



**TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, JANUARY 18, 2024 – 7 PM
TOWN OFFICES AT THE
ACADEMY BUILDING, 503 PROVINCE ROAD
603-267-6700 ext. 122
www.gilmantonnh.org**

MEETING MINUTES APPROVED

ROLL CALL

Members present included Leslie Smith, Perry Onion, Mike Teunessen, Zannah Richards, and Chair Elizabeth Hackett, along with staff Bre Daigneault.

NEW BUSINESS

Public Hearing Case #2024-01: Property owners Bertrand LaFlamme and Angela Christie are requesting a variance from Article VI, Section D to utilize a camper longer than previously approved on their property located at 19 Wood Dr, known as map and lot 118-25, located in the Residential Lake zone.

The property owners are requesting a continuance until next month as they had a death in the family.

Member Onion made the motion to table the case until the February meeting and extend the use of the recreational vehicle until February 29, 2024. Member Smith seconded. **Motion passed 5-0**

Public Hearing Case #2024-02: Applicant Lighthouse Contracting Group, on behalf of property owners David & Shari Argue as Trustees of the Argue Living Trust, represented by William Baker, Esq. of Shaheen & Gordon, are requesting a variance from Article IV, Paragraph B, to expand an existing deck in the waterfront setbacks, located at 59 Timber Ln, known as map and lot 109-015, located in the Rural zone.

Attorney William Baker along with David Allaire of Lighthouse Contracting Group presented the case. Atty. Baker stated they are requesting the variance requiring buildings be setback 75' from a waterbody. They are requesting the extension of an existing deck currently located 54' from the waterbody. The deck extension would not encroach any further into the setbacks than the existing deck. Atty. Baker explained the existing building was part of a variance approved in 1998. He stated the septic was in a place that would not allow the construction of the building to meet setbacks. He referenced the plan presented and showed the board a small rectangle of blue off the existing deck. This indicated the proposed deck addition. Atty. Baker stated the ways the application met the five factors the board is to consider in order to grant the variance:

He stated the first factor would be to show that granting the variance would not be contrary to the public interest: the NH courts have held that to be contrary to the public interest, "the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality. Another approach is to determine whether granting the variance would violate basic zoning objectives, specifically whether granting the variance would threaten the public health, safety or welfare." The proposal would not alter the essential character of the local area. This is a relatively minor addition

in light of the existing structure. This would be a 10' addition to the existing deck. Atty. Baker stated that there is no threat to the public health, safety or welfare from granting this variance. He went on to describe how the spirit of the ordinance would be observed. He stated the Supreme Court has recognized two methods to determine: "whether granting a variance would violate an ordinance's 'basic zoning objectives.' One way is to examine whether granting the variance would 'alter the essential character of the neighborhood.' Another approach 'is to examine whether granting the variance would threaten the public health, safety or welfare.'" He stated this factor is determined the same as the first factor. He felt this variance was not contrary to public interest and the spirit of the ordinance would be observed. Atty. Baker went on to address the substantial justice factor by quoting a Supreme Court ruling: "Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Atty. Baker felt there would be no gain to the general public by denying this variance, where there would be a significant loss to the property owners by denying the variance. He stated this deck addition is part of a larger project, however this (deck addition) is the only portion of the project that needs a variance to move forward. The property owners have already invested significant money in the planning and preconstruction on the project. He further stated that if the deck were not allowed to be built, windows that have already been purchased would not be able to be used. He reiterated that there would be no detriment to the public interest or public health or safety. Atty. Baker addressed the fourth factor regarding the effect on the value of surrounding properties. He stated the Superior Court has found that the ZBA may "consider noise, traffic, aesthetics and intensity of use in considering what effect, if any, the variance would have on surrounding property values." He felt the variance request would have no impact on noise, traffic, aesthetics, or the intensity of use. Further, he felt the property owners would be able to use it (the deck) in a more aesthetically pleasing manner. Atty. Baker read to paragraph five of the variance and stated the Supreme Court has held that "to demonstrate unnecessary hardship, a variance applicant must prove: (1) a zoning restriction as applied to their property interferes with their 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. Atty. Baker felt the location of the septic system, being located where it is, has resulted with the structure being built around that (septic system). The addition they are proposing is relatively minor and will not extend further than the current existing deck. He further stated that with this particular ordinance, when looking at the existing structure and existing deck, it would be unreasonable to prohibit the reasonable use by the property owners. He understands the reason for the 75' setback is to help preserve the water quality and the aesthetics around the lake, but given this unique property, for the reasons previously discussed, there is no fair and substantial reason that exists to allow the little addition while retaining the existing 54' setback. Atty. Baker felt there would be no impact to the public. He added that the deck would not be encroaching on any abutters.

Chair Hackett inquired of the width of the deck. Mr. Allaire stated the width is 10' (to the corner of the building) with the depth off of the house, towards the lake will be 14'. Chair Hackett inquired if the deck would be enclosed or open. Mr. Allaire stated the existing deck is open and they would be continuing the look that is there, just pushing it towards the corner of the house. Chair Hackett inquired if there would be additional steps coming off the deck. Mr. Allaire said the steps are existing and would not be changed. Smith confirmed the size of the deck, confirmed it is existing with what is there. Member Smith reconfirmed the size of the deck to be 10'x14'. She stated there is an existing bulkhead there that looks like it would be in the way of the new deck. Mr. Allaire stated they would be removing the bulkhead and placing an asphalt

water shedding structure that would be lower. They would install a smaller, vertical door for access. He added that the structure would not come out any further than the existing deck. Member Onion inquired if the deck would be an impermeable surface. It was confirmed the 10'x14' deck would be a permeable surface. Water would be able to come through the deck boards. Member Smith felt the proposed bulkhead structure would be a less impermeable structure than what is existing now. Mr. Allaire had not fully designed the new bulkhead until they received approval from the board. Member Richards wanted to ensure the new bulkhead would not expand further than the proposed deck. Mr. Allaire confirmed and stated he does not intend on changing the existing bulkhead foundation. Members reviewed the new septic design, which would be placed in the same location as the existing one. Chair Hackett opened the public hearing. Having no public comment, Member Onion made the motion to close the public hearing. Member Teunessen seconded. **Motion passed 5-0**

Public Hearing Case #2024-03: Property owner Vicki Boxer is requesting a variance from Article IV, Table 1, to operate an in-home dog boarding, defined as kennel, on her property located at 11 High St, known as map/lot 126-001, located in the Village zone.

Vicki Boxer stated she has clients she already does some dog walking for. They have asked if she could board the dogs, at times. The dogs would be interior and not left outside of the house. There would be no more than five dogs and would be boarded seasonally. The dogs would need an area to play outside, so she would like to put a small fenced area at the back of her property that would not be seen from the road. This would be boutique and exclusive. She would have one dog at a time in the pen and then bring them back inside. The dogs would be walked one dog at a time. She does not want to have a kennel. Chair Hackett inquired if this would be during the day time only. Ms. Boxer concurred and the dogs would stay inside the home. Member Richards inquired if there would be overnight dog sitting. Ms. Boxer stated there would be some overnight boarding. Though some would be just during the day, like a daycare. Member Onion stated their decisions are based on the property, not the person. If they give permission for a kennel to her, any future owners would have the right to run a kennel. Ms. Boxer stated she does not consider this a kennel. Member Onion felt the issue is, if Ms. Boxer was being paid, then this would make it a kennel. Member Richards read the definition of kennel from the Zoning Ordinance. Member Smith reiterated that a kennel can be commercial or non-profit and a place where dogs are boarded day or night. Ms. Boxer stated she owns two dogs herself. Member Smith inquired if that meant there would be seven dogs total. Ms. Boxer confirmed there would be five dogs total; her two dogs plus up to three additional dogs. Member Richards stated the subject property has frontage on both Route 107 and on High St. She felt the abutter to back side, going down High St, would be most in tune with the noise. There were three abutters present, including Michael Landroche (who is located behind her property), Matt Grasberger and Jennifer Knauss-Grasberger (who are across the street). Member Onion stated that the approval could be transferred to the next owner. Chair Hackett clarified that once an approval is made, it is recorded with the registry of Deeds and stays with the property. Member Onion stated they could build a new structure for a kennel and may not be as good as Ms. Boxer would be. Ms. Boxer was not aware of this and saw how this could pose a problem moving forward. Ms. Boxer wouldn't want to move forward with this staying with the property.

Chair Hackett opened the public hearing. She began by reading a letter submitted by John and Caroline Dickie. They had concern with noise from the dogs barking. Mr. & Mrs. Grasberger and Mr. Landroche all had concern with potential noise. Mr. & Mrs. Grasberger also had

concern with property values. They stated that Ms. Boxer has built a beautiful house and questioned who would want to buy a house next to a kennel? They stated that they did not move into their house to be next to a kennel. Mr. Grasberger felt there may be an increase in traffic depending on who gets picked up and dropped off. He felt that there is going to be barking. He also questioned about Ms. Boxer putting up a fence in the historic district. He did not think the HDC would approve a 9 or 8 foot fence; they would only approve a 4 foot fence. He felt a dog could jump over that. It is a quiet neighborhood and they would like to keep it that way. Mrs. Knauss-Grasberger stated that this would affect their property values. She does not want signs and strangers in and out all the time. She had concern with people casing the neighborhood. She stated that she does not have a copy of the zoning laws. Member Richards explained the table of uses. Chair Hackett stated anyone is welcome to come into the office and request a copy of the ordinances. Mike Landroche felt Ms. Boxer was requesting permission to build a fence. He stated that he read "kennel" on the notification. He felt that what Ms. Boxer had described was not a kennel. He would have a problem with a kennel. Mrs. Knauss-Grasberger stated that they are totally against this project. Ms. Boxer does not want to add something to the property that would stay with the property.

Ms. Boxer wished to withdraw the application.

Member Smith made the motion to accept the withdrawal by the applicant. Member Onion seconded. **Motion passed 5-0** This is not considered a denial of the application and will be held without prejudice.

DELIBERATION

Public Hearing Case #2024-02: Applicant Lighthouse Contracting Group, on behalf of property owners David & Shari Argue as Trustees of the Argue Living Trust, represented by William Baker, Esq. of Shaheen & Gordon, are requesting a variance from Article IV, Paragraph B, to expand an existing deck in the water front setbacks, located at 59 Timber Ln, known as map and lot 109-015, located in the Rural zone.

Members confirmed the size of the deck would be 10 feet 2 inches by 14 feet. It was, also, confirmed the deck was not going to be enclosed.

Member Onion made the motion to grant the variance:

1. Granting the variance would not be contrary to the public interest because no harm would be done to the public interest.
2. The spirit of the ordinance would be observed because there would be no additional burden to the density, traffic, aesthetics, or values of the area.
3. Granting the variance would do substantial justice because the use of the property would be enhanced without harm to the public interest.
4. For the following reasons, the values of the surrounding properties would not be diminished because the deck addition would not be seeable from other properties and from the water the deck would enhance the present one.
5. Unnecessary Hardship
Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- i. There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because it is an addition of a deck that was previously approved by a variance in 1999.
- ii. The proposed use is a reasonable one because decks are common to property in the area and the proposed addition to the existing deck is minimal.

With the following conditions:

1. The deck cannot be enclosed.
2. The deck addition cannot be larger than 10'2" x 14'.

Member Richards seconded. **Motion passed 5-0**

APPROVAL OF MINUTES – November 16, 2023

Member Onion made the motion to accept the minutes as amended. Member Smith seconded. **Motion passed 4-0**. Member Teunessen abstained as he was not present.

Member Teunessen made the motion to adjourn. Member Smith seconded. **Motion passed 5-0**

Respectively Submitted,
Elizabeth Hackett, Chair