

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY NOVEMBER 18, 2021 – 7 PM.
ACADEMY BUILDING
MINUTES

1
2 Chair Elizabeth Hackett called the meeting to order at 7:00 PM.
3 Members in attendance included Chair Elizabeth Hackett, Vice Chair Nate Abbott,
4 Member Perry Onion and Member Leslie Smith.
5 Members not in attendance included Member Mike Teunessen.
6 Staff in attendance included Bre Daigneault.
7 Members of the public included Jillian Parker, Timothy Hanna, and Theron DeBella.
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11 Chair Hackett stated that there were only four board members present, three positive
12 votes would be needed for any decision to pass. She gave the applicants the option to
13 continue until a future meeting when there may be five members present.
14 Chair Hackett explained the ZBA procedures.
15
16

17 **OLD BUSINESS**
18

19 **Continued Public Hearing Case # 2021-18 Jillian Parker & Timothy Hanna,**
20 **applicant owners:** requests a variance from Zoning Ordinance Article VII, Section
21 C-1a to build an SFD on a class 6 road. Property is 3 acres located on Sawtooth
22 Rd., Map/Lot# 410/025, in the Rural zone.
23

24 Chair Hackett called the case to order. Mr. Hanna stated they are here to build a home in
25 Gilmanton. He understands the board was waiting to hear from legal counsel. Chair
26 Hackett acknowledged they had. She inquired of the location of the property from the
27 class V road. Mr. Hanna stated it is 208' to edge of their lot and an additional 208' to the
28 following lot. They anticipate the house would be no bigger than 30' X 40' in size. They
29 are thinking it will be a ranch style home having three bedrooms. Chair Hackett stated
30 there would plenty of room on either side (to meet the setbacks). Member Onion
31 summarized the advice from the lawyers stated the only thing they can make
32 considerations about are five criteria they normally make their decisions about in any
33 other case. In order for an application to pass, it must meet all five criteria. Chair Hackett
34 discussed the letters submitted by residents Mr. Hurst and Mr. Guarino. Both letters were
35 submitted in September. One felt the road must be brought up to class V standards; the
36 other was against building on a class VI road all together. Chair Hackett stated it is not
37 the determination of the ZBA whether to allow building on class VI road. The Selectmen
38 will make that determination and agree to sign a road waiver. VC Abbott stated the board
39 had done some homework, which was the reason to ask for delay. Based on legal
40 opinion, the ZBA must limit their decision. Member Smith concurs with what has been
41 said thus far. The process can be complicated. Mr. Hanna stated they just want to use
42 the land for their home. They are open to signing waivers. VC Abbott wanted to confirm

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what was said months ago that the applicant did not have a problem widening and upgrading the road. Mr. Hanna confirmed they would widen the road to fit an emergency vehicle down it and make a turn-around.

With no additional comments and no members of the public present to speak, Chair Hackett entertained a motion to close the public hearing. Member Onion made the motion to close the public hearing. VC Abbott seconded. **Motion passed 4-0**

Compliance Hearing Case # 2021-27 Theron DeBella, owner: was granted a variance on September 16, 2021 from Zoning Ordinance Article IV Table 1 & Article VII-C4 to put an accessory structure on a non-conforming lot with no primary building on a road without Class V road frontage or better. The owner is requesting an extension per condition #7 of the approval. Property is .14 acres located on Montauk Way Map/Lot# 131/052, in the Rural zone.

Chair Hackett opened the case to public hearing. Mr. DeBella stated since he had received approval from the ZBA, he had purchased a third abutting lot and has merged all 3 lots. The original notice of decision called for two lots to be merged. He felt this gives more flexibility for a septic design. He has been working with Bailey Associates to design the septic, but the State is requesting a system with a pretreatment system. The designers are working with the State on having this rectified. A dredge and fill permit has been applied for, a preliminary septic plan has been designed, but the wait times (for the design) are extended. Mr. DeBella was waiting for the design before coming back to the ZBA for approval for building on the private road, but will not be until May, at earliest. In the meantime, he would like to keep the shed on the property. He is hoping the board feels he has done enough due-diligence and would grant the extension. VC Abbott asked how much time do you think you need to build? Mr. DeBella stated he will be building himself. He has locked in a building package and has a local builder to help with the build. If permits go as planned and are issued by June, he expects the foundation by the end of July, the structure and decking will be started in August or September, and should be a weathertight shell by October. The interior finish will take place over next winter. He estimates he could request the certificate of occupancy in the spring of 2023. Mr. DeBella would be saving money by building himself, it would just take longer to complete. Chair Hackett read the conditions placed on his approval. The lots needed to be merged by November 18th and this has been done. Condition four was to apply for a variance to build on a private road by November 18th. This could not be completed as the applicant is still waiting on a septic design. The dates would have to be changed on conditions 4 and 5, should the board decide to approve the request. Chair Hackett asked if once the building was up, do you plan to take down shed? Mr. DeBella plans to leave shed, but it may need to be relocated. VC Abbott would like to hear the dates the applicant thinks are reasonable to meet the conditions. Mr. DeBella hopes to apply for

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the house building permit in May or June. The shed would be re-applied for at that time as well. VC Abbott felt they could estimate a deadline of June 30th. Mr. DeBella agreed. Chair Hackett felt item number 5 needed to be amended as the shed would not be removed by December 31st. VC Abbott felt they could push number 5 to Dec. 31, 2022.

With no additional comments and no members of the public present to speak, Chair Hackett entertained a motion to close the public hearing. VC Abbott made the motion to close the public hearing. Member Onion seconded. **Motion passed 4-0**

Chair Hackett inquired if the code officer, Fab Cusson, had any issues with the request of the Vezina case to have additional time to remove the sheds. Admin. Daigneault had notified Mr. Cusson the sheds were to be removed. Where they were being dismantled not demolished, there was no need for a demolition permit and Mr. Cusson did not have any additional concern.

NEW BUSINESS- None

DELIBERATIVE SESSION:

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

VC Abbott feels the board should discuss each criterion before making a decision to ensure a consensus on all criteria. He asked if members could agree the application is not contrary to the public interest? Member Onion felt public welfare and the spirit of ordinance go hand in hand. Members looked to the town master plan to define the spirit of the ordinance. There was some discussion between the 2005 master plan and the newer 2018 master plan. Member Onion does not feel this application would fit the spirit of the ordinance or would be contrary to the public interest. He felt the spirit of the ordinance was to slow growth and not allow building on class VI roads. Chair Hackett asked if the discontinuance of the road being subject to gates and bars had any effect on the case? VC Abbott did not feel this should be a factor. It is still a public way. The town just does not maintain it. He feels the flavor of 2018 master plan is quite different from the 2005 one. The spirit does put brakes on some development, but how could that be applied to this case? There is a house almost the same distance away on the class V road than the applicants will be. He feels the spirit of the ordinance shall be planned and orderly. One property at a time is orderly. Member Smith felt it could result in everyone going one by one to add structures down the road. VC Abbott felt, on the premise the Selectmen approve the road agreement, the next property may do the same. There would be private agreements between the residents for the maintenance. Other associations like Shellcamp have existed for years, being in a similar situation as this lot; being subdivided prior to Zoning and full of private roads. Member Onion felt allowing building on lots such as this would cause a monetary burden on the school system. Chair Hackett stated these lots were set up in a way to be built upon. Member Onion stated there are hundreds of acres of lands on class VI roads in town, if you keep this

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extension going, you have lost control over the population. It was confirmed this parcel was subdivided before planning. Chair Hackett felt the Board's purview is based on the property and property alone, nothing else. Whether before planning or not, it was set up to be housing. Member Onion doesn't hold legal value in a subdivision that had not received planning board approval. VC Abbott was hearing lack of consensus on the first two criteria. Two members feel it would be contrary to the public interest and does not follow the spirit of the ordinance. With four members present, the vote could end at 2-2. It would be a denial. Member Onion suggested to move on to criteria number three. VC Abbott inquired if substantial justice would be done. Would denying this variance be an injustice to the applicant or to anyone else? Chair Hackett stated they cannot predict if other lots would be built or requested to be down the road. VC Abbott agreed they must look at this property alone. This is an appeals board; we do not have the planning ability. Member Smith asked to what or whom is substantial justice being directed; is it the owner or the town? VC Abbott and Chair Hackett agreed it should be fair and equitable to all parties. Chair Hackett felt there are no abutters here to argue the case to show it is impacting anyone else. Members were in agreement on criteria number three. Member Onion does not feel it is different or there is anything distinguishing it from other properties on the road. Chair Hackett feels it is distinguished from other properties in the area. She would consider the direct area being surrounding properties; not all of Gilmanton or all of Sawtooth Road. Member Onion felt all the properties in the area are on the class VI road. VC Abbott stated it is a necessary hardship they all share. Members discussed the class VI portion of the road. It was reiterated they have been told by town counsel that this is not their purview. VC Abbott moved onto criteria e.i- the applicant has stated they are interested in upgrading the road, and ii- the proposed use is a reasonable one because there's lots of room with a reasonable place for a house. Members are in agreement. Chair Hackett stated the board has to come to a decision one way or another. Members reviewed RSA's and continued to discuss whether the application would meet all the criteria.

MOTION

VC Abbott made the motion to grant the variance in **Case # 2021-18 Jillian Parker & Timothy Hanna, applicant owners**; requests a variance from Zoning Ordinance Article VII, Section C-1a to build an SFD on a class 6 road. Property is 3 acres located on Sawtooth Rd., Map/Lot# 410/025, 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 would not be adversely affected;
- c. By the granting of the variance substantial justice will be done because:

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169 the applicant will be able to use their property in a manner consistent with its
170 dimension.

- 171
- 172 d. The Board saw no evidence presented and formed the opinion that granting the
173 variance would not create diminution of value to the surrounding properties;
- 174
- 175 e. Literal enforcement of the ordinance could result in unnecessary hardship to the
176 property owner seeking it owing to special conditions of the property, that the
177 close proximity of the applicant's property to the to class V portion of the road and
178 the applicant has stated their willingness to maintain the necessary portion of the
179 road.
- 180
- 181 i. no fair & substantial relationship exists between the general public
182 purposes of the ordinance provision & the specific application to this
183 property because:
184 the space and suitability for construction of the residential home is
185 more than sufficient.

186 AND

- 37 ii. the proposed use is a reasonable one because:
188 the property owner wishes to have a single-family dwelling and the
189 property is more than ample to allow them to do that.

190

191 **CONDITIONS:**

- 192 1. The applicant not take any steps to improve the property or the road until they have
193 fulfilled all requirements of the town under RSA 674:41 (Private Road Agreement)
194 and have made the necessary posting to the BCRD.

195

196 Member Smith seconded. **Motion passed 3-1**

197

198

199 **Compliance Hearing Case # 2021-27 Theron DeBella, owner**

200 Chair Hackett stated Mr. DeBella is looking to extend the time frames on the variance he
201 recieved for his shed located Montauk Way. Condition number three has been met. The
202 dates of conditions numbers four and five would need to be pushed out if approved.

203

204 VC Abbott moved an amendment the conditions on case # 2021-27, property owner
205 Theron DeBella:

- 206 4. amend the date to June 30, 2022
207 5. amend the date to December 31, 2022

208

209 Member Onion seconded. **Motion passed 4-0**

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211
212
213 APPROVAL OF MINUTES
214

215 MOTION: VC Abbott moved to approve the minutes of the October 21, 2021 meeting as
216 amended. Member Smith seconded. **Motion passed 4-0**
217

218 OTHER BUSINESS- None
219

220 ADJOURNMENT: Member Onion made the motion to adjourn. VC Abbott seconded.
221 **Motion passed 4-0**
222

223
224 Respectfully submitted,
225

226 Bre Daigneault
227 Community Development Director