The Board members reviewed the minutes of 12/16/08 and minor changes were made.

Motion: M. Martindale moved to accept the minutes of the 12/16/08 meeting as amended, D. Hudson seconded. Motion carried 5-0-1; D. Guarino abstained, as he was not in attendance at that meeting.

ADMINISTRATOR'S REPORT

Natural Resource Audit: Planning Administrator Lynne Brunelle updated the Board on her pursuit of having a Natural Resource Audit (NRA) performed on the Town's Master Plan, Zoning Ordinance, Site Plan and Subdivision Regulations. She contacted the UNH Cooperative Extension that put her in touch with Andrew Fast from Belknap County Forest Resources. He suggested that we consider utilizing an intern from UNH and inquired about funding. Lynne reported that since the Planning Board decided not to renew its LRPC membership (in the amount of \$2900+) there would be available funds to support an intern. The Planning Board had encumbered \$1000 from the 2008 Master Plan line item for LRPC mapping. Lynne had received a memo from LRPC in December regarding assistance with the NRA; however, because the Board had determined not to fund LRPC, she did not respond to it. The Selectmen then decided to stay with LRPC and put the \$2900 back into the Planning Board budget, so now there is uncertainty as to whether there will be available funding for an intern. The Board members suggested seeking assistance from other resources such as the EPA, Moose Plate Grant, etc. Lynne will speak with Town Administrator Tim Warren about redirecting the encumbered funds to use for the NRA.

Water Withdrawal Ordinance: GCC Chair Nanci Mitchell updated the Board on a Warrant Article submitted by petition to adopt a Water Withdrawal Ordinance. It was initially based on Barnstead's ordinance; however, when representatives from the Town of Barnstead came in to the Selectmen's meeting, there were six pages missing from the document.

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The Selectmen and Planning Board also raised some valid questions and there needs to be some public education before proposing this type of an ordinance. It is the recommendation of the GCC that the Town vote “NO” on the Warrant Article this year. In the upcoming year, the Town will pursue public education efforts and hold joint work sessions to draft ordinance language in conjunction with an Aquifer Overly District. D. Russell and N. Girard are in agreement that the Town should not require a WWO because it is preempted by State law. J. Funk stated that he recognizes the Commission’s concerns and suggested the Planning Board consider incorporating language as part of the Site Plan Regulations. This would reduce the chances of negative or adverse impacts on the town’s resources, while incorporating it into the land use process and provide some form of local control. N. Mitchell appreciates this and is willing to work with the Board, but sees it as only a temporary fix.

Canine Training: Lynne conveyed an inquiry from Claire Wilkens regarding whether the kennel building located on her property, which is being rented out and used for canine training, would be considered a Home Occupation? The Board reviewed the definition of “Home Occupation” and noted that the accessory building is not being used by the property owner, but is being rented out for a specific use. Furthermore, a Home Occupation should not generate noise or fumes, and the Board agreed that barking dogs may constitute “noise”. It was determined that the proposed use is a “Service Business” which requires application to the ZBA as well as Site Plan Review by the Planning Board.

New Zoning Maps: Lynne updated the Board on the status of the new zoning maps currently being updated by LRPC. She was hoping these would be completed before year-end 2008 but their GIS Coordinator is no longer with LRPC. The only item remaining to be finalized on the map is the E911 road names.

Next Meeting: The next regularly scheduled meeting is Thursday, March 12, 2008 at 7 p.m.

ADJOURNMENT

On a motion made by D. Russell and seconded by M. Martindale, vote passed unanimously. Meeting adjourned at 9:35 p.m.

Respectfully submitted,

Lynne R. Brunelle