

**TOWN OF GILMANTON**  
**ZONING BOARD OF ADJUSTMENT**  
**THURSDAY AUGUST 19, 2021 – 7 PM.**  
**ACADEMY BUILDING**  
**MINUTES**

Chair Elizabeth Hackett called the meeting to order at 7:02 PM.

Members attending: Elizabeth Hackett, Nate Abbott, Perry Onion, Leslie Smith

Members not attending: Mike Teunessen, Zannah Richards (alternate member)

Also in attendance: Annette Andreozzi, Land Use Administrator

The Chair explained the ZBA procedures. Only four members are present. Three positive votes would be needed for any decision to pass. Applicant may request being continued till next meeting. There is a full schedule, and the ZBA would like to end the meeting by 10PM.

**OLD BUSINESS**

**Continued Public Hearing Case # 2021-10 David & Patricia Burl, applicant**

**owners:** request a variance from Zoning Ordinance Article VII, Section C-1a to build a SFD on a class 6 road. Property is 40 acres located on Canaan Rd., Map/Lot# 411/015 in the Rural zone.

No one representing the owners was in attendance. Case was held until end of public hearings.

**Continued Public Hearing Case # 2021-13 Justin Caldon, applicant, Douglas**

**Towle, owner** request an amended variance from Zoning Ordinance Article IV, Table 2 to build 2 sheds in the side & road setbacks. Property is .42 acres located at 42 Loon Pond Rd., Map/Lot# 136/037 in the Rural zone.

Ms. Hackett stated that an amendment was added to the original application because the applicant decided he wanted an additional shed to be added on the other side.

The ZBA couldn't vote until abutters had been re-notified.

Mr. Abbott stated the shed on the right is being constructed. The one on the left is being relocated.

Staff questioned if the relocated shed was to be 5' or 6' from the property line.

Mr. Caldon stated it didn't matter.

**MOTION**

**Mr. Onion moved to close Public Hearing Case # 2020-13 Justin Caldon, applicant, Douglas Towle, owner.**

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Second by Mr. Abbott  
**Motion passed unanimously.**

**Public Hearing Case # 2021-19 Chris Larson & Marvann Gage, applicant**

**owners:** request a variance from Zoning Ordinance Article VII, Section C-1a to build a SFD on a class 6 road. Property is .14 acres located on Plum Ave., Map/Lot# 119/099 in the Res. Lake zone.

Ms. Gage stated they received septic approval for construction from the state. Mr. Fortunes' well is not in the septic radius. She has a recorded well release form signed by Mr. Fortune. Form was submitted for the file.

Mr. Abbott questioned about the Moulton's property. Looking at the septic plan, it is within the radius of the new septic.

Mr. Onion stated the Mr. Fortune had waived his right for septic invasion.

Ms. Hackett said the Moulton property has no waiver.

Ms. Gage submitted a copy of the septic construction approval.

Ms. Hackett asked where the house would be on the property. The people across the street were required to access from Berry Avenue. Having a 4-season house, what access will there be to get to the property without a maintained road.

Mr. Larson said he was not worried about getting in and out.

Ms. Smith said the Moulton's well is in the radius. She asked Ms. Moulton if she was ok with that.

Ms. Moulton said no. She is required to access on a different road, so that is why the well was put where it is.

Mr. Fortune asked to look at the waiver he signed. He thought it was for the septic to be put in below him.

Mr. Abbott said the well radius of the application does not intersect the Fortune well. What the ZBA doesn't know is if the owner at the time of the Moulton property was asked to sign a waiver. If that policy was in effect or not. If the state approved the septic, then it is between the Moultons and the state.

Ms. Hackett asked about the state approval having any waivers.

Staff said there were no waivers listed on DES's approval.

Mr. Fortune objected because there is ledge and the water/septic will fall to his well.

Ms. Moulton was concerned the septic and the use of a class 6 road will pollute her drinking water.

Mr. Abbott said it gets stranger because there is not a town-maintained road in all of Sawyer Lake District. The Board must look at the safety of establishing

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a residence, also.

Ms. Gage said they have a driveway permit.

Ms. Hackett said that Sawyer Lake District stated they will not maintain the road.

Mr. Larson said he thought the Moultons would have had to sign a waiver for septic.

Mr. Fortune said there are no boundary pins just knowledge that lots are 60' wide, but not exactly where these things are going.

Mr. Abbott stated that to be certain the lots would have to be surveyed.

**MOTION**

**Mr. Abbott moved to close Public Hearing Case # 2020-19 Chris Larson & Maryann Gage, applicant owners.**

Second by Mr. Mr. Onion

**Motion passed unanimously.**

**NEW BUSINESS**

**Public Hearing Case# 2021-21 Powell Revocable Trust of 2020, applicant**

**owners:** requests a variance from Zoning Ordinance Article IV Table 2 & VII, Section C-2a to build an 8' x 6' porch with steps in the road setback. Property is .72 acres located at 234 Crystal Lake Road., Map/Lot# 110/036 in the Rural zone.

Abe Powell was authorized to represent the Powell Trust.

Mr. Powell requested to bring the building up to code, which requires a minimum of a 4' landing deck. The house was built in 1946. The new landing will not be enclosed. Originally, they wanted an 8' x 6', but would like it to be only 4' deep x 8'.

Ms. Hackett said that would be making it 4' closer to the road. Steps?

Mr. Powell said there will be 2 steps.

Mr. Abbott asked about the height of the landing re the code.

Staff stated that if the door swings out the landing has to be the same height as the doorway.

Mr. Powell said the door will open out. Which is safer.

**MOTION.**

**Mr. Onion moved to close Public Hearing Case # 2020-21 Powell Revocable Trust of 2020.**

Second by Ms. Smith.

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**Motion passed unanimously.**

**Public Hearing Case # 2021-22 Mary Sawyer, applicant owners:** requests a variance from Zoning Ordinance Article VII, Section C-2a & b to build a foundation basement under existing non-conforming house on non-conforming lot in the road setback. Property is .28 acres located at 126 Deer Dr., Map/Lot# 122/019 in the Res Lake zone.

Ms. Sawyer stated she has merged the abutting property.

Ms. Hackett stated the lot is at the end of the road. The foundation height is a whole story.

Ms. Sawyer said total height close to 30'.

Mr. Abbott asked about proper drainage, which he didn't see on the plan.

Where are the perimeter drains going to let out?

Ms. Sawyer said water would flow off naturally.

Mr. Abbott stated that the edge of the property drops off to an abandoned home at the bottom.

Ms. Sawyer said she trusts that the people she hires will take care of questions re drainage and site.

Mr. Abbott said it is fine to send water into the ravine if it is a controlled way.

No concern about the designed septic handling waste re downstream.

Ms. Hackett it will stay a 2-bedroom home.

**MOTION**

**Mr. Abbott moved to close Public Hearing Case # 2020-22 Mary Sawyer, applicant owners.**

Second by Mr. Ms. Smith

**Motion passed unanimously.**

**Continued Public Hearing Case # 2021-10 David & Patricia Burl, applicant owners:** request a variance from Zoning Ordinance Article VII, Section C-1a to build a SFD on a class 6 road. Property is 40 acres located on Canaan Rd., Map/Lot# 411/015 in the Rural zone.

There was still no one to represent Case #2021-10.

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**DELIBERATIVE SESSION:**

**Case # 2021-10 David & Patricia Burl, applicant owners**

**MOTION**

**Mr. Abbott moved to dismiss Case # 2021-10 David & Patricia Burl, applicant owners: requesting a variance from Zoning Ordinance Article VII, Section C-1a to build a SFD on a class 6 road. Property is 40 acres located on Canaan Rd., Map/Lot# 411/015 in the Rural zone. Case is dismissed without prejudice pending removal of gates & bars voted on that area of Canaan Road at town meeting, March 14, 1978.**

**Mr. Onion seconded.**

**Motion passed unanimously.**

**Case # 2021-13 Justin Caldon, applicant, Douglas Towle, owner**

**MOTION**

**Mr. Abbott moved to grant a variance in Case #2021-13 Justin Caldon, applicant, Douglas Towle, owner: requesting a variance from Zoning Ordinance Article IV, Table 2 to build two sheds in the road setback. One a 12' x 20' shed will be 20' from eastern abutting property line, and one a 12' x 10' shed will be 6' from the western abutting property line. Property is .42 acres located at 42 Loon Pond Rd., Map/Lot# 136/037 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;**
- c. By the granting of the variance substantial justice will be done because the owner will be able to make better use of the lot in a safe manner;**
- 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;**

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e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property, the location of the road has moved away from the property's stone wall, 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 the property itself is removed from the possible travel surface of the road,

AND

ii. the proposed use is a reasonable one because the property will be neater with storage space.

**CONDITIONS:**

1. A surveyor shall mark and certify that the 12' x 20' shed is at least 20' from the abutting property line.
2. A surveyor shall mark and certify that the 12' x 10' shed is no closer than 6' from the abutting property line.
3. The buildings shall be behind the stone wall from the road.
4. A Shoreland notification permit shall be received in the town office before building permit approval.
5. These building shall not be used for living space or human activities, storage only.

Mr. Onion seconded.

Mr. Onion asked if the ZBA would normally require a surveyor for a corner.

Staff stated that the code enforcement officer requested that be done.

Mr. Abbott asked if it was important enough to include as a condition.

Ms. Hackett stated that it is lake property.

Mr. Onion said this was a case where he didn't think it was important.

**Motion passed unanimously.**

**Case # 2021-19 Chris Larson & Maryann Gage, applicant owners**

Ms. Hackett said she was concerned for abutters, and about maintaining the road as it would be solely on the applicant.

Mr. Abbott stated that if the ZBA approves, it will be a legal residence, and the decision goes with the land to maintain road. The ZBA does not make the

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decision on the septic, but if it is not maintained there will be problems. Ms. Hackett was concerned there was too much slope up hill, the previous applicant had to have an access different from Plum Ave. Mr. Abbott said if it is not a safe place on the road to build, it comes down to being reasonable.

**MOTION**

**Mr. Abbott moved to deny a variance in Case # 2021- 19 Chris Larson & Maryann Gage, applicant owners: requesting a variance from Zoning Ordinance Article VII, Section C-1a to build a SFD on a class 6 road. Property is .14 acres located on Plum Avenue, Map/Lot# 119/099 in the Res. Lake zone.**

**The granting of the variance would be contrary to the public interest because the access to the property cannot be safely guaranteed.**

Seconded by Ms. Smith.

Ms. Smith stated that going down that road at night could be a disaster. Mr. Abbott said the applicants have gone to a lot of trouble to have a small house on the small lot. He was in favor of small houses. He didn't have a lot of confidence in the state's approval of the septic, but it is the state's job. The motion is based on the road, which the town required an abutter to access their property from a different road because that part of Plum Avenue was unsafe to travel. Ms. Hackett agreed and felt building would affect other people downhill as well.

**Motion passed unanimously.**

**Case # 2021-21 Powell Revocable Trust of 2020, applicant owners**

**MOTION**

**Mr. Abbott moved to grant a variance in Case #2021- 21 Powell Revocable Trust of 2020, applicant owners: requesting a variance from Zoning Ordinance Article IV Table 2 & VII, Section C-2a to build an 8' x 6' porch with steps in the road setback. Property is .72 acres located at 234 Crystal Lake Road., Map/Lot# 110/036 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;**

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- c. By the granting of the variance substantial justice will be done because the benefit to the applicant does no harm to the general public;
  - 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, the house was built before zoning, closer to the road within the setback, 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 this renovation will the increased safety of this dwelling,
- AND**
- ii. the proposed use is a reasonable one because this is the principal access to the dwelling for mail etc.

**CONDITION - As an amendment discussed by the applicant in the public hearing the landing will be 4' x 8' with steps to the ground, according to NH state building code.**

Mr. Onion seconded.

**Motion passed unanimously.**

**Case # 2021-22 Mary Sawyer, applicant owners**

**MOTION**

**Mr. Abbott move to grant a variance in Case # 2021-22 Mary Sawyer, applicant owner: requests a variance from Zoning Ordinance Article VII, Section C-2a & b to build a foundation basement under existing non-conforming house on non-conforming lot in the road setback. Property is .28 acres located at 126 Deer Dr., Map/Lot# 122/019 in the Res Lake 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



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the neighborhood will not be altered;

- c. By the granting of the variance substantial justice will be done because the applicant is able to perform necessary improvement to the underpinning of the house while increasing value, utility, & reducing its environmental impact;
  - 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, that it was built prior to zonings on cinder blocks, 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 the changes made to the dwelling will result in greater safety and stability of the building without any apparent negative impact,
- AND
- ii. the proposed use is a reasonable one because it provides for a solid foundation under the existing house.

**CONDITIONS:**

- 1. The foundation area shall not be used for any additional bedrooms.
- 2. Storm water run-off provisions shall be installed, & certified effective and complete by a certified professional in stormwater management, within nine months from receiving a building permit, and before receiving a CO or certificate of completion.

Second Mr. Onion.

**Motion passed unanimously.**

**OTHER BUSINESS**

**Follansbee request for rehearing of Case # 2021-20 Dylan Long, applicant owner:** requesting a variance from Zoning Ordinance Article VII, Section C-3a to build a garage in the road setback. Property is .55 acres located at 36 Leatherstocking Ln.,

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Map/Lot# 133/015 in the Rural zone.

Ms. Hackett stated that the reasons to grant a rehearing are that the ZBA acted unlawfully or unreasonably. There was a lot of suggesting from Ms. Follansbee that may or may not have happened. All the ZBA is to look for is unlawful or unreasonable actions, not someone's opinion. Was there an error?

Mr. Abbott said that there might be a case between all the other stuff stated. Ms. Follansbee believes if something can be done differently it must be denied. The applicant wanted more space behind their new garage. The ZBA is free to make those kinds of judgements. He felt that a reasonable assessment was made.

Ms. Hackett said there were many letters from abutters that had no problem with the application. The ZBA has to consider the letters of the ones that live there. She found no evidence that the decision was unreasonable or unlawful.

Mr. Onion stated that the applicant had wanted a playground space for kids that was not on the road.

Mr. Abbott stated that the road is not a high traffic area. Everyone agreed at the hearing.

**MOTION:**

**Mr. Abbott moved to deny the request for rehearing of Case #2021-20 Dylan Long, applicant owner;** requesting a variance from Zoning Ordinance Article VII, Section C-3a to build a garage in the road setback. Property is .55 acres located at 36 Leatherstocking Ln., Map/Lot# 133/015 in the Rural zone.

Seconded by Mr. Onion.

**Motion passed unanimously.**

**APPROVAL OF MINUTES –July 15, 2021 meetings**

**MOTION: Mr. Onion moved to approve the minutes of the July 15, 2021, meeting as amended.**

Seconded by Ms. Smith.

**Motion passed unanimously**

ADJOURNMENT: Meeting adjourned at 9:55 PM.

Respectfully submitted,  
Annette Andreozzi, Land Use Administrator