

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY JANUARY 21, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:06PM.

Members attending: Elizabeth Hackett, Nate Abbott, Zannah Richards, Perry Onion, Mike Teunessen, and alternate member Leslie Smith, who came into the meeting after the start.

Also in attendance: Annette Andreozzi, Land Use Administrator

Welcome to the Gilmanton Zoning Board of Adjustment. I am Betty Hackett. As Chair of the Board, due to the COVID-19 crisis and in accordance with RSA 91-A:2, III (b), Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. I find that this meeting is imperative to the continued operation of town government, and vital to public safety & confidence during this emergency. As such, this meeting may be conducted without a quorum or all of this body physically present in the same location.

Please note that this is to confirm that:

- a) We are utilizing the Zoom platform for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting, and the public has access to contemporaneously listen and, if necessary, participate in this meeting.
- b) We previously gave notice to the public of how to access the meeting using Zoom, with instructions provided on the Town of Gilmanton's website at: www.gilmantonnh.org.
- c) If anybody has an access problem, please call 603-267-6700 ext.116.
- d) In the event the public is unable to access the meeting, we will adjourn the meeting rescheduling it at that time.

At this time, I welcome members of the public in person & accessing this meeting remotely. Even though this meeting is being conducted in a unique manner, the rules of conduct & decorum apply. Any person found to be disrupting the meeting will be removed if they continue after being asked to cease the disruption.

Any person wishing to speak shall address me, the chair, to get permission. Please identify yourself clearly before speaking. Please have your device on mute when you are not speaking.

Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let's start the meeting by taking a Roll Call attendance. When each member states

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their presence, also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

Betty Hackett, chair – in room
Nate Abbott, vice chair-remote
Perry Onion- remote
Zannah Richards- in room
Mike Teunessen- in room
Leslie Smith, alternate – arrived in room late

The Chair explained the ZBA procedures. Three positive votes would be needed for any decision to pass.

NEW BUSINESS

MOTIONS

Ms. Richards moved to nominate Ms. Hackett for chair of ZBA for 2021.

Mr. Teunessen seconded.

Nate Abbott-yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

Betty Hackett-abstained

Motion passed.

Ms. Richards moved to nominate Mr. Abbott for vice-chair of ZBA for 2021.

Mr. Teunessen seconded.

Betty Hackett -yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

Nate Abbott-abstained

Motion passed.

Mr. Abbott moved for the ZBA to recommend to the BOS the reappointment of Mr. Teunessen and Ms. Hackett to the ZBA.

Ms. Richards seconded.

Nate Abbott-yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-abstained

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Betty Hackett-abstained
Motion passed.

Discussion re class 6 roads

Ms. Hackett read a letter from the Hursts about their feelings that building should not take place on class 6 roads in Gilmanton.

Staff explained that in the past few years if the ZBA granted a variance to build on a class 6 road, the BOS had allowed it if the owner signed a private road agreement. The agreement is recorded and stays with the property, absolving the town from any liability relating to the road.

Mr. Abbott first wanted to acknowledge the good work the Mr. Hursts did in caring for his road. Second, he wanted to state that after the Hurst's application the zoning ordinance changed so the ZBA had to grant a variance before the BOS could grant or deny the request to build on a class 6 road.

Mr. Teunessen verified that the BOS can say no even after the ZBA variance is granted.

Public Hearing Case #2021-01 Mike Wagreich, applicant, Ian Wagreich, owner:
requests a variance from Zoning Ordinance Article VII-C-1a to build on a lot with no class V or better frontage. Property is 26 acres located on Perkins Rd., Map/Lot #409/091, in the Rural Zone.

Mr. Wagreich said he was asking for a variance to build on a class 6 road. There is a house across from his lot and 2 further down the class 6 road. He has talked to neighbors about contributing to the road upkeep.

Ms. Hackett asked the size of the house, and if it was intended to be used year-round.

Mr. Wagreich said he planned for about 700 square feet of a cabin, 20' high with one bedroom, one bath, and a loft. He will get a septic system. It would eventually be used year-round.

Ms. Hackett asked how far off of the road he was intending to build.

Mr. Wagreich said there is an opening in the stone wall where he will put the driveway. The house entrance will be in that area about 35' from the property line.

Ms. Richards asked about where the class 6 part of Perkins Road started, and where the driveway would be related to that.

Mr. Wagreich said the driveway would be about half way up his lot away from the class 5 section, before the bend.

Sarah Thorne, who lives on Perkins Road, said that when she was on the planning board, the policy was to uphold the ordinance of not allowing building on class 6

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roads. She didn't see that his property showed any unique properties that would meet condition #5 for granting a variance. Scattered and premature development should not be encouraged. She was concerned about development that will put pressure on the town to accept a road not in the public interest. She felt condition #4 was not meet because the value of surrounding properties would be diminished as citizens expect no development on their class 6 road. It is not efficient development, when it is strung out. The landowner has to demonstrate unnecessary hardship. She didn't see any unnecessary hardship. If this case is accepted why wouldn't all development on class 6 roads be accepted. The town already has 60 miles of road to maintain.

Mr. Wagreich said his dwelling would fit into the neighborhood, not take away from it. It is not scattered development because there are houses across the street and 2 further down the road. He could have a camper on the property from May to December. The camper would be more traffic & negative effect on the neighborhood with it needing to come in and out a lot.

George Roberts said he was familiar with the road, and the BOS can impose standards on which a road needs to be built. He recommended the BOS have regulations that they enforce whenever the ZBA approves a private road variance. It doesn't make sense that the person in the middle section of a road should have to do everything for the road. The greatest use of the land should be provided for.

Mr. Abbott said he was not familiar with the history of the development of Perkins Road. The town has in effect now quite a few class 6 roads that are cared for by groups.

Ms. Thorne thought that in the past Perkins Road went through to Gale Road. In the 1970s the section of Perkins connected to Gale was discontinued. The lots on Perkins were already subdivided.

Staff explained that regardless of the condition of the road to be accepted as a class 5 road, it must be voted approval by a town vote.

Mr. Onion asked how much of the road frontage has to be class 5.

Mr. Abbott said the table of uses says 200'

Staff stated that was true to form a new lot, but that already existing lots need to have a driveway on a class 5 road, so the width of a driveway is all that is necessary without a variance.

Mr. Abbott said Bingham Road was allowed to be subdivided by building the road to class 5 standards, then the town voted on acceptance. The ideal way is for the planning board to require the road to be built to class 5 standards, that protects the tax payer.

Mr. Onion said he couldn't see any difference between the class 5 and class 6 sections of Perkins Road.

Ms. Smith, who walks the road often, said it does deteriorate less than 100 yards after the class 6 section starts.

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Mr. Teunessen moved to close Public Hearing Case #2021-01 Mike Wagreich, applicant, Ian Wagreich, owner.

Seconded by Ms. Richards.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

Motion passed unanimously.

Public Hearing Case #2021-02 Christina England, applicant, Valley Shores Family Club Inc., owner: requests a variance from Zoning Ordinance Article VII-C-1a to build on a non-conforming lot with no class V or better frontage. Property is .424 acres located on Summer St., Map/Lot #130/075, in the Rural Zone.

Ms. England said she wants to build a home on the property she is buying, and she has staked out the property lines and where the house will be.

Ms. Hackett stated that board members have looked at the property. The septic design shows it is for a proposed 2-bedroom house.

Ms. England said it will be one bedroom.

Ms. Hackett said there is to be an attached garage of what size.

Ms. England said the house will be 32' x 26' and about 15' high, and the garage 22' x 16'.

Ms. Hackett said the property is 100' x 181'

Ms. Hackett read a letter from the property owner giving Ms. England permission to take possession of the property while the deed is being transferred.

Mr. Abbott said there was an error on the septic/site plan, which stated the area of foundation to be 503.5. It should be 832 square feet.

Staff confirmed the building permit will state: to be built on the site as building placement is shown on the septic plan.

Mr. Teunessen was concerned about the owner giving Ms. England permission to build during transfer of ownership.

Staff indicated that Ms. England & her contractor understood they could not start building until they received a building permit.

Mr. Mahoney, an abutter, was asking for another abutter, Marilyn Nelson, if there would be a buffer between the properties, and what the setbacks are.

Ms. Hackett stated that according to the site plan, the required setbacks will be met.

Ms. Richards asked who maintains Summer Street.

Mr. Mahoney said that he did up to the end of his property.

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Dave Smith from Butternut Lane said his house was 5 houses from the Summer Street property, and two of people in the area have plow trucks and chip in to maintain the road.

MOTION

Mr. Teunessen moved to close Public Hearing Case #2021-02 Christina England, applicant, Valley Shores Family Club Inc., owner.

Seconded by Ms. Ms. Richards

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

Motion passed unanimously.

DELIBERATIVE SESSION:

Case #2021-01 Mike Wagreich, applicant, Ian Wagreich, owner

Ms. Hackett stated the application was to build on a lot with no class 5 road frontage, but which abuts where the class 5 road ends. The driveway will be up at the bend after the class 6 section starts. There are presently houses located on the class 6 section of Perkins Road.

Ms. Richards said that this lot has lot of acres, and the applicant is not asking to make a subdivision. The house is being located near the road maximizing the property for enjoyment. It would be a great idea for the BOS to form a policy on this, but to bring tar all the way up Perkins Road is overkill.

Ms. Smith asked how certain it is that the map is right in that the class 5 part of Perkins ends before this lot.

Staff explained that the mappers use all the information available to indicate where the lot lines are.

Mr. Abbott said that it does not look like premature and scattered development; there are house around the lot. The first family to build on Perkins Road is still there, and they did a lot of the building. Building on this lot is filling in a plan, and the location is not way beyond a class 5 road.

Mr. Teunessen stated that Ms. Thorne brought up 60 miles of roads that are maintained by the town. He looked up all the towns around Gilmanton and found that they have the same number of miles to maintain or more.

Ms. Hackett said if this lot was way out beyond where any houses were there might be a problem, but if abutters don't have a problem, she didn't see one.

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MOTION

Ms. Richards moved to grant a variance in Case #2021-01 Mike Wagreich, applicant, Ian Wagreich, owner: requesting a variance from Zoning Ordinance Article VII-C-1a to build on a lot with no class V or better frontage. Property is 26 acres located on Perkins Rd., Map/Lot #409/091, in the Rural Zone.

- a. The granting of the variance would not be contrary to the public interest because the health, safety, or welfare of the public will not be threatened;**
- b. The spirit of the Ordinance is observed because the essential character of the neighborhood will not be altered & there are 2 neighbors existing across the street;**
- c. By the granting of the variance substantial justice will be done because the applicant can make better use of the property without changing the neighborhood;**
- d. The Board saw no evidence presented and formed the opinion that granting the variance would not create diminution of value to the surrounding properties;**
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property, being it is at the end of a class 5 road and abuts the boundary of that road, distinguishing it from other properties in the area,**
 - i. no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because there are already other houses further down the class 6 road,**

AND

- ii. the proposed use is a reasonable one because this house is an appropriate use of 26 acres.**

CONDITIONS:

- 1. A private road agreement must be signed with the Board of Selectmen & filed at the Registry of Deeds.**
- 2. A site plan will be submitted to the town along with an approved septic plan.**

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Mr. Teunessen seconded.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

Motion passed unanimously

Case #2021-02 Christina England, applicant, Valley Shores Family Club Inc.,
owner

Ms. Hackett said the applicant was looking to build a home and a one-story garage. Mr. Mahoney, an abutter, had no issues. Another neighbor wanted a buffer.

MOTION

Mr. Abbott moved to grant a variance in Case #2021-02 Christina England, applicant, Valley Shores Family Club Inc., owner; requests a variance from Zoning Ordinance Article VII-C-1a to build on a non-conforming lot with no class V or better frontage. Property is .424 acres located on Summer St., Map/Lot #130/075, in the Rural Zone.

- a. The granting of the variance would not be contrary to the public interest because the health, safety, or welfare of the public will not be affected;**
- b. The spirit of the Ordinance is observed because the essential character of the neighborhood will not be altered significantly;**
- c. By the granting of the variance substantial justice will be done because the applicant can make better use of the property without changing the neighborhood unduly;**
- d. The Board saw no evidence presented and formed the opinion that granting the variance would not create diminution of value to the surrounding properties;**
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property, being it is the second property on the road & is next to and across from properties with residences already developed, which distinguish it from other properties in this development,**

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- i. no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because the development will not be scattered or premature
- AND**
- ii. the proposed use is a reasonable one because this house is continuing an existing pattern of the residential neighborhood.

CONDITIONS:

1. A private road agreement must be signed with the Board of Selectmen & filed at the Registry of Deeds.
2. The site plan submitted will be corrected to include the correct square footage of the foundation.

Ms. Richards seconded.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

Motion passed unanimously

APPROVAL OF MINUTES – November 19, 2020, meeting

MOTION: Mr. Onion moved to approve the minutes of the November 19, 2020, meeting as corrected.

Seconded by Mr. Abbott.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

Motion passed unanimously

OTHER BUSINESS

Ms. Hackett announced that Mr. Teunessen, Mr. Abbott, Ms. Richards, and herself where at the planning board hearing of proposed new zoning ordinances.

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REVIEW OF ZBA PROCEDURES

Ms. Hackett looked at the planning boards procedures. It states that members have to be a resident.

Mr. Teunessen felt the fact that abutters don't need to be renoticed, if the hearing is continued, should be included. The consensus was to include that in the procedures.

A mention about appeals should be included.

Mr. Abbott said a variance or special exception should have expirations if no action takes place.

Ms. Hackett stated the town voted to change the expiration date from 2 years to 4 years.

Mr. Abbott would like a statement on the application form about the expiration date of a variance or special exception.

Ms. Hackett stated the ZBA could decide to rule on each of the 5 criteria for a variance one at a time, but she thought that was too confining and lengthy. The ZBA would be going till midnight, and there would be a problem if the votes didn't add up to a clear total.

Mr. Abbott said the Board could vote on finding of facts at any time, then vote on an entire motion.

Ms. Hackett said the Board can't do anything about tiny houses, because the planning board hasn't taken that subject up.

MOTION

Mr. Teunessen moved and it was seconded by Ms. Richards to accept the discussed changes to the rules of procedure and post them as needed.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Zannah Richards-yes

Mike Teunessen-yes

ADJOURNMENT: Meeting adjourned at 9:50 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator