

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:04PM.

Members attending: Elizabeth Hackett, Nate Abbott, Perry Onion, Mike Teunessen, Leslie Smith (alternate member)

Members not attending: Zannah Richards

Also in attendance: Annette Andreozzi, Land Use Administrator

Betty Hackett, chair – in room

Nate Abbott, vice chair- in room

Perry Onion- in room

Mike Teunessen – in room

Leslie Smith – remote, no one else in room

Zannah Richards – not in attendance

The Chair explained the ZBA procedures. Three positive votes would be needed for any decision to pass. There is a full schedule, and the ZBA would like to end the meeting by 10PM. She appointed Ms. Smith as a voting member for the meeting.

OLD BUSINESS

Continued Public Hearing Case # 2020-11 Bear Investments LLC, owner, Gary Anderson, applicant: requests a special exception as in the Zoning Ordinance Article IV Table 1, provided in Article IX-B to use the property for Gravel/Fill/Loam/Stone Removal and Treated Soils. Property is 42 acres located at 313 NH Route 106, Map/Lot# 412/022 in the Business zone.

Mr. Anderson provided a new site plan with the additional area to remove soil. Treated soils are no longer under consideration. The state requirements may require a further setback from the road than he is asking of the town.

Mr. Abbott asked if the blue area was where excavation would occur. He questioned if the scale on the plan was correct.

Mr. Anderson thought the scale was doubled.

Ms. Hackett stated that a site plan to correct scale was needed.

Mr. Abbott asked about the total area or dimensions for excavation.

Mr. Anderson was not sure.

Mr. Abbott said he had no problem with the area depicted. It seemed like an appropriate area for the activity.

Mr. Anderson stated the setback from wetlands is 50 feet.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

MOTION

Mr. Teunessen moved to close Public Hearing Case # 2020-11 Bear Investments LLC, owner, Gary Anderson, applicant

Seconded by Mr. Mr. Abbott

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Mike Teunessen - yes

Leslie Smith - yes

Motion passed unanimously.

Public Hearing Case # 2021-08 Matt Spaulding, applicant, Douglas Monson,

owner: request a variance from Zoning Ordinance Article IV, Table 2 to increase the volume of a storage building that is located in the road setback. Property is .75 acres located at 502 Crystal Lake Road, Map/Lot# 107-012 in the Rural zone.

Mr. Spaulding said he started out with a repair job to the roof. The owners felt the windows were too small and there was not enough headroom in the second floor.

Ms. Hackett said the building is for storage. Why would a deck be needed for a storage space?

Mr. Spaulding said downstairs is a workshop. Upstairs is used for rainy day crafts. The deck was a second thought. It would be nice to have a glass doorway.

Ms. Hackett stated that there were already 2 garages and two houses on the lot, more than would be allowed by ordinance now. Having a deck in the lake setback with a slider access, it will become a sleep over space, and more people staying with limited septic.

Mr. Teunessen agreed.

Mr. Onion stated that adding a deck to a storage building was a concern. It seemed obvious that the use of the deck and space would not be limited to the people living in the houses. He shares the concerns.

Mr. Spaulding said the second floor is accessed only from outside, not from the first floor.

Mr. Abbott said it is clear the space has been used for recreation. The request is to make a nicer space for that activity. The property is already over-built.

Ms. Hackett asked if the ZBA approved more space but no balcony, was that acceptable?

Mr. Spaulding said he would like to ask the owner.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

MOTION

Mr. Onion moved to continue Case # 2020--08 Matt Spaulding, applicant, Douglas Monson, owner, to the June 17, 2021 meeting at 7PM.

Seconded by Mr. Abbott.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Mike Teunessen – yes

Leslie Smith - yes

Motion passed unanimously.

NEW BUSINESS

Public Hearing Case # 2021-09 Emmanuel & Miranda Reyes, applicant owners:

request a variance from Zoning Ordinance Article IV, Table 2 to subdivide into 2 lots with 1 lot having less than 200' of frontage. Property is 5.92 acres located at 27 Willowgrass Lane, Map/Lot# 414/019 in the Rural zone.

Mr. Reyes stated the land had been subdivided in 2003. Two of the lots had been merged by the owner in 2010. The owner then got subdivision approval to make it back into 2 lots, but did not record the approval, so it has to be re-approved.

Ms. Hackett noted that the shed on the property had been put up without a building permit.

Staff noted that the plan provided by the applicant was for the original subdivision application in 2003.

Mr. Onion asked if the 2003 subdivision had been properly done.

Ms. Reyes stated yes. It was allowed because there was conservation land in the back as part of the subdivision, so it was ok to have a lot with less frontage than required.

Ms. Hackett stated that the planning board approved the subdivision with a lot having less than 200' of frontage, but they do not have that authority. Only the ZBA can grant a variance to the Zoning Ordinance.

Mr. Onion stated that what didn't happen in 2003 was that a ZBA application was never made.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

MOTION

Mr. Abbott moved to close Public Hearing Case # 2020-09 Emmanuel & Miranda Reyes, applicant owners.

Seconded by Mr. Teunessen.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Mike Teunessen - yes

Leslie Smith - yes

Motion passed unanimously.

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.

James Bagby gave the Board a letter from Mr. Burl giving permission for Mr. Bagby to act for the Burls. Mr. Bagby is interested in purchasing the property.

Mr. Bagby would like to build a house on property past the end of the class 5 road.

Ms. Hackett said there is a turnaround at the end of the class 5 part of the road.

The class 6 part is a path made by the snowmobile club.

Mr. Bagby said he could make a wider road.

Ms. Hackett said the class 5 road stops at the property line. Where would he be putting the house?

Mr. Bagby said he had no idea, but further back on the lot is wetland.

Ms. Hackett said permission from the BOS would be needed in addition to a variance. The ZBA would like the driveway as close to the class 5 road as possible.

Mr. Bagby wanted to come off at the class 5 road. He found 2 markers. He could make an access off the class 5 part, because the property borders it.

Mr. Onion said bordering is not the same as having frontage on the class 5.

Staff clarified that the property cannot have a driveway coming off on the class 5 part of the road, because the property line only comes to a point at the class 5.

Other people's property would have to be traversed to get to the class 5 part.

Mr. Abbott said it is tricky to get approval to build on a class 6 road. He explained the legalities for final permission to build.

Michele Crumb was concerned about any building taking place on a class 6 road.

Someone, who said they lived on Canaan Road, wanted to know the intentions for the property, and what effect it would have on the road.

Jamie Dow said the spring road conditions are bad. If there was only a single-

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

family home on the property, he was not opposed. There wouldn't be much effect on the road.

Mr. Bagby said he would not subdivide.

Ms. Dow was concerned the town might upgrade the road and build into the easement on her property.

Mr. Abbott said the BOS will need to give direction on what the applicant needs to do to the road before building on it.

Ms. Hackett stated that the road right-of-way is not the property owners' land.

Mr. Abbott asked about the planning board approval for the subdivision.

Ms. Hackett stated that there is BOS approval for snowmobile travel on the road.

Staff clarified the BOS decision is to be able to use the road for snowmobile travel. It is not technically a trail.

Lauran Paquin said that if approved there should be a condition that the road be improved.

Mr. Abbott said the town should be maintaining the class 5 part of the road through the elected road agent.

Mr. Paquin said permission to build on a class 6 must be reviewed by the planning board before the BOS.

Ms. Crumb wanted to know if the turn-around would always be there.

Ms. Hackett said that is a road agent question.

Steve Paquin asked if there was an approved subdivision, which should show the end of road, and could he see it.

Ms. Hackett indicated the Board would probably continue the case to get any planning board package, and see what they did.

Mr. Teunessen asked how much frontage is needed on a class 5 road to build a house.

Mr. Abbott said it is a chicken & egg thing. The applicant can't move forward without BOS or ZBA. A condition might be that there be only one dwelling on the property. The BOS might cause an improvement of more feet of road. Mr. Bagby has to forget about coming off his property into the turn-around.

MOTION

Mr. Onion moved to continue Public Hearing Case # 2020-10 David & Patricia Burl, applicant owners, to the June 17, 2021 meeting at 7PM.

Seconded by Mr. Teunessen.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Mike Teunessen - yes

Leslie Smith - yes

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

Motion passed unanimously.

Public Hearing Case # 2021-11 Bruce Clay, applicant owner: request a variance from Zoning Ordinance Article IV Table 2 to build in the side & road setbacks. Property is .25 acres located on 18 Thistle Rd., Map/Lot# 419/075 in the Rural zone.

Mr. Clay wants to improve the property with a 6' deep porch on the front of the house, which was built in 1969, prior to most of the rules.
Ms. Hackett stated that the present porch is 3' x 3'.
Mr. Clay said that would be absorbed into the new porch.
Ms. Hackett said the porch would be 12' from the road on one end and 17' on the other, and close to the neighbor on the side. She asked about steps off the porch.
Mr. Clay said it would be a ground level porch, no steps needed.
Ms. Hackett asked if he had a problem with a condition not to enclose the porch.
Mr. Clay said no.

MOTION

Mr. Abbott moved to close Public Hearing Case # 2020-11 Bruce Clay, applicant owner.

Seconded by Mr. Teunessen.

Nate Abbott-yes
Betty Hackett -yes
Perry Onion- yes
Mike Teunessen - yes
Leslie Smith - yes

Motion passed unanimously.

DELIBERATIVE SESSION:

Case # 2020-11 Bear Investments LLC, owner, Gary Anderson, applicant

MOTION

Mr. Abbott moved to grant a special exception for Case #2020-11 Bear Investments LLC, owner, Gary Anderson, applicant: requesting a special exception required by Zoning Ordinance Article IV Table 1, provided in Article IX-B to use the property

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

for Gravel/Fill/Loam/Stone Removal and drop, without prejudice, any consideration of using Treated Soils. Property is 42 acres located at 313 NH Route 106, Map/Lot# 412/022 in the Business zone.

- a. The site is appropriate for the use because there is access to the bordering state road in an area that is not highly developed & not likely to be because the area across the road is mostly wetland;
- b. The use as developed will not adversely affect the neighborhood because the area has little development and not likely to be, because the area across the road is mostly wetland, over 150 feet away, and this area is quite steeply sloped;
- c. Adequate & appropriate facilities will be provided for the proper operation of the proposed use through the Planning Board's site plan approval;
- d. The Board found no evidence and formed the opinion that a nuisance or hazard would not be created.

CONDITIONS:

1. All work will be done by licensed professionals.
2. All permits will be acquired before any use begins.
3. A revised plan with accurate scale will be provided to the town.

Mr. Teunessen seconded.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Mike Teunessen - yes

Leslie Smith - yes

Motion passed unanimously.

Case # 2021-09 Emmanuel & Miranda Reyes, applicant owners

Mr. Abbott moved to grant a variance in Case #2021-09 Emmanuel & Miranda Reyes, applicant owners; requesting a variance from Zoning Ordinance Article IV, Table 2 to subdivide into 2 lots with 1 lot having less than 200' of frontage. Property is 5.92 acres located at 27 Willowgrass Lane, Map/Lot# 414/019 in the Rural zone.

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

- 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 this property will be returned to the original layout of the subdivision accepted by the town, despite any flaws that may exist in the subdivision plan no objection from the public has arisen in 20 years;
 - 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 subdivision is in a cul-de-sac with special access to conservation land provided as part of the subdivision plan, 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 is situated in a cluster subdivision,
- AND**
- ii. the proposed use is a reasonable one because there is ample space for the house that will be enabled.

CONDITIONS:

1. If construction of a dwelling unit is not started on the southwestern lot within 6 months the unpermitted shed shall be removed.
2. Before a certificate of occupancy can be issued on the southwestern lot, the present shed shall receive a certificate of completion from the building inspector, or be removed.

Seconded by Mr. Onion.

Nate Abbott-yes
Betty Hackett -yes

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

Perry Onion- yes

Mike Teunessen - yes

Leslie Smith - yes

Motion passed unanimously.

Case # 2021-11 Bruce Clay, applicant owner

MOTION

Mr. Onion moved to grant a variance in Case # 2021-11 Bruce Clay, applicant owner: requesting a variance from Zoning Ordinance Article IV Table 2 to build a 6' x 30' open porch in the side & road setbacks. Property is .25 acres located on 18 Thistle Rd., Map/Lot# 419/075 in the Rural zone.

- a. The granting of the variance would not be contrary to the public interest because there would be sufficient room for vehicles to pass;**
- 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 owners will be able to improve the use of their property with a modest front porch;**
- 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, in fact it would enhance them;**
- 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 the house has existed in the setback since before zoning, and is on an unusually small lot for the area, 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 owner will increase the quality of the house and, therefore, the neighborhood by the outdoor space provided by the porch,**

AND

- ii. the proposed use is a reasonable one because porches are an**

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

accepted requirement for a well-appointed house.

CONDITIONS:

- 1. A building permit must be applied for, and the porch needs to meet building code specifications.**
- 2. The porch shall not be enclosed, or used as living space.**
- 3. The porch may not be expanded toward the abutting property.**

Seconded by Mr. Abbott.

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Mike Teunessen - yes

Leslie Smith - yes

Motion passed unanimously.

OTHER BUSINESS

The ZBA will have a joint meeting with the Planning Board at their regular scheduled day of July 8, to hear a joint application.

APPROVAL OF MINUTES –March 18, 2021, & April 15, 2021 meetings

MOTION

Mr. Teunessen moved to approve the minutes of the March 18, 2021, meeting as amended.

Seconded by Mr. Abbott

Nate Abbott-yes

Betty Hackett -yes

Perry Onion- yes

Mike Teunessen - yes

Leslie Smith - yes

Motion passed unanimously

MOTION

Mr. Teunessen moved to approve the minutes of the April 15, 2021, meeting as amended.

APPROVED

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY MAY 20, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

Seconded by Mr. Onion

Nate Abbott-yes
Betty Hackett -yes
Perry Onion- yes
Mike Teunessen - yes
Leslie Smith - yes

Motion passed unanimously

ADJOURNMENT: Meeting adjourned at 9:15 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator