

TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, MARCH 17, 2022 – 7 PM
ACADEMY BUILDING, 503 PROVINCE ROAD
603-267-6700 ext. 112
bdaigneault@gilmantonnh.org

MEETING MINUTES

Members present included Chair Elizabeth Hackett, VC Nate Abbott, Member Leslie Smith, Member Perry Onion, Member Mike Teunessen, and Alternate Member Zannah Richards.

Chair Hackett explained there were five members present at this meeting. There would need to be three out of five votes to be granted. Chair Hackett explained the procedures and processes of the hearing.

NEW BUSINESS

Public Hearing Case # 2022-8: Property owners Frank & Janice Tkacik are requesting a variance from Article IV, Table 2 to build a garage within the road setbacks, being 15' from the side boundary line abutting the fire road. The owners have improved drainage on the property as was partly the reason for the ZBA denial on September 16, 2021. The property is located at 267 Hemlock Dr, Map/Lot 121-040, in the Residential Lake Zone.

Mrs. Tkacik requested that their general contractor, Bob Dow, speak on their behalf. Mr. Dow clarified that one corner of the garage would be 15' from the property line, the rest would meet setbacks. Extensive drainage has been added to the property, along with two large catch basins with culverts running underground to the road culverts. Once the snow melts and the roads are no longer posted, they will be finishing the work. He believes drainage was a concern last fall when the garage was first proposed. Chair Hackett recalled that there was an issue with drainage as well as the garage being proposed to be as close to the fire road as possible. VC Abbott viewed the site earlier in the day. He stated there was water issuing from a 12" culvert above the road into a ditch, and from the ditch water ran down under the road. There is a culvert at the back of the property that captures all the water and runs down to this one spot. Mr. Dow reiterated there are two large catch basins and grates will be added once the ice and snow melt. VC Abbott questioned whether there were any specific measures to slow the water down. Mr. Dow clarified that where Mr. Daigle is putting up the wall on the bank, there is riprap. Boulders would be added over the riprap, which will slow the drainage. The idea is to catch the water, slow it down, and manage it down through the ditch. Alt. Member Richards asked for further clarification. She could see where the equipment was, all of the earth behind it had been disturbed. She inquired if the brook further down was always producing a lot of water or if this was seasonal. Mr. Dow and Mr. Tkacik stated that the "brook" is at a seasonal high level. Mr. Dow stated the drainage really has three tiers. Behind the house would be the highest point they would see the drainage. Member Onion questioned what would be stopping the drainage from silting up. Mr. Dow clarified that the filter fabric and riprap (which is 6" stone or greater) will

slow down the water and catch the silt. Additionally, once vegetation grows in there will not be much silt.

Ms. Hackett read an email into the record from abutters Donna and John Faro in favor of granting the variance.

Chair Hackett opened the case to public hearing. With no comments, VC Abbott made the motion to close the public hearing. Member Perry Onion seconded. **Motion passed 5-0**

Public Hearing Case # 2022-9: Property owners Eileen Hertel and Arnold Parseghian and Wayne Parseghian are requesting a variance from Article IV, Table 2 to build a shed within the side setbacks, being no closer than 3' from the boundary line. The property is located on 14 Whispering Pines Road, Map/Lot 106-019, in the Rural Zone.

Ms. Parseghian Hertel explained her growing family's need to add additional space by means of a shed. The neighbor directly affected by the request for the variance spoke to the Community Development Director in favor of the variance and wrote a letter.

March 8, 2022 – Memo from Bre Daigneault, Community Development Director to ZBA Chair Elizabeth Hackett.

I received a phone call on March 8, 2022 at approximately 11 a.m. from abutter Vern Gordon located at 20 Whispering Pines Rd (M/L 106-018). Mr. Vernon Gordon has no objection to the variance request. He stated the property owners have been great neighbors and he would be in favor of the granting of the variance to place a shed within 3 feet of his property boundary.

Chair Hackett questioned the shed already on the property. Ms. Parseghian Hertel clarified that it's a boathouse. There is a fence running on the property line between the subject property and Mr. Gordon's. VC Abbott questioned the size of the proposed shed which was verified to be 12'x26'. VC Abbott observed that the abutting property has a similarly sized shed, approximately 3' from the fence on his property. Mr. Jeff Hertel stated that his (Mr. Gordon's) shed has been there about 15 years. He stated that the original camp was built in 1950 and it still has the original septic. Norway Plains has done a new septic design and the placement of the shed is based off of those plans. Chair Hackett questioned what the shed will be used for and is it one story. Mr. Hertel clarified it would be one story utilized for storage. Chair Hackett asked for clarification on the size. Mr. Hertel reiterated the size and explained the company requires 2 feet of gravel around the exterior of the shed which would be a foot away from the fence. Alt. Member Richards requested clarification on the placement of the current and future septic systems. Mr. Hertel explained that the current holding tank is within the State waterfront setback and indicated where on the lot the new system would be placed.

Chair Hackett opened the case to public hearing. With no comments, Member Onion made the motion to close the public hearing. Member Smith seconded. **Motion passed 5-0**

Public Hearing Case #2022-10: Agent Eckman Engineering LLC on behalf of property owner Georges Realty, LLC is requesting a variance from Zoning Ordinance Article VII, Table C.1(b) to build a single-family dwelling in the front and side setbacks, being 18' from both side property lines and 20' from the front property line. The property is 0.14 acres located on Tamarack Trail, Map/Lot 132-099, in the Residential Lake Zone.

David Eckman from Eckman Engineering representing Will Georges of Georges Realty gave some background information on the lot. The lot is small at 60'x 100'. With a small lot like this, they could not violate any environmental setbacks. They must place the location of

neighboring wells in reference to the proposed leach field. The lot was evaluated by a wetlands scientist. The plans include a catch basin to collect water, which will be diverted into the roadway ditch on the private road. The EDA (Effluent Disposal Area) would be placed to the back of the lot. They do have a State approved system. They are proposing a 24'x 36', 2-bedroom house. For the home to fit the lot, they are requesting it to be 18' from the side setbacks. There is a required 10' setback from the septic system, which does not allow the structure to be placed any further back on the lot, causing the structure to be 20' from the road setback. Chair Hackett verified the request is to be 18' on the sides where it's 20' per Town ordinance and 20' from Tamarack Trail, where the setback is normally 35'. VC Abbott asked for verification on the location of the grade stakes at the lower and upper end of the property along the road, and where the driveway will be. Mr. Eckman explained he believed those were to mark the center location for the septic. Chair Hackett confirmed there was an approval for an Individual Sewage Disposal System dated 3/16/2022 from DES. Alt. Member Richards inquired if there were any houses past this lot. Mr. Eckman stated the road pretty much ends at the subject lot.

Chair Hackett read a letter against the variance approval from abutters Jason & Georgette Ducey into the record.

Chair Hackett clarified they do have State approval for the septic system. Mr. Eckman added they are using an advanced enviroseptic, which is a special state-of-the-art septic system that takes the bad coliforms and bacteria. It really cleans it up and is actually allowed within two feet of the water table. They have made sure this system is safe and is not going to adversely affect any of the abutters. It is called the Advanced Enviro-Septic. VC Abbott asked if the system has an active aerobic digestion tank; a pump that pumps air into it. Mr. Eckman stated that would be a clean solution that they would have used if it was closer to the lake.

Chair Hackett opened the case to public hearing. Abutter Dena Flanagan owns the property behind the hill (lot number 100 on Tamarack Tr). Ms. Flanagan stated these lots are small and it would be built 2' closer to her property. She is not for this. She stated when she bought her property, she was told these were non-buildable lots. Chair Hackett stated the lots are non-conforming; non-buildable is something else. Ms. Flanagan stated that she was told you could not build on the lots. If the house is built, she would be sandwiched between the hill and a house. She stated there is a lot of water run off from the hill and where they intend to put the septic is quite wet. She also had concerns about the markers on the property, new ownership not knowing the property lines, and the size request of the home. Mr. Eckman addressed her concerns with the property boundaries. There are flags on the lot that do not represent the boundaries. VC Abbott addressed the discussion, stating the ZBA does not make judgements determining the dimensions of their property boundaries. He explained it is settled between neighbors or at the owner's expense of hiring a surveyor. Chair Hackett explained that if the request is approved or denied, abutters and owners have 30 days to appeal the decision. Mr. Eckmann addressed the water runoff stating the wetlands scientist walked the property. He had concerns with drainage. They have created a ditch with a catch basin system to collect the water and control the water flow. VC Abbott asked Ms. Flanagan if she planned to build on her lot. She replied yes, she was starting to look into it.

With no additional comments, VC Abbott made the motion to close the public hearing. Member Teunessen seconded. **Motion passed 5-0**

Public Hearing Case #2022-11: Agent Eckman Engineering LLC on behalf of property owner Georges Realty, LLC, is requesting a variance from Zoning Ordinance Article VII, Table C.1(a) to build a single-family dwelling on a lot having no class V road frontage. The property is 0.14 acres located on Tamarack Trail, Map/Lot 132-099, in the Residential Lake Zone.

Mr. Eckman showed the land contours and stated that they fixed the drainage. They added a catch basin so they have the water controlled. Chair Hackett stated that although they may be able to approve the dwelling, they are not authorized to allow them to build on a road that is not class V. ZBA's recommendation goes to Planning Board, Planning Board gives a recommendation to the Selectmen, and the Selectmen will have the owner sign a private road agreement releasing the Town of liability. VC Abbott asked if Mr. Eckman had spoken with the Shellcamp Lake Association about their road maintenance plans. Mr. Eckman stated they had not yet. VC Abbot observed that the road appears to be unmaintained and stated that status would have to change. Mr. Eckman stated that there is a house directly across the street. VC Abbott stated it appeared the neighboring property was not inhabited in the winter. Chair Hackett has also observed that it was not plowed the previous week. VC Abbott explained that building permits are year-round, so the Town can't make a provision for seasonal residence. Mr. Eckmann felt it could be a provision that the owner must maintain that section of road. Chair Hackett opened the case to public hearing.

With no comments, Chair Hackett called for a motion to close public hearing. VC Abbott made the motion to close the public hearing. Member Onion seconded. **Motion approved 5-0**

OLD BUSINESS

Continuance from Feb. 10, 2022: Public Hearing Case #2022-6: James E. Rooney, Jr. property owner, is requesting a variance from Article VII, Section C.1 to build a single-family dwelling on a non-conforming lot that does not have frontage on a Class V Road or better. The property is located at 24 Intervale Dr, consisting of 1.885 acres, known as map/lot 130-045, located in the Rural Zone.

Mr. Rooney had purchased two separate lots and had them merged. He is intending to build a small single-family home, approximately 20'x 32', one floor. He will be meeting all setbacks. Chair Hackett stated that it appears he had four lots merged together. Mr. Rooney confirmed that they were involuntarily merged by the Town into two double lots. He had made contact with his neighbors, who support his request. Chair Hackett requested confirmation that he wants to build a 20'x 32' instead of a 20'x 30' as he listed on the application, Mr. Rooney confirmed. Chair Hackett stated if ZBA approved the plan, Mr. Rooney would need to update the Town with the new dimensions. Mr. Rooney will update when he gets his septic design. Alt. Member Richards questioned if there was a motor home on the property. Mr. Rooney, stated no, that is a single, .42 lot. His property starts just after the motor home. Mr. Rooney stated he plows. Chair Hackett stated he had missed the joint meeting with ZBA and Planning Board in February. Mr. Rooney clarified that he met with Planning Board and they are recommending approval to the Selectmen (to build on the private road). VC Abbott wanted to add for the record, the lot is 150' deep, leaving sufficient room for a 32' house, to meet the setbacks, and place a septic system. Chair Hackett stated if this is approved, ZBA does not have the purview for having septic, but they can put a condition that the plan is submitted to the Town prior to any construction.

Chair Hackett opened the case to public hearing. With no comments, Member Teunessen made the motion to close public hearing. Member Onion seconded. **Motion approved 5-0**

Deliberation

Public Hearing Case # 2022-8: Property owners Frank & Janice Tkacik are requesting a variance from Article IV, Table 2 to build a garage within the road setbacks, being 15' from the side boundary line abutting the fire road. The owners have improved drainage on the property as was partly the reason for the ZBA denial on September 16, 2021. The property is located at 267 Hemlock Dr, Map/Lot 121-040, in the Residential Lake Zone.

VC Abbott inquired if members felt the letter from the contractor completing the drainage work sufficed to meet the Town regulations. Regulations call for a certain type of professional to make that judgment. Chair Hackett stated she has no issue with the statement and work that the contractors have done for the drainage on the property. She feels Mr. Dow maintains the roads there and believes that this will be a much better drainage system for this area. Alt. Member Richards agrees.

VC Abbott made the motion to grant the variance of Public Hearing Case #2022-8: Property owners Frank and Janice Tkacik are requesting a variance from Article IV, Table 2 to build a garage within the road setbacks, being 15' from the side boundary line abutting the fire road. The owners have improved drainage on the property as was partly the reason for the ZBA denial on September 16, 2021. The property is located at 267 Hemlock Dr, Map/Lot 121-040, in the Residential Lake Zone.

- a. **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 and the applicant has adjusted their property drainage accordingly.**
- b. **The spirit of the ordinance would be observed because in performing the requested construction the character of the neighborhood will not adversely be affected.**
- c. **By granting of the variance substantial justice will be done because the property owner will be able to utilize their yard fully in all the ways that they have chosen to use it.**
- d. **The Board saw no evidence presented and formed the opinion that granting the variance would not create the diminution of values 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 is sits on a relatively steep slope and significant modification to the terrain was required to accommodate the change that they sought, distinguishing it from other properties in the area.**
 - i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to this property because the owners have made special measures to adjust the drainage of the water so that it is all contained within drainage ditches and culverts and will not cause undue erosion.**

- ii. The proposed use is a reasonable one because the property can be completed and used as the property owner is intended to use it.

With the following conditions:

1. All water control measure be done by Robert Dow, General Contractor and his subcontractors must be completed according to the plan that they have described to the Board.
 2. The new construction of the garage may not be used as living space.
- Member Onion seconded. Motion passed 5-0

VC Abbott made the motion to grant the variance of Public Hearing Case # 2022-9: Property owners Eileen Hertel and Arnold Parseghian and Wayne Parseghian are requesting a variance from Article IV, Table 2 to build a shed within the side setbacks, being no closer than 3' from the boundary line. The property is located on 14 Whispering Pines Road, Map/Lot 106-019, in the Rural Zone.

- a. 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 property owner may use the property and allow for the construction of a replacement septic and still store their recreational materials in a safe way and the character of the neighborhood will not be adversely affected as a result.
- c. By granting of the variance substantial justice will be done because the applicant is seeking storage similar to storage that's already in place on their abutting neighbor's property and the abutting neighbor approves of their plan and it will allow improvement of the septic disposal that will benefit the water quality of the lake.
- 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 owners seeking it, owing to special conditions of the property, that it was originally constructed as a camp and within the setback from the lake and additional structures were placed on the property which left them with few options for neat storage of equipment, distinguishing it from other properties in the area.
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application to this property because the property owner has the need to upgrade their septic system in the coming years and a different location for this storage shed would impede their options and that effort.
 - ii. The proposed use is a reasonable one because it allows them to enjoy their property more safely and with better protection for the environment and the lake.

With the following conditions:

1. The storage shed may not be used as residential space.

2. The shed will not be larger than 12' x 26'.

Member Smith seconded. Motion passed 5-0

Case #2022-10: Agent Eckman Engineering LLC on behalf of property owner Georges Realty, LLC is requesting a variance from Zoning Ordinance Article VII, Table C.1(b) to build a single-family dwelling in the front and side setbacks, being 18' from both side property lines and 20' from the front property line. The property is 0.14 acres located on Tamarack Trail, Map/Lot 132-099, in the Residential Lake Zone.

Member Onion had concern with Georges Realty selling and if the new buyers would be free to build anything else on the property, or if they would be stuck with the plans that are in place. VC Abbott stated yes, only if they put conditions on the approval and then it would be registered with the deed. Additionally, Chair Hackett stated that building on a Class V Road would be forwarded to the Planning Board and Selectmen. Member Teunessen is concerned approving this not knowing if Planning will bring the road up to code. His recommendation is to wait for Planning Board's decision. VC Abbott clarified they are only discussing approval for them to build the house within the setbacks in this case. Chair Hackett stated she intends to speak to the Selectmen and request to have the Fire Chief, Police Chief, and Road Agent give their input when applications are received in regards to location and roads. VC Abbott stated this is an existing non-conforming, pre-zoning subdivision.

VC Abbott made the motion to grant the variance of Public Hearing Case#2022-10: Agent Eckman Engineering LLC on behalf of property owner Georges Realty, LLC is requesting a variance from Zoning Ordinance Article VII, Table C.1(b) to build a single-family dwelling in the front and side setbacks, being 18' from both side property lines and 20' from the front property line. The property is 0.14 acres located on Tamarack Trail, Map/Lot 132-099, in the Residential Lake Zone.

- a. **Granting of the variance would not be contrary to the public interest because of the health, safety, or welfare of the public will not be threatened.**
- b. **The spirit of the ordinance is observed because a lot of record can be utilized for a residential property and character of the neighborhood would not thereby be adversely affected.**
- c. **By the granting of the variance substantial justice will be done because the building lot of record will be usable with a reasonable adjustment and intrusion into the setbacks.**
- 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 is in a sloping area and that there is a swale through it. However, it also has buildable area that is outside the boundaries of well radii and septic radii for neighboring properties distinguishing it from other properties in the area.**
 - i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the lot is a pre-existing lot of record and the expectation of the creators of the lot was to place a dwelling upon it.**

- ii. The proposed use is a reasonable one because a modest dwelling can be serviced by an advanced enviroseptic system, which will serve to protect the environment and the lake's water quality.

With the following conditions:

1. This approval is conditioned upon the approval of Case # 2022-11 and also the approval of the Selectmen for construction on a Class VI Road.
2. The drainage plan provided by Eckman Engineering must be reviewed and approved by an independent storm water drainage professional. The storm water drainage professional will be selected by the Gilmanton ZBA and the service to provide the report on the plan will be at the cost of the applicant. This must comply with the plans offered to the ZBA, namely the septic plan, drainage of the lot with diversion into the road, and the setbacks as presented by Eckman Engineering in the variance.
3. Any residence constructed on this property will be a single-family residence not closer to the road than 20' nor closer to either side boundary than 18'. The dimensions of the structure shall not exceed 24'x 36'.

Member Onion seconded. Motion passed 3-2

Public Hearing Case #2022-11: Agent Eckman Engineering LLC on behalf of property owner Georges Realty, LLC, is requesting a variance from Zoning Ordinance Article VII, Table C.1(a) to build a single-family dwelling on a lot having no class V road frontage. The property is 0.14 acres located on Tamarack Trail, Map/Lot 132-099, in the Residential Lake Zone.

Members discussed roads and difficulty of roadway decisions. There is a home directly across from this property and there may be another home built beyond that. A decision was made previously to discontinue roadways that were unpassable, but there are quite a few miles that get maintained.

VC Abbott made the motion to grant the variance to Public Hearing Case # 2022-11: Agent Eckman Engineering LLC on behalf of property owner Georges Realty, LLC, is requesting a variance from Zoning Ordinance Article VII, Table C.1(a) to build a single-family dwelling on a lot having no class V road frontage. The property is 0.14 acres located on Tamarack Trail, Map/Lot 132-099, in the Residential Lake Zone.

- a. 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 will be observed because Tamarack Trail services at least one other house and the character of the neighborhood will not be adversely affected.
- c. By granting the variance substantial justice will be done because the applicant has recognized deficits in the property and is willing to construct suitable drainage and other modifications to make the property usable and accessible.
- d. The Board saw no evidence presented and formed the opinion that granting the variance would not create diminution of the value of 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 is an

old lot of record with limited space, yet with sufficient distance from neighboring wells and septic systems to allow construction, distinguishing it from other properties in the area.

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application to this property because the lot is a lot of record pre-dating zoning and the applicant has made substantial proposals to compensate for the deficits in the property.
- ii. The proposed use is a reasonable one because the district is a subdivision of residential houses on small lots.

With the following conditions:

1. Before the applicants proceed, they must receive permission from the Selectmen for approval of their building permit on a Class VI Road.
2. The applicant must contact the road maintenance entities for that area of Shellcamp Lake, gaining their approval to use the road year-round and to see that it is maintained.
3. To the degree that the applicant wishes to upgrade the road they must gain the approval of both the Selectmen and the Shellcamp Lake Association.

Member Onion seconded. Motion passed 3-2

VC Abbott made the motion to grant the variance of Public Hearing Case #2022-6: James E. Rooney, Jr. property owner, is requesting a variance from Article VII, Section C.1 to build a single-family dwelling on a non-conforming lot that does not have frontage on a Class V Road or better. The property is located at 24 Intervale Dr, consisting of 1.885 acres, known as map/lot 130-045, located in the Rural Zone.

- a. 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 applicant has ample space to build a single-family home and the character of the neighborhood will not be adversely affected.
- c. By the granting of the variance substantial justice will be done because the lot which is both accessible and spacious, can be used by the applicant as a residence.
- d. The Board saw no evidence presented and formed the opinion that granting the variance would not create diminution of value of 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 is sits in an underdeveloped portion of an old subdivision and the applicant has overcome this condition by acquiring several abutting properties and making one large lot and this distinguishes it from other properties in the area.
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision in this specific application to this property because the applicant is planning a modest structure within the setbacks in a relatively level upland portion of the property.

- ii. The proposed use is a reasonable one because the space is ample for a modest single-family dwelling and the applicant has shown the capability of creating this dwelling.

With the following conditions:

1. Prior to initiating construction, the applicant will gain a state septic approval plan and submit the plan to Bre Daigneault at the Town Offices.
2. The applicant will supply a revised plan or sketch showing the new dimensions of the actual dwelling to be 20'x 32' instead of 20' x 30' and the actual position of the building.
3. The applicant is required to gain approval for his building permit on the Class VI Road, Intervale Avenue, which he must do from the Board of Selectmen.

Member Teunessen seconded. **Motion passed 5-0**

APPROVAL OF MINUTES – February 10th, 2022, February 17th, 2022

Member Onion made the motion to accept the minutes as amended. Member Smith seconded. **Motion passed 5-0**

Member Teunessen made the motion to adjourn. VC Abbott seconded. **Motion passed 5-0**

Elizabeth Hackett, Chair