

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 21, 2021 – 7 PM
ACADEMY BUILDING, 503 PROVINCE ROAD
MINUTES

Chair Elizabeth Hackett called the meeting to order at 7:00 P.M.

Members in attendance: Elizabeth Hackett, Nate Abbott, Perry Onion, Mike Teunessen

Members not attending: Leslie Smith, Zannah Richards (alternate member)

Also in attendance: Bre Daigneault, Land Use Administrator

Public in attendance: 12 people

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

NEW BUSINESS

Public Hearing Case # 2021-30 Aidan Lesner, owner: requests a variance from Zoning Ordinance Article VI Section D4 to live in a trailer from November 1, 2021 to May 15, 2022. Property is 6.1 acres located at 20 River Rd., Map/Lot# 116/009, in the Rural zone. **Applicant Withdrew**

Public Hearing Case # 2021-31 John & Judi Zamperini, owners: request a variance from Zoning Ordinance Article VI Section D6 to store a trailer on a vacant lot. Property is 2.3 acres located at 143 Crystal Lake Rd., Map/Lot# 112/001, in the Rural zone.

Applicant John Zamperini – For the last 2 years they have camped on the property with permission from the town. They had the trailer permit. They have sold their property, and are hoping to keep the trailer on the lot until they build next year. The past two summers they would bring it home, but since the home has sold, they were hoping to leave the winterized camper on the lot.

Ms. Hackett – You want to store the camper there. How long before you move it?

Mr. Zamperini – They have plans in April or May of 2022 to hopefully start building. They would like to utilize it during the summer months while they're building.

Mr. Abbott – They have applied for seasonal permit (128-day permit). The first year they removed it and returned it to their residential address. They returned this past summer with the camper, sold their current residence, and are hoping to now store it on the lot.

Mr. Zamperini- Yes.

Mr. Abbott - Have you pulled a building permit yet?

Mr. Zamperini – They plan to in January.

Ms. Hackett- Where do they plan on building, Gilmanton or someplace else?

Mr. Zamperini – No, on the subject lot.

Ms. Hackett- Called for abutters. None present.

MOTION.

Mr. Abbott moved to close the Public Hearing Case # 2021-31 John & Judi Zamperini, owners. - closed the public hearing.

Second by Mr. Onion.

Motion passed unanimously.

Public Hearing Case # 2021-32 Michael Kusie & Kathryn Morales, owners: request a variance from Zoning Ordinance Article VII-C-1a to build an SFD on a lot with no class 5 road frontage. Property is 1.4 acres located off Guinea Ridge Rd., Map/Lot# 406/028, in the Rural zone.

Michael Kusie & Kathryn Morales, and from the engineering firm, Adam Morris.

Mr. Kusie - The property was purchased in the early 80's by his father-in-law. They have inherited the property and wish to build a vacation home on the property.

Ms. Hackett – In order to get to the property, are you crossing private property to access land?

Mr. Kusie – Yes.

Ms. Hackett – You are looking to construct a four-bedroom home with a deck. The plan includes a 12'x14' porch, 8'x52' deck, 27'x40' house, height approximately 25'. Included in packet is the original purchase and sales agreement giving the deeded right of way to go across.

Ms. Hackett- Read letter from abutter Richard Sheehan, 175 Guinea Ridge Rd, who sees no reason why the application should be denied. It would be a miscarriage of justice to deny the application.

Ms. Hackett- The same (setbacks) apply to distances from porch and deck, not just the house. It appears from the end of deck to waterway is 85', which meets the 75' waterfront setback. What is the level patio located 20' from water?

Mr. Kusie- Paving stones, not a structure.

Ms. Hackett- It says steps.

Mr. Morris- It will be steps and a dock; both will be needing a wetlands permit.

Ms. Hackett- Yes, that is correct. What they don't want is a shed storing things next to the water.

Mr. Abbott- There has been nothing done to the property currently?

Mr. Kusie- Correct.

Mr. Abbott- Questioned the maintenance of the private way.

Mr. Kusie- It is currently cared for by a neighbor. Once they build, they will be assisting in the maintenance.

Mr. Abbott- Do they plan on using it seasonally?

Mr. Kusie- They do plan to come up in the winter. Their driveway has a contour curve to drive to mitigate the slope.

Mr. Abbott- Is there a plan to deal with acceleration of water caused by the addition of the pad and steps with the beach and construction? Is it just going to be sand or hard surface?

Mr. Kusie- Just beach sand.

Mr. Morris - All waterfront surfaces will be pervious materials.

Mr. Abbott - All boundaries will be covered in shoreland permit?

Mr. Morris – Yes, with the exception of the beach, which is under wetlands.

Ms. Hackett- Noticed a lot of vegetation and trees. Do you plan to remove any more trees?

Mr. Kusie- The plan is to limit the amount of trees to be removed.

Mr. Abbott- The septic is a pump-back system with leach field at higher elevation, correct?

Mr. Kusie- Yes.

Mr. Morris – It is an advanced enviro-septic.

Ms. Hackett- Are there any abutters – None present.

MOTION

Mr. Onion moved to close Public Hearing Case # 2021-32 Michael Kusie & Kathryn Morales, owners.

Second by Mr. Abbott.

Motion passed unanimously.

Public Hearing Case # 2021-33 Mark & Laura Doherty, owners: request a variance from Zoning Ordinance Article VII-C-1b to build a new SFD in lake setback, 60' from high water mark. Property is .396 acres located at 121 Varney Rd., Map/Lot# 106/030, in the Rural zone.

Mr. Pohopek - Jason Pohopek, land surveyor along with the property owners, Mark & Laura Doherty. They are seeking relief from, Article IV, Table 2; the dimensional ordinance from high water mark 75' to the lake. A lot of time was spent designing a house that fits within the footprint, and they designed a footprint that fits within the side setbacks. They are proposing to maintain the same distance from what the existing dwelling is from lake. The garage is proposed to be demolished and rebuilt. It will sit less into the side setbacks than the existing garage.

Ms. Hackett noted that she drove by the property and everything is currently removed from the property; all has been demolished. She asked the contractor on-site if trees were to be removed, but the contractor said the trees were remaining.

Mr. Pohopek - Yes, the proposal would be no less within the setbacks. Currently, there is only land. As a surveyor, the plan does document the location of the previous buildings and are accurate. He felt the biggest variable was this board and wanted to make sure they had permission from ZBA before submitting to the shorelands and wetlands bureaus for the reconstruction of the dock, stairs, and any construction within 150' of the lake.

Ms. Hackett – The house with the deck will be 62' from the waterway and the zoning ordinance calls for 75'. It is 50' with the state but the town ordinance is more restrictive. If this is approved, it will be 62' from the water. The house meets the side setbacks, the garage does not. The garage is 18' on one side, the other side has plenty (of room to meet the setbacks). It is only 33' from the roadway and it has to be 35'.

Mr. Pohopek – The orientation of garage - It was attempted to maintain setbacks, but they had to keep some separation between the house and garage to allow the walkway.

Ms. Hackett – What would be the height of the house?

Mr. Doherty - No higher than 26'.

Ms. Hackett – It appears the new plan has three bedrooms, but existing was two. Will the new septic accommodate the three bedrooms?

Mr. Pohopek- In his experience he feels this lot would meet all lot loading requirements for a septic. A new well will need to be installed approximately 10' away from the existing well. They do plan to seek a subsurface approval.

Ms. Hackett - Currently it has steps going down to the dock.

Mr. Doherty- The current steps are in disrepair; they would be re-doing steps and railings to the water.

Ms. Hackett – Is that a ramp going to, or steps to the water?

Mr. Doherty – It's steps.

Mr. Abbott - It says living area 881 sq/ft?

Mr. Doherty – The objective is not to exceed 2400 sq/ft, 2-story (home). The goal is to have a year-round vacation home and to have a home that better the neighborhood. They would like to keep with the waterfront location.

Mr. Abbott – Was the original home unlivable?

Mr. Doherty – It was a three-season home in disrepair.

Mr. Abbott – It was still intact and usable?

Mr. Doherty – Yes.

Mr. Onion- The existing garage and proposed garage -- the proposed is now 2' into the setback and 3' into the road front setback?

Ms. Hackett – The new one will be 33' from the roadway. The previous one was closer.

Mr. Onion – I am having trouble understanding why the garage couldn't be moved out of the setbacks the 2'.

Ms. Hackett – It would be 16' from the new house to the new garage.

Mr. Pohopek- They were just trying to utilize as much of the pre-existing, non-conforming area as possible to better utilize the land.

Mr. Doherty- The thought was to keep it as close to where it was without blocking the front of the house.

Mr. Pohopek- The proposed driveway area was designed to allow for vehicles to back up and turn around in the driveway.

Mr. Onion – Would moving 2’ not allow vehicles to turn around?

Mr. Pohopek- We did not want to take the chance of not having enough room.

Mr. Doherty – For simplicity they are trying to use the existing driveway footprint, which allows vehicles to pull straight in from Varney Rd.

Mr. Onion- So is moving 2’ an option?

Mrs. Doherty – She does not want to see the garage block the front door. Also, she feels it is a safety issue to have the front door blocked by the garage.

Mr. Pohopek- The proposal is aesthetically pleasing.

Members viewed the street view of the proposal.

Ms. Hackett - The steps from the deck are proposed to the side, not towards the water.

Mr. Doherty - That is correct. They would not encroach on the water setbacks.

Mr. Onion – What will be done with water coming off the surface with the new building?

Mr. Pohopek – In the shoreland permitting it will be addressed. They will have gutters going into catch basins and follow all wetland requirements.

Mr. Abbott- He appreciates when an applicant tries to meet pre-existing technicalities, but since the original building has already been removed, it is no longer pre-existing. It is now an empty lot so is this suitable as a variance?

Mr. Pohopek- I respectfully disagrees. I feel the survey documents where it existed.

Mr. Onion & Mr. Abbott -- Disagreed.

Mr. Abbott- Any law that exists that shows what was pre-existing does not affect what’s really on the lot. He requests a state ordinance, or some other rule that should guide them in interpreting.

Mr. Pohopek – I believe that the plan documents the non-conformity. They applied for the demolition permit and have no malicious intent.

Mr. Onion – We have this problem all the time, where people have property on the lake. For him, it’s easier if he can tell himself the town is going to lose the old building and replace it with a new. That argument has been taken away in his mind because they don’t have the old structure anymore for reference.

Mr. Pohopek- The town has documentation of the dwelling that existed.

Mr. Abbott- The board understands there was a building there and there is intention to replace it with something better, as well as to put in a new septic. He feels the removal of the previous dwelling was inappropriate prior to ZBA approval.

Mr. Doherty- They want to better the property and do it right.

Mr. Pohopek- He was asked and he led the owners to believe this was suitable for the location.

Mr. Teunessen – There was a breakdown in communication between the demolition permit issuance and ZBA. Maybe the person issuing the permit should have advised the applicant to go in front of the board first.

MOTION

Mr. Teunessen moved to close Public Hearing Case # 2021-33 Mark & Laura Doherty, owners.

Second by Mr. Onion.

Motion Passed unanimously.

Public Hearing Case # 2021-34 Foden Floors, LLC, applicant and Anton Loskoutov & Sara Hunter, owners; request a variance from Zoning Ordinance Article VII-C-1a to build

an SFD on a lot with no class 5 road frontage. Property is 4.576 acres located at 17 Powder House Ln., Map/Lot# 126/018, in the Rural zone.

Ms. Nash -- Katelyn Nash from Foden floors.

Mr. Abbott – I would like to correct the record to state it is Powder House Ln (not Rd).

Ms. Nash – The owners had purchased the property with a deteriorating mobile home. They would be replacing it with a modular home that will meet all setbacks and replace the septic. They applied for the building permit but were told they would need a variance as it is a private road. They were unaware they would need a variance, as there is already a home there.

Ms. Hackett- It appears the new home would meet the roadway setback, but is measuring within 13' of side setback.

Ms. Nash -- There is room to move the home over. It was placed there to be in proximity to the shared well near the property line. They would move forward with meeting setbacks and have any surveying needed done.

Ms. Hackett – It's a 17' x 27' house?

Ms. Nash -- The new one is a 56' x 27' modular.

Ms. Hackett requests updated plans because existing plans reflect 14' x 27'.

Ms. Nash – We are working on updated plans.

Mr. Abbott – The topic of the variance is building on a private road. Who maintains it?

Ms. Nash -- Everyone on the road shares the expense and hires a contractor.

Mr. Abbott- There's not much of a distance or slope.

Ms. Hackett opens the meeting to public comment.

Mr. Barr – Ben Barr of 28 High St. abutter and land owner. He had not viewed the plan and was hoping to see the location. He reviewed the plan.

MOTION

Mr. Onion moved to close Public Hearing Case #2021-34 Foden Floors, LLC, applicant and Anton Loskoutov & Sara Hunter, owners.

Second by Mr. Abbott

Motion passed unanimously.

DELIBERATIVE SESSION:

Case # 2021-30 Aidan Lesner, owner

Withdrawn.

Case # 2021-31 John & Judi Zamperini, owners

Ms. Hackett – She recapped: they would like to store just for this winter, use it again in the spring/summer, and plan to a build house on property.

Mr. Abbott – The key question to deliberation is the diminution of value. The permit allows it (the camper) there during high season and has not shown values of surrounding properties being diminished thus far. He does not feel maintaining over one winter would diminish values. Making sure there is a building permit no later than January 31st, 2022 would be an appropriate condition.

Mr. Onion – He understands the difficulty of getting carpenters right now; we should set a date and have the applicant come back if unable to meet the deadline.

MOTION

Mr. Abbott moved to grant a variance in Case # 2021-31 John & Judi Zamperini, owners, requesting a variance from Zoning Ordinance Article VI Section D6 to store a trailer on a vacant lot. Property is 2.3 acres located at 143 Crystal Lake Rd., Map/Lot# 112/001, 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 character of the neighborhood will not be adversely affected;**
- c. By the granting the variance substantial justice will be done because a resident will be able to erect their dwelling without undue hardship;**
- 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, in that it is a vacant property transitioning to a full-time residence distinguishing it from other properties in the area;**
 - i. no fair & substantial relationship exists between the general public purpose of the ordinance provision & the specific application to this property because the applicants will be constructing their residence during the time of effect of this variance,**

AND

- ii. the proposed use is a reasonable one because the lot is suitable for a residential dwelling and the applicant is pursuing their rights to build in a normal fashion consistent with other properties in the district.**

CONDITIONS:

- 1. The applicant will have applied for and received a building permit for the property prior to January 31st, 2022.**
- 2. If the applicant is unable to complete construction prior to October 31st, 2022, the applicant will need to return to the Zoning Board of Adjustment for an additional variance.**

Mr. Onion seconded.

Mr. Onion – Under ii. I would like to bring in that it's going to be like all the other houses and fit into the neighborhood.

Mr. Abbott – I would like to add at the end of that sentence: consistent with other properties in the district.

Motion passed unanimously.

Case # 2021-32 Michael Kusie & Kathryn Morales, owners

Ms. Hackett – She recapped: they are looking to build off a private right of way off Guinea Ridge. The abutter is okay with the owners building a four-bedroom home, and crossing the right of way on abutting property.

Mr. Onion -- This strikes him as being an older subdivision that's already been decided. There are already three houses, and he does not see any reasonable basis to deny a fourth.

Mr. Abbott – He agrees. The right of way is well developed and level, well used, and the distance is small.

MOTION

Mr. Abbott moved to grant a variance in Case # 2021-32 Michael Kusie & Kathryn Morales, owners: request a variance from Zoning Ordinance Article VII-C-1a to build a SFD on lot with no class 5 road frontage. Property is 1.4 acres located off Guinea Ridge Rd., Map/Lot# 406/028, in the Rural zone.

- a. The granting of the variance would not be contrary to 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 adversely affected;**
- c. By granting of the variance substantial justice will be done because the applicant will be able to construct their residence on a suitable property without any apparent barriers to access;**
- 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 lies at the end of an established Right of Way used by neighboring residents to access their properties, which way is suitable for their own access 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 readily accessible through the existing right of way,**

AND

- ii. the proposed use is a reasonable one because the lot is spacious and suitable for the construction of the dwelling.**

CONDITIONS:

- 1. All applicable Shoreland and State permits be received prior to construction.**

Mr. Onion seconded.

Mr. Abbott – This is a question to staff regarding exclusions of conditions.

Ms. Daigneault – During a recent consult, it was advised to make decisions on the land itself and not hinder any other approvals by other Boards or departments.

Mr. Perry – Under e. would like to add that it lies at the end of established Right of Way?

Motion passed unanimously.

Case # 2021-33 Mark & Laura Doherty, owners

Ms. Hackett -- Recapped- Build a new house and garage at 121 Varney Rd, replacing what was there, and the lot is already cleared.

Mr. Teunessen – He was impressed with the presentation of the package.

MOTION

Mr. Teunessen move to grant a variance in Case # 2021-33 Mark & Laura Doherty, owners: request a variance from Zoning Ordinance Article VII-C-1b to build a new SFD in lake setback, 60’ from high water mark. Property is .396 acres located at 121 Varney Rd., Map/Lot# 106/030, 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 adversely affected;**
- c. **By granting of the variance substantial justice will be done because this will allow the applicant the opportunity to build a new, more code compliant dwelling on the property;**
- d. **The Board saw no evidence presented and formed the opinion that granting the variance would not create a diminution of value to surrounding properties;**
- e. **Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it only to the special conditions of the property, that the owners seeking to replace an older dwelling with a more contemporary and newer building 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 will allow improvement to the property by the construction of the newer structures,**

AND

- ii. **the proposed use is a reasonable one because the new dwelling will be more closely aligned esthetically with other homes in the area.**

CONDITIONS:

- 1. **The new garage shall not intrude on the side setback by more than 2’.**
- 2. **The new garage shall not intrude upon the road setback by more than 10’**

Mr. Abbott seconded.

Mr. Teunessen – He referenced an earlier point. If they (the property owners) had received permission (from the ZBA) to demolish the existing structures and not done so (demolished the buildings), it would have been easier from the board’s point of view, to have them stay within the current footprint of the building.

Mr. Onion – Under e. i, it made reference to “the property by being able to remove” (the current building).

Mr. Abbott suggested changing the wording to “replace the current buildings”.

Mr. Onion – Well, it’s not there. We can’t replace it. Can we change the wording?

Mr. Abbott – The truth of the matter is the new structure will replace the old structure. There is just a period where it’s removed.

Ms. Hackett – We can say this will allow improvement to the property by the construction of the newer structures.

Motion passed unanimously.

Case # 2021-34 Foden Floors, LLC, applicant and Anton Loskoutov & Sara Hunter, owners

Ms. Hackett – She recapped – Powder House Ln. is a private road, the owners looking to replace a trailer with a house.

MOTION

Mr. Abbott moved to grant the variance in Case # 2021-34 Foden Floors, LLC, applicant and Anton Loskoutov & Sara Hunter, owners; request a variance from Zoning Ordinance Article VII-C-1a to build a SFD on lot with no class 5 road frontage. Property is 4.576 acres located at 17 Powder House Rd., Map/Lot# 126/018, 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 would not be threatened;
- b. The spirit of the Ordinance is observed because the character of the neighborhood will not be adversely affected;
- c. By the granting of the variance substantial justice will be done because a decaying structure will be replaced with a nicer, newer structure, and the septic will be upgraded;
- d. The Board saw no evidence presented and formed the opinion that granting the variance would not create diminution of value to the surrounding property;
- 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 is situated on a long-established private way in a well settled area of the town, 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 residents on Powder House Ln. have relied on each other for road maintenance for many years, and it has not been a problem for them,

AND

- ii. the proposed use is a reasonable one because it continues the occupation of the property by means of a single-family dwelling.

CONDITIONS:

None

Mr. Teunessen seconded.

Motion passed unanimously.

OTHER BUSINESS

Chris Larson & Maryann Gage request for rehearing of 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 Ave., Map/Lot# 119/099 in the Res. Lake zone.

Ms. Hackett – She read the letter for a request for rehearing due to the “unlawful decision that was made by the Gilmanton ZBA. “The ZBA clearly stated at the first recorded meeting that they vote only on what is in their purview..., they clearly stated that the state overrules the town. The state approved our septic design and the ZBA should have stood down. Instead, they declined our building permit on something that is not in their purview.”

Ms. Hackett- She reiterated that the town overrules the state in the requirements.

Mr. Onion – He feels they may be talking about the septic. The town does not overrule the state for septic.

Ms. Hackett – The reasoning for granting must be either unlawful or provide additional information. They reviewed thoroughly, even to the slope of the property & access. And the owners across the street had previously been denied a variance based on the property slope. The road is well over a 15-degree slope.

Mr. Teunessen – He discussed the steepness of the road.

Mr. Abbott – He revisited the road. He reiterated the denial has nothing to do with the septic. The application was for a variance to build on a Class 6 road, private road. He discussed the safety hazards and the delay in safety measures that could be made in an emergency situation.

MOTION:

Mr. Abbott moved to deny the request for rehearing of 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.

Seconded by Mr. Onion.

Mr. Abbott – He further states that the applicant did not supply further document and the board was lawful in denying the original variance request.

Motion passed unanimously.

OTHER BUSINESS

Ms. Hackett – She would like the Selectmen to reinforce the use of the form to department heads for case opinions. In reference to Claude Vezina -- he will not be requesting a rehearing. The owners are requesting time to have the outbuildings removed. The board was unaware of a time frame had been set.

Mr. Abbott – He stated that this is under the purview of the Board of Selectmen.

APPROVAL OF MINUTES – July 8, 2021, meeting

MOTION: Mr. Abbott moved to approve the minutes of the July 8, 2021 joint meeting, Zoning Board of Appeals and Planning to accept the minutes as amended by the chair.
Seconded by Mr. Onion.

Motion passed unanimously

APPROVAL OF MINUTES – September 16, 2021, meeting

MOTION: Mr. Onion moved to approve the minutes of the September 16, 2021, meeting as amended.

Seconded by Mr. Abbott.

Motion passed unanimously.

ADJOURNMENT: Meeting adjourned at 9:30 P.M.

Respectfully submitted,

Bre Daigneault
/AD