

Approved Minutes

Town of Gilmanton  
Zoning Board of Adjustment Minutes  
Thursday, April 17, 2008

Chairman Elizabeth Hackett called the meeting to order at 7:03 P.M. Members in attendance were Elizabeth Hackett, Paul Levesque, Carolyn Baldwin, Israel Willard, Ron Labelle, Alternate Members Wayne Gray and Adam Gilbert, and Wendy L. Keane, Recording Clerk.

Chairman Hackett gave an overview of the Zoning Board of Adjustment's hearing procedures to the applicants and members of the public in attendance and introduced the board.

**Public Hearing Case #5-2008 J. Walenda applicant: Request for a Special Exception from Article VII.C.3 to construct a 24'X28' single-family dwelling which will encroach upon the setbacks per Article IV Table 2. Property located at 13 Wood Ave, a .18-acre lot in the Residential Lake District. Map 118 Lot 24.**

Attorney Catherine Broderick, of Wescott, Millham & Dyer, LLC., spoke on behalf of the applicant (her client) and provided written permission for her to represent him on the application. to do so. Attorney Broderick stated that she originally appeared before the Board in February seeking a Variance on the same property. Since that time the Ordinance has changed thereby changing the requirement of the property to seek a Special Exception now. At the meeting in January the Board asked some very valid questions of the applicant which hopefully she would answer during this meeting. Attorney Broderick stated that her first order of business is to affirm that the application for a Variance has been withdrawn and that the application for the Special Exception has been accepted for hearing. Chairman Hackett stated that the yes, the application has been accepted for review.

Attorney Broderick referred the Board to plans submitted which illustrates the lot in question. The plans, by a color-coded section, showed the actual available building area on the lot and the proposed building site as well as the well and septic site. Atty. Broderick stated that there is an approved state septic design. In February, the Board questioned the well radius as shown on the septic plans. Attorney Broderick stated that the well radius exceeds the profile of the lot which means that Mr. Walenda will file a release in the Registry of Deeds for the well radii which is a standard, statutory release which basically says that "the applicant is working with a licensed well designer who is using the best practices for my (applicant) safety and I release everyone else involved including the Town and my neighbors".

Atty. Broderick stated that the applicant is looking to construct a 24'X28' single-family dwelling. Under the Special Exception criteria, the site is an appropriate location for the proposed structure; the area is a residential neighborhood with similar structures. Atty. Broderick stated that she has spoken with Road Agent, Paul Perkins and verified the driveway access with him. The house itself will be 25' high, which will be 10' under the ordinance maximum height. The proposed structure is a 2-bedroom home which will have low impact on the area. The residence, in the opinion of the applicant, will not adversely affect the neighborhood and will be in keeping with the neighborhood. The

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structure will be built with fine quality materials. There are adequate and appropriate facilities to support the house, private well and septic. No nuisance or hazard will be created in the construction of the dwelling.

Attorney Broderick state that her client intends to utilize the property seasonally. She further stated that the owner of the vacant abutting land is not willing to sell to her client at this time.

Chairman Hackett stated that her question of whether this would be a year round or seasonal use property has been answered. She further stated that this is a small lot as is typical of the neighborhood, however that is not taken into account when weighing the merits of each case. She continued by stating that the applicant has 20' on either side of Birch Ave, however the setbacks are 35' from each roadway.

William Morrison of 18 Mallard Ave stated that he is opposed to the proposed project because the proposed structure will not meet any of the setbacks and it is a very small lot. He further stated that he is not sure how this lot got any approval because of it's size and lack of setbacks.

Chairman Hackett stated that the applicant has not received any approval from the ZBA. Israel Willard pointed out that the applicant has a state approved septic design. Mr. Willard further pointed out that the state has regulations that the applicant must meet and that this lot met those regulations.

Ericka Randmere, 18 Mallard Ave, stated their property is kitty corner to the Walenda's property. The down slope from the Walenda property causes water to run directly into their back yard and across their septic site. She further stated that the town maintained road has no culverts and no drainage pipes, which further makes the drainage from Wood Drive run down through her property and continuing into the lake worse. Building a house on that lot would exacerbate the problem of drainage.

Bob Flanders, Building Inspector and Code Enforcement Agent, stated that in December of 2005 there was a camp located on the property that was destroyed by fire. The owners of the property at that time immediately applied for a new septic design that was approved. When the septic design was presented to the state, it was done as a replacement system for a recently burned out structure that may cause the state to be a little more flexible with issuing waivers. Mr. Flanders further stated that our ordinance allows for rebuilding for up to one year after a structure is destroyed by fire but that time limit expired over 2 years ago. Mr. Flanders stated that the buildable area on the lot is very small and there have been instances where applicants with bigger lots in the area have not been granted a variance or special exception. Mr. Flanders also made the Board aware that the applicant, prior to purchasing the lot, had visited the office and spoken at length with both he and Wendy Keane, who both stated that there is no guarantee that the ZBA would grant a variance (which was needed at that time) to construct a dwelling on the lot in question. Mr. Flanders reiterated that the Board has a history of not allowing lots of this size to be built upon and that the applicant was well aware that he may not ever be able to build on the property before he purchased it.

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Carolyn Baldwin inquired about is considered to be the buildable area of a lot. Bob Flanders explained that the buildable area of a lot is an area that is not encumbered by setbacks. Carolyn Baldwin further inquired if Bob Flanders was referring to well area. Bob Flanders stated he was not.

Chairman Hackett inquired if there were any further questions from Board Members or abutters. Being none, Chairman Hackett called for a motion.

**MOTION: Israel Willard moved to close the public hearing. Seconded by Paul Levesque. Motion carried 5-0.**

**Public Hearing Case #6-2008 T. & K. Gibbons applicants: Request for a Variance from Article VII.B.3 to demolish an existing dwelling and construct a new 24'X44' dwelling with attached 24'X8' deck which will encroach upon the setbacks per Article IV Table 2. Property located at 63 Leatherstocking Lane, a .30-acre lot in the Rural District. Map 133 Lot 43.**

Terrence Gibbons introduced his wife Kathleen and himself to the Board. He stated he and his parents have owned property in Gilmanton since 1970. He further stated that he and his wife would like to retire to their property on Shellcamp Pond. Mr. Gibbons presented a letter from Roland Boulanger, an abutter.

Chairman Hackett read the letter from an abutter, Roland Boulanger, in support of the project.

Chairman Hackett stated that her concern is the runoff from the roadway to the lake, specifically from Moccasin Path which is a steep slope located across the road from the subject property. Chairman Hackett inquired if the plan is to build the entire property up or to park on the side of the roadway as the neighbors do. Mr. Gibbons stated that they will be building the area up to the street level. Chairman Hackett also inquired if there would be a problem with changing the location of the dwelling, which would increase their setbacks from the lake. Chairman Hackett also referred to the proposed 24' X 8' deck off of the rear of the proposed structure that is within the town shoreline required setback of 75' (state is 50' from shoreline).

Rick Lepene, the engineer and septic designer for the Gibbons property spoke in regards to the plans presented. Mr. Lepene stated that the reason the structure could not be moved closer to the road was because while reviewing all of the applicable regulations pertaining to town and state, they chose the best location for the structure that would meet as many of those requirements as possible. Per state regulations, the septic must be a minimum of 10' off of the property line and the leachfield must be 25' from the foundation of the structure. Mr. Lepene referred to the plans to show the Board the measurements as proposed. Mr. Lepene stated that in placing the structure in the proposed location they would meet those state regulations.

Wayne Gray inquired about the elevation of the roadway in relation to the elevation of the proposed retaining wall. Mr. Lepene stated that there is a steep drop on the land and that by putting the house in the proposed location the elevation of the structure will be a

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little below the roadway. The Board and Mr. Lepene continued to review the plans and the elevations as sited illustrated.

The Board and Mr. Lepene discussed the possibility of runoff and the mitigation plan that was submitted by the applicant.

Ron Labelle inquired why the high water marks as depicted on the plans do not reflect the lay of the shoreline. Mr. Lepene stated that where the shoreline appears to come to a point in several locations is where the survey marker was placed and measured from.

Bob Flanders, Building Inspector and Code Enforcement Agent, stated that he and Nanci Mitchell, Chairman of the Conservation Commission, visited the site together and it is his belief that Nanci Mitchell was comfortable with the plan based on the re-charge and other mitigation plans. Mr. Flanders further stated that an ideal plan will have a post development flow equal to or lesser than the pre development flow which is what the engineer has obtained in this instance by the use of a catch basin and re-charge area.

Adam Gilbert stated he is concerned about the runoff from the neighboring property because of the angles coming off of the roadway. It is his impression that the runoff will be funneled beside the drop-off (to the right of the property) and would hit the retaining wall and that between the two there would be a great charge of water that will not reach the top of the retaining wall. His concern is also the removal of the trees on the edge of the property (as are marked on the plans) and the potential that it may exacerbate the problem.

Mr. Lepene stated that of course there will continue to be water runoff, however with the plans in place it will minimize those issues.

The Board and Mr. Lepene continued to discuss the elevation of the property at finished status as well as water mitigation plans.

Israel Willard inquired about the foundation and where it sits in reference to the water table. Mr. Lepene stated that the water table is at approximately 30”.

Chairman Hackett inquired if the Gibbon’s would be adverse to a condition that the deck never be enclosed as living area. Mr. Gibbons stated that would not be an issue.

Chairman Hackett inquired if there were any further question from the Board or public. There being none, she called for a motion.

**MOTION: Paul Levesque moved to close the public hearing. Seconded by Israel Willard. Motion carried 5-0.**

**Public Hearing Case # 7-2008 J. Funk & D. Chase applicants: Request for a Special Exception from Article VII.B.2 to construct an 18’X12’ addition to an existing garage which will encroach upon the setbacks per Article IV Table 2. Property located at 513 Province Rd., a .90-acre lot in the Village District. Map 127 Lot 2.**

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John Funk stated that his application as proposed involves an addition to his existing garage. The applicant would like to construct the addition for equipment storage and an area for potting plants. Mr. Funk further stated that he and Deborah Chase have already received approval of their plans from the Historic District Commission. The area of proposed construction will not encroach any further into the setbacks than the existing structure.

Chairman Hackett asked the applicants for clarification on the size of the proposed structure.

Mr. Funk stated that the structure is proposed to be 18'X12. Mr. Funk further stated that the two lots they own, as shown on the tax map, have been officially merged.

Israel Willard inquired why the applicant chose not to expand the proposed structure to match the width of the existing structure. Mr. Funk stated that he wanted the structure to step in so that it would be more conforming and aesthetically pleasing.

Chairman Hackett inquired if there were any further questions from the public or Board members. Being none, she called for a motion.

**MOTION: Paul Levesque moved to close the public hearing. Seconded by Ron Labelle. Motion carried 5-0.**

## **DELIBERATIVE SESSION:**

### **Case #5-2008 J. Walenda applicant:**

The Board discussed the aspects of the lot size and grade. They further discussed the state approved septic design as well as waivers.

Israel Willard stated that based on testimony from Robert Flanders, Building Inspector, the applicant knew that he may not be able to develop the piece of property before he purchased it.

Carolyn Baldwin inquired if this case was re-noticed. Wendy Keane affirmed that yes it was re-noticed as the application had changed from a Variance to a Special Exception.

The Board discussed previous denials of variances in the area and the reasoning behind them. Chairman Hackett explained to newer members of the Board that historically this neighborhood has been a wet area. Across the road and several buildings down, there is a structure that one resident stated they hardly use because it is so wet. Chairman Hackett further explained that though historically they have denied variances in the neighborhood for various reasons, those reasons do not necessarily apply to this property and the case must be reviewed on it's own merits.

Carolyn Baldwin stated that Mr. Morrison spoke to the Board regarding his concern of runoff.

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Wayne Gray inquired how long a septic design approval is valid for. Bob Flanders stated that they are good for four years. Wayne Gray stated that his concern was whether the applicant needed an updated plan. Chairman Hackett affirmed that the septic design is still valid.

The Board discussed the language of the ordinance as compared to the language of the approval/denial findings as shown in Article IX. They found that there is a discrepancy in what the language of Article VII.C.3 allows and what conditions are to be met within the findings.

The Board discussed the timeframe allowed to them to approve or deny an application. Chairman Hackett stated that the Board has up to 30 days to approve or deny an application from the date of the meeting.

Carolyn Baldwin stated that what needs to be decided among the Board is if there are other issues within the findings that would prohibit them from adequately making a decision.

The Board decided, after lengthy deliberation, that they could utilize the wording as it is stated within the ordinance with referral to the language of Article VII.C.3 as adopted on March 11, 2008.

Adam Gilbert stated that well issues aside, the lot would have to be greatly defoliated in order to develop.

**MOTION: Israel Willard moved to grant the Special Exception from Article VII.C.3 to construct a single family dwelling at 13 Wood Ave in the Residential Lake District. The Special Exception is granted with the following findings:**

- a. That the site is appropriate due to the lot having been the site of a previous single-family dwelling.
- b. The use as developed will not adversely affect the neighborhood in that there was previously a structure on the site in the same footprint.
- c. Adequate and appropriate facilities will be provided for the proper operation of the proposed use of a 2 bedroom single-family dwelling, as a new well and septic will be installed on the site.
- d. There will be no nuisance or hazard created with the development of this site.
- e. The structure will not meet the setbacks as proscribed in Article IV Table 2. The existing language within Article VII.C.3, as adopted on March 11, 2008, supercedes the language as written in Article IX.B.2e.

**Seconded by Ron Labelle. Motion carried 4-1. Carolyn Baldwin opposed.**

### **Case #6-2008 T. & K. Gibbons applicants:**

The Board discussed the application as submitted by the applicant and engineer Rick Lepene.

Chairman Hackett stated that the site itself is not one that she would prefer personally, however that does not mean that it is a bad location and feels that the

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proposal would greatly improve the lot. Chairman Hackett further stated that she is uncomfortable with the driveway.

Ron Labelle stated that he walked the entire lot and did not find any area that was overly wet or squishy as he expected to with all of the snow this past winter season and runoff. Chairman Hackett stated that she also walked the property and did not encounter any wet areas either.

Wayne Gray stated that his concern is that the elevation drop between the garage floor and the road is only 4'. Wayne Gray pointed out that Rick Lepene stated during testimony that the garage floor would be slightly tipped from left to right to control possible water from standing in the garage.

The re-charge system and water mitigation was also discussed.

**MOTION: Paul Levesque moved to grant the variance from Article VII.B.3 to demolish an existing dwelling and construct a new single-family dwelling and garage. The variance is granted to locate the structure at 50' from the shoreline that is within the 75' setback to the shoreline as set forth by the town in Article IV Table 2. Also to locate the septic within 125' of the shoreline as also set forth in Article IV Table 2. Specifically the septic shall be located at 107' from the shoreline as illustrated in the plans submitted. This variance is granted with the following findings:**

- a. **There will be no diminution of value of the surrounding properties.**
- b. **Granting of the variance will not be contrary to the public interest.**
- c. **Denial of the variance would result in unnecessary hardship to the owner.**
- d. **By granting the variance substantial justice will be done.**
- e. **The granted variance will not be contrary to the spirit of the ordinance.**

**The variance is granted with the following condition: That the deck shall never be covered or enclosed and converted into living area.**

**Seconded by Israel Willard. Motion carried 5-0.**

### **Case # 7-2008 J. Funk & D. Chase applicants:**

The Board discussed the plans as proposed by the applicants.

Carolyn Baldwin stated that there have already been two variances granted on this property and the current proposal is less invasive than the previous proposals. She also stated that the two lots have been merged to create a lot which is .90 acres.

Chairman Hackett reiterated that the applicants have received approval of design by the Historic District Commission.

Ron Labelle inquired if anyone knew what the applicants propose to place the shed on. Wendy Keane stated that they propose to place it on a concrete pad.

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**MOTION: Carolyn Baldwin moved to grant the Special Exception from Article VII.B.2 to construct an 18'X12' addition to an existing structure. The Special Exception is granted with the following findings:**

- a. That the specific site is appropriate for the proposed use.
- b. The use as developed will not adversely affect the neighborhood.
- c. Adequate and appropriate facilities will be provided for the proper operation
- d. There will be no nuisance or hazard created.
- e. The structure will not meet the setbacks as proscribed in Article IV Table 2. The existing language within Article VII.C.3, as adopted on March 11, 2008, supercedes the language as written in Article IX.B.2e.

**Seconded by Ron Labelle. Motion carried 5-0.**

**OTHER BUSINESS:**

Chairman Hackett stated that there are minutes from previous meetings to be approved.

Carolyn Baldwin requested that if members cannot be present for a scheduled meeting to please let Wendy Keane know.

Chairman Hackett stated that she saw in the newspaper that the town has advertised for openings on various boards within the town. She also made the Board aware that Sandra Littlefield has resigned her membership on the Board. Chairman Hackett stated that it is her policy to allow alternate members to participate and vote on cases on a rotating basis. Chairman Hackett further stated that she would recuse herself so that the alternate members may do this. Chairman Hackett stated that the reason she does this is because she understands the value in participative knowledge.

**MOTION: Israel Willard moved to accept the minutes from the February 21, 2008 meeting as corrected. Seconded by Ron Labelle. Motion carried 5-0.**

**MOTION: Ron Labelle moved to accept the minutes from the January 17, 2008 meeting as corrected. Seconded by Paul Levesque. Motion carried 5-0.**

Israel Willard addressed Carolyn Baldwin in regards to a case that was heard by the Board during the February 21, 2008 meeting when she was acting Chairman in Betty Hackett's absence. Israel Willard stated that one of the cases that was heard had been discussed in emails prior to the hearing. He further stated that in one of the classes he has taken, it was stated that it is highly illegal to discuss a case via email on whether a case will be approved or not. Israel Willard made the Board aware that he did not respond to the email for that reason. Chairman Hackett stated that the emails as discussed in the class referred to discussing the cases among each other. However, she continued, it was her understanding that Wendy Keane asked the question how things are interpreted among the Board and not on merits of the case. Carolyn Baldwin stated that it is her recollection that Wendy Keane was asking about a policy procedure and whether the application should be accepted absent a state approved septic system as has been done in the past. Wayne Gray asked if that decision should

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be made the night of the hearing. Carolyn Baldwin stated that people come in and abutters are notified and it is not fair to the applicants or the abutters to accept an application and then turn them away the night of the hearing. Carolyn Baldwin stated that there needs to be a policy on whether the Board will allow applicants to come before the Board absent state approved septic designs.

Israel Willard stated that there is an area within the application that states the items an applicant must have.

Wendy Keane stated that she was unsure as to whether or not to accept the application because it was her recollection that there had been cases where the Board had made approvals subject to a state approved septic design. That was why she was unsure whether to accept that particular application or not. Wendy Keane could not find on the application where it stated that the applicant must supply a state approved septic design. Israel Willard stated that within the ordinance it states you must have a septic plan for an application.

Chairman Hackett stated that she took the email to be a matter of policy and procedure, and not on merits of a particular case. Carolyn Baldwin stated that she felt the same in regard to the email.

Israel Willard then pointed out to the Board that under Section 4, number 6 of the application, it asks “ Is a septic system approval from the N.H. Water Supply and Pollution Control Commission necessary for the proposed construction? If so, the approved site plan must be submitted with your application”. He stated that there is a policy in place in the application. Wendy Keane stated that she would amend the application to reflect that requirement on the front page of the application. Bob Flanders stated that there have been a number of applicants who have come in with septic designs that allow the Board to better see the topography of a plan, and all applicants should have that.

Israel Willard stated that the case in question from January did not have any septic or perk test information from the applicant.

Carolyn Baldwin stated that it sounds as if it is the consensus of the Board that an application will not be accepted if it requires a septic design and one is absent. Chairman Hackett stated that from this point forward an application shall not be accepted unless it is submitted with a state approved septic design as it states on the application.

Chairman Hackett began discussion on Article VII. She inquired what the process is for a Special Town Meeting. Bob Flanders stated that the Selectmen would be discussing the language at the next Selectmen’s meeting. He further stated that there is a possibility that language will be posted immediately to close the loophole that the ordinance has created. From that point they have 90 days to go through the public hearing process and then on to a special election. Carolyn Baldwin inquired if they could do it quicker than 90 days. Wendy Keane stated that is not possible per RSA. Israel Willard stated that he spoke with Tim Warren and asked him to have a meeting with the Planning Board, Zoning Board and Building Inspector so that we could all be

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on the same page. Tim Warren stated that the Planning Board met with the Selectmen and that town council has not given us directive. Wayne Gray inquired if town council can nullify the ordinance. Wendy Keane stated that could not be done because the town voted it in. Bob Flanders stated that at the Planning Board and Selectmen joint meeting, he asked Walter Mitchell if there were a loophole to make the ordinance invalid and Attorney Mitchell stated that there is not.

The Board continued to discuss Article VII.

**MOTION: Carolyn Baldwin moved to elect Betty Hackett as Chairman. Seconded by Ron Labelle. Motion carried 5-0.**

**MOTION: Paul Levesque moved to adjourn. Seconded by Ron Labelle. Motion carried 5-0.**

Chairman Hackett adjourned the meeting at 9:19 p.m.

**Respectfully submitted,**

**Wendy L. Keane  
Recording Clerk**

**THESE MEETING MINUTES ARE NOT OFFICIAL UNTIL VOTED ON BY THE  
ZONING BOARD OF ADJUSTMENT**