



**TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, SEPTEMBER 21, 2023 – 7 PM
ACADEMY BUILDING, 503 PROVINCE ROAD
603-267-6700 ext. 122
www.gilmantonnh.org**

MEETING MINUTES APPROVED

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

Chair Hackett appointed Member Zannah Richards as a full voting member for tonight's meeting with the absence of Member Mike Teunessen.

Members present included Chair Betty Hackett, VC Nate Abbott, Members Perry Onion, Leslie Smith and Zannah Richards. Chair Hackett explained the rules and procedures of the Board.

NEW BUSINESS

Public Hearing Case # 2023-14: Property owners Justin Chojnacki is requesting a variance from Article VII, Section C:1-a to build on a parcel having no frontage on a class V road or better. The property is located on Locust Ave, known as map and lot #119-053 located in the Residential Lake Zone.

The applicant was not present and didn't have anyone present representing him. The case was tabled to the end of the meeting.

Administrative Decision Appeal Case # 2023-15: Property owners James Virgin & Melanie Maheux, represented by Timothy Britain of Cleveland, Waters, and Bass, are seeking an appeal of administrative decision on the grounds the Town Community Development Director erred when determining the property has no class V road frontage. The property is located on Canaan Rd, known as map and lot #411-015 located in the Rural Zone.

Atty. Britain asked if the board could rule on the administrative decision before the last item on the agenda for the variance. If the administrative appeal is upheld then they do not need to move forward with the variance. Mr. Virgin & Ms. Maheux filed for the variance prior to seeking counsel. Atty. Britain stated they believe Canaan Rd, as it abuts the applicant's property, is class V not class VI. A letter was submitted on Aug. 24th supporting both applications. A number of exhibits were also filed. The applicants want to build a 3 bedroom home on the property. Atty. Britain states that the tax card shows they are being taxed for a building lot of 2 acres out of the 40 acres on the lot. When the applicants filed their building permit, they had already received a driveway permit in July 2022 and a septic system approval by the Department of Environmental Services. The driveway is already roughed in. On June 13, 2023 the Community Director denied the building permit on the basis that the property was on a nonconforming lot and unbuildable as it did not meet the requirements of Article VII.C-1 or the zoning ordinance as it did not have 150 feet of frontage on a class V road. Atty. Britain believes the town records and other reasons indicate the road to the driveway is a class V road. When you measure from Lot #14 to the far edge of the turnaround it is 153 feet. Atty. Britain explained what is to happen in an Administrative Appeal. He read the public record from 1978 article 50 of the warrant article and stated it specifically mentions the turnaround at Joseph Gomes place, which is Lot #14. Atty. Britain states that the road from Rt 140 to the end of the turnaround is exactly the same. Both the road and the turnaround had been recently graded. They believe based on that 1978 vote, the condition of the property, and that the Town continues to

maintain up to the turnaround, that it is a class V road. The survey shows that the distance from the edge of the property to the turnaround is 153 feet, so it meets the conditions of the zoning ordinance of a conforming lot. He asked that the board, after looking at all the evidence, finds that this portion of road is class V and the applicants do have 150 feet on a class V road. VC Abbott asked if they had any other evidence to present or discuss for the end of the class V portion of the road. Atty. Britain stated they did an exhaustive search. He is confident that it is the turnaround from the 1978 warrant article. Chair Hackett read a statement from the road agent which states the area is not maintained to class V road standards. The turnaround was created by a prior road agent so that when they would plow the road, they could push the snow into the end and be able to turnaround. They do not agree that turnaround is to class V road status. She stated that the deed's reference to the property stops at an old fence line which is on the plan. There is nothing that clearly delineates, except what the deeds say, that the turnaround is part of a class V. It has not been maintained but some gravel and dirt has been put down so the plow trucks don't get stuck. This section of road is subject to gates and bars and she explained what that means. Member Richards states a picture provided clearly shows stakes before the turnaround. She questioned if the parcel was in current use. It was confirmed it is all in current use. She was curious as to how far the road agent pushes the snow into that circle. There was a question about the driveway permit as the exhibit they received was not signed by the road agent. Chair Hackett stated the tax card has a note from 2007 stating it is a class VI road and would need to be upgraded in order to build. Chair Hackett believes this would be information the Community Development Director relied on when making the determination that it is class VI. Atty. Britain stated there is no evidence of gates and bars. There are no town records indicating a line of demarcation ending the class V road at the property line of Lots #14 & #15. VC Abbott disputed Atty. Britain's assertion because previous road agents have changed the turnarounds in many locations in town when property condition changed and the location is no longer prudent. From what he saw there are several options in turning trucks around. He feels Atty. Britain anchored his argument on a temporary condition of where the dirt is today. Atty. Britain stands on the 1978 Warrant Article and the condition of the road. He sees no evidence from the Town that indicates anything to the contrary regarding discontinuance of the road at Lot #14 and feels that is an arbitrary line. He stated it is strange that the road agent would give a driveway permit to come off that road considering it was going to be a potential building permit and the applicants relied on that. Chair Hackett stated they have all been out to the site back in June, when the application was filed, and went out again just the other day. Joe Haas, a concerned citizen of the Town, stated he asked Paul Perkins, Road Agent, if he needed a driveway permit for a 95 acre parcel that he owned on Parsonage Hill Rd. He stated you have to go through the office. He states if people want a driveway on class VI road, they can do that. Member Onion motioned to close public hearing. VC Abbott seconded. **Motion passed 5-0.**

Public Hearing Case # 2023-16: Applicants Robert & Ileana Stone, on behalf of property owners Heather Stone & the Estate of H. Marie Seewald, are requesting a variance from Article VII, Section C to construct a shed on a non-conforming lot that does not meet setbacks. The property is located at 5 Bacon Way, known as map and lot #110-006, located in the Rural Zone. Chair Hackett read a letter from the owner, Heather Stone, to act on her behalf. The applicants gave letters from her neighbors as well. Mr. Stone stated they are looking for a shed as they have no way to store outside items due to the small lot size. He felt this will help the look of the property as there won't be items all over the place. Most of his neighbors have sheds for the same reason. There used to be a shed there that his grandfather took down. They would like to have the shed put in the current staked out location. Chair Hackett read the letters from the neighbors. Chair Hackett discussed the previous variance filed which was denied and the process because of that. She confirmed they are proposing a 10x16 shed and owner clarified 10x14. The location that is marked

is not as presented on the application as it is closer to the fence. It is also being put against the propane tanks and you can't have that. Mr. Stone stated those tanks are very old and a new company is coming out to relocate and provide them with new tanks. He also stated there is a big difference from their application compared to the 1991 case. One is he has removed 8 trees from the lot which created a more open space area. Chair Hackett stated there maybe an issue with the utility company as you cannot build anything under their lines. They should contact them. Mr. Stone stated they are not picky about the location but they just need a shed. Member Richards asked what is in their basement. Mr. Stone stated, based on its layout, you can not store gasoline or a snowblower. VC Abbott confirmed the property is lot 6. Chair Hackett explained the board needs to decide if they continue along with the application since the location of the shed is different from what is on the application. Chair Hackett feels they just need to submit a new plan if approved. Member Richards asked if what they saw marked out a different location. Chair Hackett stated that no, it is just different from the plan submitted. VC Abbott made a motion to make a determination on the likeness of this application to the prior application. If the board finds it is alike, we have to dismiss without prejudice and they will need to make a different application. If the board finds it is different from the application that was denied, we should say why we believe that and vote on it. He feels the following items have changed: the location of the driveway is different, there are more sheds in the area, and the two items cited in previous denial were snow removal, blockage of the driveway and fire hazard. The Fire Chief, Police Chief, and Road Agent have no concerns. The abutters in 1991 strongly opposed the application because it was a seasonal area. VC Abbott stated for those reasons he feels the board should find that the current application is sufficiently different from the prior application. Member Smith seconded. Member Richards stated for the record that the Stones use the property year round. She asked if the two properties beyond them use it year round as well. Mr. Stone stated no. Member Richards asked if the road is plowed all the way to the end and Mr. Stone stated it is. **Motion passed 5-0.** Chair Hackett stated if this passes, they submit a new plan showing where the shed would be going. Member Smith asked if we would grant it, but not fully, until we get the drawing. VC Abbott clarified they would put a condition on it. Member Onion motioned to close public hearing. VC Abbott seconded. **Motion passed 5-0.**

VC Abbott moved to table case #2023-14 for Justin Chojnacki to the meeting of October 19th. Member Onion seconded. **Motion passed 5-0.**

DELIBERATIONS

Administrative Decision Appeal Case # 2023-15: Chair Hackett stated there was a submittal from Atty Britain. She didn't see anything from the road agent and he states they don't consider that road as a class V. She read a note from the Community Development Director. Member Onion stated a lot hinges on the town vote from 1978. He feels that the language is very vague but it clearly states from the turnaround to Belmont is Class VI. He felt the turnaround was included in the class V portion, but the location of the turnaround is undetermined. Member Richards stated she saw the reference in the deeds to the lines and the road agent has stated he doesn't plow to class V standard but he is rather just pushing it as he needs a place to put it.

VC Abbott made motion of findings of fact:

1. The maintenance of the turnaround at the end of the class V portion of Canaan Rd supports no viatic use of Canaan Rd beyond the point N of lot #14.
2. The road agent believes that the town maintained portion of Canaan Rd ends at the northerly boundary of lot #14.

3. The applicant asserted the March 14, 1978 vote of the town specified nothing more accurate than from the turnaround by the Joseph Gomes place to the Belmont Town Line.
4. At the present time the board has not been shown where the turnaround by Joseph Gomes place was in 1978. The applicant assumes it was the same place that it is now.

Members discussed further. Chair Hackett feels it is this Board's job to go with what we have on record. According to the Town's records, this portion of the road is class VI. The deeds clearly state it stops at the property line. The applicant quoted our town record from 1978 which is very vague.

VC Abbott re-read his suggested finding of facts. He stated the Town is maintaining the turnaround just to maintain the part where the houses are built, not for where houses are not built. We haven't seen anything that accurately places where that turn around is. Member Richards seconded. **Motion passed 5-0 for findings of fact.**

VC Abbott stated this application deserves a full hearing and doesn't feel they are equipped to hear it as it is submitted. He doesn't feel the board has evidence to agree the Community Development Director erred because all the evidence that she has tells her where that boundary is. It seems there are bigger issues with the future of Canaan Rd and the applicant's property. He feels they need to refuse the appeal to get a full hearing on the application. The last time this property came before the board there was a lot of concern from the abutters on Canaan Rd. The Town is affected by maintenance if it is declared it is a class V road. He doesn't feel this gets a proper hearing if they just say the Community Development Director made a mistake.

VC Abbott made a motion to deny the application for relief of administrative decision. This will allow the variance to go forward. Chair Hackett stated VC Abbott made a motion to deny the appeal that Community Development Director did not err in her determination that the turnaround piece is not class V, it is class VI based on the information that is in the office. **Member Richards seconded.** Chair Hackett stated she has a problem with this board saying a house or whatever can be built on a property on a class VI road when it has to go to planning and the Selectmen. She feels it should go to Planning, Selectmen and then ZBA in that order. VC Abbott stated they have a contingent application. The first part is: "may we please have an appeal from administrative decision as we believe the Community Development Director erred by stating they had no frontage on a class V road"? The applicant states they have 150 ft of frontage on a class V road as it is the turnaround. He feels they have a disagreement and should be settled by hearing the variance. The applicant also filed for a variance if the appeal is denied. During the variance the board can then hear about the road, planning board and the selectmen. He is asking this board to deny the appeal so they can do their work properly and they can give the applicants a decision they can live with and last for a while. **Motion passed 5-0.**

VC Abbott asked to move the variance case under old business to be heard now as there are attorneys in attendance.

OLD BUSINESS

Public Hearing Case # 2023-13: Property owners James Virgin & Melanie Maheux are requesting a variance from Article IV, Table 2 to construct a single-family home on a parcel having no frontage on a class V road or better. The property is located on Canaan Rd, known as map and lot 411-015 located in the Rural Zone.

Atty. Britain commented regarding the appeal that the deeds in applicants' chain of title do not say it is a class VI road going forward. Neither do the property pins have any relevance of the boundaries in extent of a class V road and he will stand on the 1978 warrant article as best evidence of that. Best practice of the road agent is inconsistent with the actual vote of the Town. The vote of the town should control. There was a question of a signed driveway permit. The property record card states a driveway permit was approved. VC Abbott asked how the applicants applied for a driveway permit. Applicant James Virgin explained how he obtained a driveway permit. Mr. Virgin furthered explained improvements he made to the turnaround, including sand, gravel, and the removal of large boulders with the agreement from the road agent. VC Abbott stated he felt the case should be continued until the Community Development Director could be in attendance. Atty. Britain stated he would like the Road Agent there as well. VC Abbott felt the case could be continued to allow both the applicants and the board to further review the case and the location of the class VI road. Atty. Britain asked for a moment to confer with his client. Atty. Britain stated his client and himself would like the road agent and the Community Development Director in attendance. They would like to continue the hearing until November. Member Onion asked if the continuance was going to include witnesses for the appeal. Chair Hackett stated no. That case has been closed. The continuance will be on the variance only.

VC Abbott motioned the present case #2023-13 be continued to November 16 and a special provision made to have the road agent and the Community Development Director in attendance. Member Onion seconded. **Motion passed 5-0.**

DELIBERATIONS

Public Hearing Case # 2023-16: Chair Hackett stated the board decided this case was different from the previous case as the driveway is open, the trees are gone and the shed size is different. Member Richards stated the lot is very tight and at some point, this is something you have to consider. VC Abbott noticed the other two sheds in the area and is not sure how they got there. He looked at the old denial and the board's concern of congestion of vehicles and fire. In this application the biggest supporter is the neighbor to which the gas tanks are the closest. Member Richards did have a conversation with a neighbor who was not happy about it. VC Abbott stated the neighborhood now seems to have sheds on any property that needs it. In the old case it was clear that neighbors did not want them at all.

Member Abbott made the motion on Case #2023-16:

Applicants Robert & Ileana Stone, on behalf of property owners Heather Stone & the Estate of H. Marie Seewald, are requesting a variance from Article VII, Section C to construct a shed on a non-conforming lot that does not meet setbacks. The property is located at 5 Bacon Way, known as map and lot #110-006, located in the Rural Zone.

- 1. Granting the variance would not be contrary to the public interest because residents in the area frequently have similar sheds.**
- 2. The spirit of the ordinance would be observed because the applicant finds inadequate space for maintenance items that create an eyesore when not stored.**
- 3. Granting the variance would do substantial justice because the size of the home is very small and there is little space for storage.**
- 4. The values of the surrounding properties would not be diminished as written submissions by abutters were all in favor of the applicant's plan.**

5. Unnecessary Hardship:

- a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - i. There is a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because the property is not only small but tapers toward the driveway.
 - ii. The proposed use is a reasonable one because items for property maintenance may be kept out of sight, improving the appearance of the property.

With the following conditions:

- 1. The applicants must submit a plan that is specifically distinct from the July 1991 application and showing all of agreed-to adjustments in location.**
- 2. Propane Tanks must be relocated as described by the applicant.**

Member Onion seconded.

Members Richards asked how this is different. There was discussion among the member of the difference of the two applications.

Motion passed 4-1

APPROVAL OF MINUTES – June 15, 2023

Member Richards motioned to accept as amended. Member Smith seconded. **All in favor 5-0.**

Member Richards motioned to adjourn. VC Abbott seconded. **All in favor 5-0.**

Elizabeth Hackett, Chair