

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY JULY 15, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

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

Members attending: Elizabeth Hackett, Nate Abbott (arrived at 7:20), Perry Onion, Mike Teunessen, Leslie Smith

Member not attending: Zannah Richards (alternate member)

Also in attendance: Annette Andreozzi, Land Use Administrator

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

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.

Mr. Bagby, who is representing the owners, called to ask for a continuance until next month. He is delayed with work. He promised to be in attendance at next month's meeting.

MOTION

Mr. Onion moved to continue Case # 2021-10 David & Patricia Burl, applicant owners until the August 19, 2021, ZBA meeting at 7PM.

Seconded by Ms. Smith.

Motion passed unanimously.

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

owner: request a 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.

No one was in attendance for the application. It was held until the end in case the applicant showed up.

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NEW BUSINESS

Public Hearing Case # 2021-18 Jillian Parker & Timothy Hanna, applicant owners:

request a variance from Zoning Ordinance Article VII, Section C-1a to build a SFD on a class 6 road. Property is 3 acres located on Sawtooth Rd., Map/Lot# 410/025, in the Rural zone.

Ms. Hackett stated that all board members had looked at the site.

Mr. Hanna said they are living in an old house, trying to downsize. The property on Sawtooth is secluded, and 200' from the end of the class 5 road. They want to build a 2- or 3-bedroom house. The driveway would be about 300' from the end of the class 5 road.

Ms. Hackett stated that there are no other houses around the property. The applicants should understand that if a variance is granted, they will also need a Selectmen's private road agreement. She felt the road would need to be upgraded and have a turnaround.

Ms. Smith asked about where the class 5 ended. It was pointed out to her.

Ms. Hackett read letters from concerned residents. Mr. Hurst said the applicants should upgrade the road as he had to do. Mr. Guarino was in opposition to building on class 6 roads. Wolcott construction emailed they were not in favor.

Mr. Joyce, an abutter, said he had no issue with the application. He wanted to find out what would happen to the road along his property.

Mr. Abbott arrived.

Ms. Hackett asked about the size of the house.

Mr. Hanna said about 30' x 40'.

There was discussion about class 5 road standards in the subdivision regulations appendix.

Ms. Parker said she felt they have been involved in the community.

Ms. Hackett said if she had to get out of her car and walk to be able to get to the property, then this "road" is a snowmobile trail. It needs to have some upgrade so that a vehicle can traverse it without getting stuck.

Mr. Joyce asked if the road needs to be widened, will it take his land.

Ms. Hackett told him his property could not be taken, but the ZBA doesn't know whose property the road belongs to.

Mr. Abbott stated there is no plan of subdivision. Decisions go with the land, which means the decision isn't about the owner, it is about the property now and in the future.

Staff explained about road ownership.

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MOTION

Mr. Onion moved to close Public Hearing Case # 2020-18 Jillian Parker & Timothy Hanna, applicant owners.

Second by Mr. Mr. Teunessen

Motion passed unanimously.

Public Hearing Case # 2021-19 Chris Larson & Maryann 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.

Mr. Larson said he wanted to build a SFD off a class 6 road.

Ms. Hackett stated it would be a 2-bedroom home on .14 acres with the septic close to the road, Plum Avenue.

Mr. Teunessen had asked the Sawyer Lake commissioner about Plum Avenue. All commissioners said the district would not maintain Plum.

Mr. Onion stated that there was a house across the road.

Ms. Moulton, who owns that house, said she was required to buy a portion of property on Berry Avenue to be able to access the Plum property off Berry, before she could make a 4-season home.

Staff indicated the rules have changed since the time owners could build 3-season residences. Now all houses must meet 4-season standards, because in the future the owner might live in the residence all year.

Mr. Teunessen, a resident of the district, stated that emergency equipment cannot get up the steep grade of Plum.

Mr. Abbott felt the owners should have a plan to access the property some other way than from Plum Avenue.

There was a discussion about steep roads, and the site plan appendix says a road should not have more than a 10% grade.

Mr. Abbott said Plum was a very steep road.

Mr. Fortune, 10 Plum Avenue, said the district road agent turns around in his first driveway when he is doing maintenance.

Mr. Onion questioned about the septic's possible effect on surrounding wells.

Ms. Hackett said the ordinance states there can be no septic waivers on non-conforming lots. She wondered if a waiver would be needed for the approval. She stated that the owners would not be able to build anything else on the lot and meet the setbacks.

Mr. Fortune said his well doesn't show on the septic design that was presented. It is right below the leach field, and everything rolls downhill.

Mr. Onion asked if the state knew that the abutters' wells are not on the plan.

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Mr. Abbott said he could see Ms. Moulton's well on the septic plan, but not her radius. If Ms. Moulton signed a waiver for her well, she can't object to the placement of other septic fields, because the well waiver says owners will not sue the state if a neighbor pollutes their well. He thought most of the Larson well radius was on lots that are probably not buildable.

Mr. Onion wanted to continue the case until next month to be able to get more information about neighbors' wells.

Mr. Abbott said it would be great to look at an approved septic design. If the state approves the septic the ZBA is done with it.

Ms. Moulton stated she was not allowed to use that class 6 road for access to her property. Her well is right off the road. There would be a problem if the road was upgraded.

Mr. Fortune said a lot of water comes down Plum, which is supplying his well. That is where Mr. Larson wants to put his septic. A realtor told him that the applicant could make more money to sell his lot, if he got a building permit.

MOTION

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

Second by Ms. Smith.

Motion passed unanimously.

Public Hearing Case # 2021-20 Dylan Long, applicant owner: requests 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.

Mr. Long wanted his new garage to be closer to the road so he would get more backyard. There will be no water or septic attached to the garage.

Ms. Hackett thanked the applicant for the pictures of the site. She confirmed that the 2-car garage would be one story.

Mr. Onion asked about access.

Mr. Long said the garage doors are on the street side.

Mr. Onion asked if the road agent has approved a driveway, because there doesn't seem to be 200' in both directions.

Staff explained that the road agent has leeway with town roads.

Ms. Hackett listed letters from abutters that were supplied by the applicant. All were in favor of a variance.

An email from Ms. Follansbee was not in favor due to safety.

Mr. Long got the idea of having the garage moved closer to the road because he

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thought that across the street the building was only 15' from the road.
Ms. Hackett asked if there was a reason the garage couldn't be further back.
Mr. Long said the house is close to the back property line. He has not talked to the road agent. The garage will be accessed from the long side of his property.
Ms. Follansbee said her renters would not be able to see when coming out of her driveway if the garage is built there. She said some ordinance says driveways can't be more than 30' wide. The applicant wants to keep their other driveway also.
Mr. Long said the 2 driveways would not be connected.
Mr. Onion stated that the new driveway would not be wider than the garage.
Mr. Long said that was correct.
Mr. Abbott asked if the applicant wanted to continue to use the existing driveway also.
Mr. Long said that was to be determined.
Ms. Smith suggested a side access to the garage.
Mr. Long said that was where the leach field was located.
Ms. Follansbee said the ordinance states where driveways can go.
Ms. Hackett informed her that the road agent determines where the driveway can go off town roads.
Mr. Long emphasized that every abutter was in favor except Ms. Follansbee.

MOTION

Mr. Onion moved to close Public Hearing Case # 2020-20 Dylan Long, applicant owner.

Second by Mr. Teunessen

Motion passed unanimously.

The applicant in Case # 2021-13 had not appeared.

MOTION

Mr. Abbott moved to continued Public Hearing Case # 2021-13 Justin Caldon, applicant, Douglas Towle, owner: request for a variance from Zoning Ordinance Article IV, Table 2 to build 2 sheds in the side & road setbacks on property located at 42 Loon Pond Rd., Map/Lot# 136/037 in the Rural zone to the next ZBA meeting on August 19, 2021 at 7PM.

Seconded by Mr. Teunessen.

Motion passed unanimously.

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DELIBERATIVE SESSION:

Case #2021-18 Jillian Parker & Timothy Hanna, applicant owners

Mr. Onion said that this was the third class 6 case, recently. The other one had houses around the lot. This one doesn't. If the ZBA allows this one, it seems the other lots on the road would have a right to build.

Mr. Teunessen said that Mr. Hurst had to upgrade the road to class 5 standard, so the standard has been set for requiring the same for this lot.

Mr. Onion asked "If that is true what do we have to make a decision about?"

Mr. Teunessen said the BOS can decide not to give a private road agreement.

Mr. Onion said they tend to rubber stamp a request.

Mr. Abbott said that Bill Hurst's property is significantly different from the applicant's.

Bill's is set significantly back. What we have is an abandoned subdivision. The best thing would be for the owners to organize and go before the planning board. That road is not good and somewhat wet. The ZBA has to think carefully to wording of conditions. Is this scattered and premature development?

Ms. Hackett said the problem is there is no subdivision plan.

Mr. Onion stated that the only reason the applicant is before ZBA is they want to build on a class 6 road.

Ms. Hackett said each property is judged on its own merit.

Ms. Smith asked what the owners would need to do to meet the conditions the Hurst's did.

Ms. Hackett said it seems from the tax card it is a town road.

Mr. Abbott said he felt that the correct motion is a denial for the reason that looking at the larger map, all the lots were out of the lot Mr. Hurst owns with the understanding they would be useful for somethings. People liked to camp on property more in the 1960's.

There is no evidence of a plan to access the properties on the road. There is no knowledge of what kind of road would be there. To grant a variance would promote scattered and premature development. The spirit of the ordinance would not be observed without a plan for access to more than one property along the road.

Mr. Teunessen said scattered development is a result of the land, not the property.

Mr. Abbott said the ZBA has no idea of what the other property owners want to do, or can do. Approval would end up being piecemeal development, not a plan. Emergency vehicles will need to access the property whether it is a class 6 road or not. Municipal development requires planning.

Ms. Smith said the Hurst's got to build.

Mr. Abbott said the Hurst's were the next property at the end of the class 5 road.

Ms. Hackett said the problem literally is being 300' from the class 5 portion.

Mr. Abbott stated that the Hursts had to build across other undeveloped lots.

Mr. Onion said this seems to be a planning board problem. The ZBA isn't equipped to

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handle wetlands and other requirements.

Mr. Abbott said it is a question for town counsel. There is momentum to build on outlying areas.

Ms. Hackett asked what the applicant would need to do for additional info.

Mr. Abbott asked for a legal basis to see if the ZBA is applying the rule correctly, a review of case law, and can a legal opinion be formed. Can the ZBA have a condition that the BOS require a road upgrade? He would like the owners to have a chance to make a plan with abutters.

MOTION

Ms. Smith moved to reopen the public hearing of Case #18 Jillian Parker & Timothy Hanna, applicant owners

Mr. Abbott seconded.

Motion passed unanimously.

Mr. Hanna said he thought each lot was defined on its own merits, so why would there be need for information on other properties.

Mr. Abbott said the road doesn't go to a single property. The planning board would have defined this with a subdivision but that didn't happen. He wants to be clear what the ZBA can apply and require.

Mr. Joyce asked if an abutter can just improve road.

Mr. Abbott explained that a class 6 road is not a class 6 because of condition it is in, but because the town did not vote to maintain the road.

Ms. Parker asked if they say they will maintain a section of the road, will they get approval.

Mr. Abbott said that is a Selectmen decision.

MOTION

Ms. Smith moved to continue Public Hearing Case # 2021-18 Jillian Parker & Timothy Hanna, applicant owners; requesting a variance from Zoning Ordinance Article VII, Section C-1a to build a SFD on a class 6 road with property located on Sawtooth Rd., Map/Lot# 410/025, in the Rural zone to the September 16, 2021 meeting of the ZBA.

Second by Mr. Onion.

Motion passed unanimously.

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

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Mr. Onion wanted to know how close to the neighbors' wells the septic would be. The board looked at a bigger section of the plan that showed the whole second well radius. There was a discussion of the septic design and approval by DES, as well as the zoning ordinance requirement of septic approvals without waivers. Mr. Abbott indicated that this is a system that has to be maintained. Staff said a condition could be that pumping on schedule be proved by the applicant.

MOTION

Mr. Abbott moved to reopen public hearing Case # 2021-19 Chris Larson & Maryann Gage, applicant owners.

Seconded by Mr. Teunessen.

Motion passed unanimously.

Mr. Abbott requested that all well locations of abutters be located on the septic design and an answer about locating a leach field within the neighbors' well radius, where there appears to be no waiver signed by the neighbors.

Mr. Abbott asked Mr. Fortune if he knew the distance of his well from the proposed septic.

Mr. Fortune did not know the distance, but knew where the well was located.

Mr. Abbott said Sawyer Lake District has said they will not maintain the road.

Ms. Hackett is looking for all the wells on the septic plan, and where the driveway will be if it is not on Plum Avenue.

Mr. Abbott said there is a driveway permit, but with conditions. Is it safe to access the property year-round?

MOTION

Mr. Abbott moved to continue Public Hearing 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 on property located on Plum Avenue, Map/Lot# 119/099 in the Res. Lake zone to the August 19, 2021 ZBA meeting at 7PM.

Seconded by Mr. Onion.

Motion passed unanimously.

Case # 2021-20 Dylan Long, applicant owners

Ms. Hackett said the applicants want to have a garage 20' from the road. The setback is 35'. She was concerned about whether the road agent would allow another driveway on the lot. In the future the road agent could be asked in advance if driveways would be

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approved in the requested location.

MOTION

Mr. Abbott moved to grant a variance in 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.

- 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 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, that the lot consists of 4 of the original small lots arranged length wise, and the depth of the property does not allow placement of a garage without encroachment, 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 has been general support from the neighbors for the garage location,**

AND

- ii. the proposed use is a reasonable one because the owner needs space for toys on their property.**

CONDITIONS:

- 1. A surveyor shall mark and certify the garage is no closer to the road property line than 20'**
- 2. There shall be no additional structures or additions in any setback.**
- 3. The garage shall not be used for living space, storage only.**
- 4. The applicant will follow the direction of the town road agent with respect to accessing the garage from the road.**
- 5. No construction shall begin until all driveway permits have been completed.**

Seconded by Mr. Teunessen.

APPROVED

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Mr. Teunessen said that there appears to be a line-of-sight issue from Ms. Follansbee's property.

Mr. Abbott said if there is a safety issue with the road, it is the road agent's responsibility.

Ms. Hackett said the corner is all trees, which can't be seen thru anyhow.

Mr. Onion said there is a sharp corner on Leatherstocking, which one has to slow down to make.

Motion passed unanimously.

APPROVAL OF MINUTES – June 17, 2021 meeting

MOTION:

Mr. Abbott moved to approve the minutes of the June 17, 2021, meeting as amended.

Seconded by Mr. Teunessen.

Motion passed unanimously

ADJOURNMENT: Meeting adjourned at 10:30 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator