

**Gilmanton Planning Board
Thursday, December 10, 2009
Academy Building
503 Province Road
Gilmanton, New Hampshire 03237**

Minutes of the Meeting

Members Present Nancy Girard, Chair; John Funk, Vice-chair; Don Guarino, Selectmen's Rep.; Marty Martindale, Member; David Russell, Member; Mark Fougere, Professional Planner; Desiree Tumas, Clerk; (Absent from the meeting – Dan Hudson)

Public Attendance (As signed in) Elizabeth Hackett, ZBA-Chair, Bob Pace, Jeff Burd, Tom Dionne. (Not signed in) Carolyn Baldwin, ZBA Member

Open Meeting

Chair Girard called the meeting to order at 7:10 pm with the introduction of Board Members and explanation of the Meeting Procedures.

Public Hearings

None Scheduled

Discussions

Mark Fougere, AICP – To discuss preparations for amendments to the Zoning Ordinance and suggestions for immediate amendment.

Mr. Fougere is in attendance and reviews the following proposed amendments to the zoning ordinance.

Article VI Manufactured Housing, Section D, Storage and Use of Recreational Vehicles, as follows:

- 1) *A single recreational vehicle owned by permanent residents of the Town of Gilmanton may be stored or parked ~~on~~at the owner's ~~primary residence property~~ during all periods of non-use.*
2. *Any property owner or lessee may accommodate one recreational vehicle upon their property for travel, camping, recreational or business purposes, whether the recreational vehicle be owned by the property owner, lessee, or a non-paying guest of the owner/lessee, for a period not to exceed 120 ~~consecutive~~ days annually, provided that during all periods of use the recreational vehicle remains mobile, legally registered and inspected, and adequate water and sewage systems, whether self-contained or temporarily connected to facilities approved by the New Hampshire Department of Environmental Services ~~Water Supply and Pollution Control Commission~~ are provided. Any such recreational vehicle must meet the setback requirements for buildings in Article IV, Table 2. Except as provided in Article VI.D.1., no Recreational vehicle shall be located on any property unless a permit has been issued by the Town. Except as permitted herein, recreational vehicles may be used or stored only in approved campgrounds.*

Article IX, Board of Adjustment, C Variances, by amending the Section as follows:

- 1) *The Board of Adjustment may authorize a variance from the terms of this Ordinance only where the Board finds that all of the conditions as defined in RSA 674:33, I-III are met, ~~namely:~~*
 - ~~a. That if the variance was granted, no diminution in the value of the surrounding properties would be suffered;~~*

- ~~*b. That the granting of the variance would be of benefit to the public interest;*~~
- ~~*c. That denial of the variance would result in unnecessary hardship to the owner seeking it;*~~
- ~~*d. By the granting of the variance, substantial justice will be done; and*~~
- ~~*e. That the proposed variance will not be contrary to the spirit of the Ordinance.*~~

~~*a.f. A variance shall expire if the use or construction permitted by the variance is not implemented within one (1) year of the date of the action of the Zoning Board of Adjustment. A variance shall be considered abandoned if the use permitted shall cease for more than one (1) year.*~~

~~*2. Unnecessary hardship may be established by proof that (1) a zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property; Considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others.*~~

ZBA Members in attendance stated concern with removing the language.

It was suggested that the language be added to the application so that a resident seeking relieve from the ZBA will have the information included with the application. The change in this manner would allow the application addendum to be updated when the state legislation changes and would not require going through the town vote to amend as it is now in the zoning ordinance.

Article IX, Board of Adjustment, B Special Exceptions, by amending the Article as follows:

By amending Section 2, Conditions of Approval, by amending paragraph e, to read as: - Any structure proposed must meet all of the dimensional requirements of Table 2, except as allowed by Article VII, Paragraph B Non-conforming uses and non-conforming structures.

ZBA Members in attendance state concern with the removal of the sentence.

It was explained that the existing language is conflicting and the language as proposed eradicates the conflict.

Additional Zoning Ordinance Amendments proposed are as follows:

- a) Article IV Zoning District Regulations, Table 1, by **deleting** the land use term "Agriculture Traditional" and replacing it with Agriculture.*
- b) Article XVI, Definitions, by **deleting** the term Agriculture – Traditional.*
- c) Article XVI, Definitions, by amending the current definition of "Agriculture" as follows: As defined in RSA 21:34-a, **including agritourism uses.***

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- d) *Article XVI, Definitions, by adding the following definition: Agritourism - means attracting visitors to a working farm for the purpose of eating a meals making overnight stays, enjoyment of the farm environment, education on farm operations, or active involvement in the activity of the farm which is ancillary to the farm operation. Said operation shall be approved by the Board of Selectmen and in compliance with all applicable state and local laws, ordinances and regulations. Such uses may include, but shall not be limited to, corn mazes, farm animal petting, horse and pony rides, horse riding lessons, pick your own produce, and wagon/sleigh rides.*

Board Members completed review of the proposed amendments and all approve of the proposed amendments.

Ms. Mitchell expressed disappointment with the inability to procure language pertaining to aquifer overlays and ground water but understands that time is of the essence at this point and looks forward to working to create suitable language for consideration next fall when the Planning Board again reviews language for proposed amendments.

Chair Girard called for further comment, hearing none; discussions were concluded.

Nanci Mitchell, Conservation Chair – GPS Unit and Planning Board involvement in purchasing and implementing use.

Ms. Mitchell explained she has purchased the GPS unit that will be used with the ArcGIS Mapping program. The purchase was for a Garmin GPSMAP 60SX with carry case, 4-rechargeable AA batteries, battery charger and topo maps.

The Board was reminded that they agreed at the November 12, 2009 Planning Board Meeting to split the cost of the GPS unit between the Planning Board and Conservation Commission.

Mrs. Tumas signed off on the expenditure based on the approval motion contained in the November 12, 2009, Planning Board Minutes of the Meeting.

Having nothing further, discussions were concluded.

R. Jeffrey Burd - RJB Engineering to discuss further subdivision of the property shown as TM 118 LT 9 located on Route 107

Chair Girard called Jeffrey Burd, PE of RJB Engineering to discuss conceptual ideas for potentially subdividing the property owned by Tom Dionne. Jeff Burd, PE and Property Owner, Tom Dionne are present and explain that they are interested in possibly subdividing the property shown on TM 118 LT 9 located on Route 107 creating two lots, pending approval by the state for an additional curb cut(s).

Currently the Assessment Card on file with the Town of Gilmanton indicates that there is no further subdivision due to the number of curb cuts already approved and abuts a state forest. Documentation on file with the assessment card indicates that the NH Department of Transportation has provided three drives which are the maximum allowed to the original parcel per State Policy.

Mr. Burd explained that he has been denied an additional curb cut and is currently under appeal with the NHDOT. The hearing will be held in January 2010. Mr. Burd went on to explain that other options available would be to turn the current driveway that access three existing lots to a road. Another option would be to come off of Sawyer Lake Road, which would require an easement from the property owner of TM 118 LT 8. Neither Mr. Burd nor Mr. Dionne have approached the property owner as yet and would like to explore the other options available using the existing LT 9 before entertaining the option of an easement with an abutting property owner.

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Mr. Burd questioned development of condos as an alternative to a 2-lot subdivision and constructing single-family dwellings on each or a possible open space subdivision deeding the back portion of the lot that abuts the state forest to the town. It was explained that a condo development is also a subdivision and a minimum of 20 acres is needed of the open space subdivision.

Board Members noted that during the original approval the property owner wanted a larger remaining lot to develop for him and due to the large amount of wetlands on the property the Board wanted to ensure enough contiguous upland. Other concerns stated if the lot were to be subdivided are disturbance of the existing wetlands to access and develop the lot.

Mr. Burd explained that he had evaluated the lot and there would be no disturbance to the existing wetlands if he were to subdivide and develop the lots.

Mr. Burd questioned if he were to receive the required curb cut(s) if the Board would look favorably on the proposal. Board Members explained that if the required curb cut(s) were approved by the NHDOT, the Board would review the proposal and give due consideration as with every other subdivision application that is received. It was additionally noted that without NHDOT approval for a additional curb cut(s) it would be an uphill battle to gain access to the property by other means due to the configuration of the original subdivision and the subject lot did not have frontage on any other road.

Board Members are cautious to comment on the assessment card notation of no further subdivision without reading the minutes of the meeting from the public hearings conducted in 2002; Chair Girard reiterated the fact that the discussions are conceptual and nonbinding.

Mr. Burd questioned if he could tell the NHDOT at the hearing that the Board would be in favor of the proposed subdivision if an additional curb cut(s) were approved. Following further discussion with regard to expanding the existing shared driveway and the Boards inability to commit to any favorability of the proposal on a conceptual level. Vice-chair Funk again reiterated that the Board would review and consider the proposed subdivision application as they do with every other application that is submitted.

Chair Girard suggests writing a letter to the NHDOT. Mr. Burd and Mr. Dionne are thankful for the letter to NHDOT and request a copy of the letter that is sent.

Chair Girard will compose a letter and copy will be sent to NHDOT as well as Mr. Burd and Dionne.

Having nothing further, Mr. Burd and Mr. Dionne are thanked for coming in and discussions were concluded.

Site Walk Discussions

Sawtooth Road - Class VI

Board Members were provided pictures from the site walk conducted November 21, 2009, a copy of the Gilmanton Class VI Roads Committee Evaluation and Recommendations Form for Sawtooth Road, a letter addressed to the Board of Selectmen date May 11, 2006 from the Conservation Commission and a letter to Tom Giles dated April 15, 2006 from Blue Moon Environmental, Inc pertaining to wetland delineation within ROW of Sawtooth Road for 600' along the Class VI section for consideration. (Copy attached to the Town Clerk Municipal Record)

Following review of the material provided and discussion pertaining to the site walk conducted; Board Members expressed concern regarding the upgrade and development due to the existing conditions such as the amount of ground stabilization needed and ground saturation with the amount of standing water observed during the site walk. Also noted were the steep slope of the proposed development area and the size of contiguous undeveloped land that the subject lots if developed would break –up. Board Members stated concern that the proposed development would not be within the spirit of the zoning ordinance.

Chair Girard called for further comment, hearing none; discussions were concluded.

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Proposed Public Safety Building Site

Board Members agree to defer discussions until the January 14, 2010 regular meeting when the plans will be updated and available for discussion.

Administrative Business

Assessing Department Request - Harry W. Gordon – TM 405 LT's 80 & 81 – Purchase of abutting non-conforming lot that was not merged in 1991

Mrs. Tumas explained it had been brought to the Assessing Departments attention that when Mr. Gordon purchased an abutting non-conforming lot in 1991 it was never merged as required by the Town of Gilmanton Policy Contiguous Lots in the Same Ownership, which requires mandatory merger of non-conforming contiguous lots held in the same ownership.

Mrs. Tumas went on to explain that the solution is to either rule that the lots should have been merged in 1991 and due to an oversight never were or the property owner would be required to apply to the planning board and incur all the required costs.

Following brief discussion, it was determined that the lots should have been merged at the time the abutting lot was purchased in 1991. Chair Girard called for a motion; ***Vice-chair Funk moved that the two lots should have been merged when the abutting property was purchased in 1991, Member Martindale second the motion as stated; the motion passed unanimously.***

Chris Keith – TM 414 LT61 – Conflicting Approval

Mrs. Tumas explained that during the course of site plan review for the Chris Keith request for approval to maintain a contractor yard on the property shown as TM 414 LT 61 in the Historic District was subsequently denied; there were other conditions with regard to the existing barn that were approved by the Planning Board that should have been deferred to the Historic District Commission.

Mrs. Tumas went on to explain that request for the Board to rescind the approval was brought to her by the HDC Clerk.

Board Members stated that any conditions that were outline were right and just. Board Members would like additional information as to the specific conditions that the HDC would like to have rescinded.

Mrs. Tumas will obtain the necessary information and will revisit the issue with the Board at the January 14, 2010 regular meeting of the Planning Board.

Having nothing further, discussions are concluded.

Advertising Budget

At the November 12, 2009 regular meeting it was questioned why the Advertising Budget line item was over budget. Mrs. Tumas spoke with the Town Administrator and it was explained that due to the number of applications processed and the employment ad for the clerical position are what caused the overspending of the Advertising Budget line item.

Having nothing further, discussions were concluded.

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2010 Meeting Schedule

Mrs. Tumas explained the new meeting schedule was ready for approval; the only issue with scheduling was the November 2010 meeting that falls on November 11th, which is Veterans Day. Mrs. Tumas scheduled the November meeting on November 18, 2010.

Chair Girard called for further discussion, hearing none; entertains a motion to approve the 2010 Planning Board Meeting Schedule.

Member Martindale moved to approve the 2010-meeting schedule, Vice-chair Funk second the motion as stated; the motion passed unanimously.

Proposed Decision, Abutter Notice, Regional Notice, Approval/Denial Letter, Minute Policy

Due to the late hour, Mrs. Tumas requested the Board review the Abutter Letter for approval and move approval of the other letters and notices to the January 14, 2010 regular meeting.

Board Members reviewed the proposed Abutter Letter; ***Member Russell moved to approve the Abutter Letter, Member Martindale seconds the motion as stated; the motion passed unanimously.***

While on the subject of Regional Notice, Members questioned the regional notice received from the Town of Loudon pertaining to the winter events proposed at the track. It was questioned without answer whether or not the NHMS used decibel-lowering mechanisms. Following brief discussion, Board Members agree to send a letter expressing concern regarding the noise and limit hours of operation.

Conditional Approval Compliance – Bernard Lynch – Approved Contractor Yard on the property shown as TM 412 LT 20 – Temporary Erosion Controls Established by November 19, 2009

Mrs. Tumas reminded the Board that during the October 8, 2009 approval of Mr. Bernards Contractor Yard and one of the condition of approval was to make sure all temporary erosion controls were established by November 19, 2009 as well as recheck of the erosion controls in the spring following the thaw.

Member Guarino explained that he had been by the property but not up onto the property. It seemed to him that the temporary erosion controls were established. A confirmation recheck will take place following the spring thaw.

Having nothing further, discussions were concluded.

Amended Fee Schedule – 03/23/2009

Mrs. Tumas explained that the copy is to update the zoning ordinance that each member has. The rates were adjusted March 23, 2009.

Having nothing further, discussions were concluded.

August 13, 2009 - Minutes of the Meeting

Mrs. Tumas explained that during the approval of the August 13, 2009 meeting minutes Board Members moved to remove the content that was truncated due to voids in the tape. Following discussion with Town Counsel, it was recommended that only the discussions where the void in tape be removed.

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Following brief discussion, *Vice-chair Funk moved to remove only the content with subsequent gaps omitted as the limited portion of discussions do not reliably reflect the topic of discussion, Member Martindale seconded the motion as stated; the motion passed unanimously.*

Approval of Minutes

Mrs. Tumas has received, via email the symantec and grammatical amendments from Dan Hudson in his absence.

Regular Meeting - November 12, 2009

Member Martindale moved to approve the November 12, 2009 Minutes of the Meeting as amended, Member Russell seconds the motion as stated; the motion passed 4-in favor, 1-abstained vote by Vice-chair Funk who was not in attendance.

Site Walk – Class VI Sawtooth Road - November 21, 2009 @ 9:00 AM

Member Martindale moved to approve the Site Walk – Class VI Sawtooth Road Minutes of the Meeting as amended, Member Russell seconds the motion as stated; the motion passed 4-in favor, 1-abstained vote by Vice-chair Funk who was not in attendance.

Site Walk – Proposed Safety Building Site - November 21, 2009 @ 10:00 AM

Member Martindale moved to approve the Site Walk – Proposed Safety Building Site Minutes of the Meeting as amended, Member Russell seconds the motion as stated; the motion passed 4-in favor, 1-abstained vote by Vice-chair Funk who was not in attendance.

Unscheduled Business

Marilyn Fenollosa – TM 406 LT 31& 32 - Boundary Line Adjustment

Mrs. Tumas questioned if a survey of all 39 acres of Lot 31 and 135.43 acres of the abutting lot 32 would be required. The proposed boundary line adjustment would convey approximately 500' x 200' area from the 135.43-acre parcel (Lot 32) to the 39-acre parcel (Lot 31) allowing additional setback from the existing property line.

Board Members agree that it would not be necessary to survey both lots in their entirety and a survey of the area to be conveyed would be required. However, both lots will have to be included on the plan for recording purposes.

Having nothing further, discussions were concluded.

J. Daniel & Linda Lemieux – Tax Map 124/Lot 08 – 283 Province Road; PB #0909

Mrs. Tumas explained the application was approved on July 9, 2009 and has yet to receive a final plan for approval and signature. There is a pencil drawing in the file, however, a final scale plan has not been submitted. Mrs. Tumas spoke with Mr. Lemieux and mailed a copy of the approval letter for clarity and requested a final plan.

Mrs. Tumas wanted to confirm with the Board that a scale plan with the conditions of approval outlined on the plan is required.

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Following brief discussion, Board Members agree Mr. Lemieux does have to submit a final scale plan with the conditions outlined on the plan. The Board would review the submitted plan. Once the conditions of approval are confirmed the plan will be signed. Mrs. Tumas will follow-up with Mr. Lemieux.

Having nothing further, discussions were concluded.

Adjournment

Chair Girard called for further business, hearing none; ***Member Russell moved to adjourn the meeting, Member Martindale seconded the motion as stated; the motion passed unanimously.***

Respectfully submitted,

Desiree Tumas, Clerk