



**TOWN OF GILMANTON
ZONING BOARD OF ADJUSTMENT
THURSDAY, OCTOBER 20, 2022 – 7 PM
ACADEMY BUILDING, 503 PROVINCE ROAD
603-267-6700 ext. 122
www.gilmantonnh.org**

APPROVED AS AMENDED

MEETING MINUTES

Members present included Chair Elizabeth Hackett, Members Mike Teunessen, Perry Onion and Alt. Member Zannah Richards, along with staff Bre Daigneault and Lauraine Paquin.

Members of the public included Patrick and Stephen Sampson, Jeffrey Clark and Miriam Perkins, Patricia and John Baldi, Charles and Lori Umanita, Michael Fogg, John Weber and Susan Grenier and guest.

Chair Hackett called the meeting to order at 7:02 pm and explained there were four members present at this meeting. Zannah Richards, alternate, was made a voting member. There would need to be three votes in favor for a variance to be granted. Chair Hackett explained the procedures and processes of the hearing.

NEW BUSINESS

Chair Hackett read a letter from the Conservation Commission regarding all items on the agenda. The commission saw no problems. She read another letter from the Cemetery Trustees stating they don't know of any cemeteries near these properties. Road Agent, Fire Department and Tax Collector have no concerns with the properties on this agenda.

Public Hearing Case # 2022-15: Property owners Patrick and Erica Sampson are requesting a variance from Article IV, Table 2 to replace and enlarge an existing deck 61' from a waterbody and 16' from the side boundary line. The minimum setback from a waterbody is 75' and side boundary is 20'. The property is located at 115 Lakeshore Dr, Map/Lot 132-004, consisting of .21 acres, located in the Rural Zone.

Mr. Sampson stated the existing deck, 8'x10', is rotted and he would like to replace it with another deck 8'x30', which is the length of the house. He does have a permit from the State for a 50' approval from the water body. He stated the tax maps online are incorrect where it is showing his side boundary line. Chair Hackett asked where the stairs will be located. Mr. Sampson stated they are going straight down towards the water but not extending past the 8'. Member Richards clarified the current size of the deck and measurement from the house. Member Onion asked if the deck will have spaces for drainage. Mr. Sampson stated there will be about 1/16th inch between each board and will probably put a gutter up due to the roof pitch. Chair Hackett asked if there will be an overhang and Mr. Sampson stated there will not be. Chair Hackett asked if he would have an issue if they condition this to never be enclosed and Mr. Sampson stated he would not have an issue.

Member Teunessen made the motion to close public hearing. Member Onion seconded. **Motion approved 4-0.**

Public Hearing Case # 2022-16: Property owners Jeffrey Clark and Miriam Perkins are requesting a variance from Article IV, Table 1, to construct a garage on vacant land prior to the construction of a dwelling. The property is located at 126 Sawtooth Rd, Map/Lot 410-041, consisting of 83.86 acres, located in the Rural Zone.

Mr. Clark mentioned the building of the house is delayed due to the architect but the builder for the garage is available now. Once the garage is built, they would like to use the garage to store the materials for the house during construction. Member Richards asked if the 1st driveway was part of their parcel. Mr. Clark stated that was the area the loggers used. Member Onion asked if the driveway was going to the flat spot. Mr. Clark stated you go about 120' up to the area that flattens out after you crest the hill. Member Onion asked about the utility lines. Mr. Clark stated they are hoping to bury them. Ms. Perkins stated NHEC will come out to look at the job once the foundation is in.

Member Richards made the motion to close public hearing. Member Onion seconded. **Motion approved 4-0.**

Public Hearing Case # 2022-17: Property owner Patricia Baldi is requesting a variance from Article IV, Table 2 to construct an Accessory Dwelling Unit (ADU) against the side boundary line, where the setbacks require 20'. The property is located at 299 Crystal Lake Rd, Map/Lot 111-005, consisting of 3.3 acres, located in the Rural Zone.

Mr. Baldi stated they were looking to build an ADU for his father-in-law. Chair Hackett asked about the patio, as that pushes the ADU to the property line. Mr. Baldi clarified it is a concrete walkway, not a patio. Chair Hackett made note that the sheds have been moved from this location. She sees the ADU is going to be about 683 sq ft. She mentioned there is a 35' height requirement but it looks like the roof level will be about 22'. The plan only shows the 1st floor, so she asked if the bedrooms will be on another level. Mr. Baldi stated they have no plans to put bedrooms on the second floor as it will be storage and the 1st floor will have a living area, kitchen, bath. Member Richards asked if this will be more like a studio and asked where will the stairs go. Builder Fogg stated the stairs will have a platform in the middle to go up and down and the basement will be a 3' crawl space. Member Richards stated the building is going to be a 30'x20' and she can't imagine how it is going to fit in that area. She asked about the hill. Mr. Baldi stated it will go 30' back and a little into the hill area. Builder Fogg stated they are going to try and level that area out so they can push the ADU back and have it fit better to grade for the entrance. He is looking to also cut the walkway area narrower to make the ADU.

Member Richards asked if the fence between the properties is the actual boundary and Mr. Baldi stated, "yes". Member Richards wanted to see how close the ADU will be to the boundary and Mr. Baldi stated it will be very close. Builder Fogg mentioned they have gotten the shoreland permit done and they suggested a 2' boundary. Builder Fogg would like to see it pushed further out than that. Member Richards was concerned about the water coming off the hill. She asked about the 2nd floor and the plan looks like there will be space above that and Mr. Baldi stated there will not be. Builder Fogg stated the 2nd floor space was to be utilized for storage.

Member Onion questioned that if there is no bedroom, why is this not just another building. Chair Hackett stated they have gotten a DES septic and Staff Daigneault stated DES has a 2 bedroom minimum. Member Onion asked what makes this a dwelling and Staff Daigneault stated the living area. Chair Hackett asked if the septic accommodates both dwellings. Mr. Baldi stated his current septic will accommodate both. Staff Daigneault mentioned that the DES document states 2 bedroom with a 1 bedroom ADU. Builder Fogg stated they can use the current septic but are required to have a septic design if their current septic fails.

Member Onion stated that the ADU and shed are a large swath of impervious area. He asked Mr. Baldi to explain what system they currently have to keep the water in control. Mr. Baldi stated it is designed to have all the water that comes off the back hill into the yard into drainage that goes down the left side to the driveway. Builder Fogg asked the board not to forget that the shoreland approval from the state means he passed all requirements. He also explained about building the ADU in

92 today's world. Member Richards stated this lot does not have a lot of acreage and with the hillside
93 behind it, the impact from the water is a major factor for her. Mr. Baldi stated when they had the
94 house built the board had them address the water.
95 Member Onion asked if there will be enough room to fix the structure if you are only 1 or 2' off the
96 boundary line. Builder Fogg believes the fence will have to come down for construction and then be
97 put back up. He would like to make the walkway only 3ft wide and move the ADU over. Chair
98 Hackett stated the plan from Mr. Scott Bailey is not to scale. If this is approved, a new plan will need
99 to be submitted to scale. Mr. Baldi thought it was to scale and wondered if when he brought it to
100 staples to be printed it somehow had gotten messed up.
101 Abutter Lori Umanita stated she and her husband overall support this but do ask for a few conditions.
102 One condition is to never allow this to be a rental property, as they have the liability for the beach.
103 They own the beach but others have rights to use it. Second condition is the fence will be replaced
104 with equal or better anytime the fence needs to be removed or is damaged. Chair Hackett stated if a
105 variance is approved, that variance stays with the property, not the owners. Chair Hackett stated the
106 board has no purview for the beach. Staff Daigneault stated the beach rights would have to be done
107 as a private matter. Chair Hackett stated they can condition it for the father and if that was to change,
108 they would have to come back to the board. Staff Daigneault mentioned that the current ordinance
109 states either the primary residence or the ADU has to be owner occupied. Member Richards stated
110 our current ordinance states the square footage to be between 300-1000 sq feet and if the upstairs was
111 finished it would be above the acceptable square footage. Staff Daigneault clarified that the 1000 sq
112 ft in our ordinance is for habitable living area.
113 Member Onion asked for clarification of the 2nd condition. Ms. Umanita stated to replace it if it gets
114 damaged to equal or greater value and put it back into the same location it was taken out of. This is
115 for any time, not just this one time of construction. Chair Hackett stated if this is approved, they
116 would condition this to a 5' separation from the property line or fence. Builder Fogg stated it could
117 be doable.
118 Mr. Umanita stated the water runoff that comes off their property goes to a culvert on the street that
119 no longer works, so it is not diverting the water properly. He has contacted the road agent and
120 nothing has been done to fix it. Member Richards was concerned about the height. Builder Fogg
121 stated if it is just storage he could put in a few windows rather than having just a big enclosed plain
122 front.
123 Member Onion made the motion to close public hearing. Member Richards seconded. **Motion**
124 **approved 4-0.**

125
126 **Public Hearing Case # 2022-18:** Property owners John and Doreen Weber are requesting a variance
127 from Article IV, Table 2 to replace and enlarge a deck 13' from the road front boundary line, where
128 the setbacks require 35'. The property is located at 52 Justamere Ln, Map/Lot 110-051, consisting of
129 .22 acres, located in the Rural Zone.

130 Chair Hackett read a letter of support from an abutter for the property owners.

131 Mr. Weber stated he would like to replace the original deck. He is looking to make it two feet wider
132 for safety reasons. This will allow for a larger area coming out the door and for chairs. This is a
133 private road and he is the last house on the road. Chair Hackett clarified that the current deck is
134 8'x28' with the stairs coming off the front and side. Mr. Weber stated he would like to make it
135 10'x32'. Member Richards asked if he is going to keep the steps to the road and Mr. Weber replied,
136 "yes". Member Richards asked about the block foundation. They are hoping to bury it to fill in the
137 driveway. Member Richards asked if he would object to negating the front steps. Mr. Weber replied,
138 "he would".

Member Onion made the motion to close public hearing. Member Teunessen seconded. **Motion approved 4-0.**

Public Hearing Case # 2022-19: Property owners John and Doreen Weber are requesting a Special Exception to replace an existing deck 15' from the road front boundary line, where the setbacks require 35'. The property is located at 52 Justamere Ln, Map/Lot 110-051, consisting of .22 acres, located in the Rural Zone.

Staff Daigneault explained this is for a special exception to replace in kind if the Webers are not granted a variance under Case #2022-18.

Mr. Weber stepped away. The issue will be revisited after the next case.

Public Hearing Case # 2022-20: Property owner Susan Grenier is requesting a variance from Article IV, Table 2 to construct a shed 6' from the rear property boundary, where the setbacks require 20'. The property is located at 10 Bear Ave, Map/Lot 120-051, consisting of .14 acres, located in the Residential Lake Zone.

Ms. Grenier stated she wrote a book about this house that has been in her family since 1959. The property is small so she doesn't have storage. Chair Hackett clarified that Ms. Grenier is looking to put a 10'x14' shed in the back part of the property. She was concerned that Ms. Grenier would have to cut into the hill, but it looks as if the shed will be placed in front of the hill. Ms. Grenier stated she may put the shed into the hill a little bit and may change it to 10'x13'. Chair Hackett stated she has made the setback from both roadways so it is just the back property line. Member Richards was concerned about some of the trees in the area of her shed. Ms. Grenier stated she just took down a massive tree. Member Richards suggested she may want to do some type of brick back on the hill. Member Teunessen stated the trees alleviate the water issue coming down the hill. They act as insulation to keep the roots intact.

Member Teunessen made the motion to close public hearing. Member Onion seconded. **Motion approved 4-0.**

Public Hearing Case # 2022-19 continued:

Chair Hackett clarified with Mr. Weber regarding his Case #2022-18 for a variance and Case #2022-19 for a special exception.

Member Teunessen made the motion to close public hearing on Case #2022-19. Member Onion seconded. **Motion approved 4-0.**

The board took a break at 8:36 pm. Board resumed at 8:44 pm.

Deliberation
Case #2022-15

Member Teunessen made the motion to approve the application in Case #2022-15, applicants Patrick and Erica Sampson, who are requesting a variance from Article IV, Table 2 to replace and enlarge an existing deck 61' from a waterbody and 16' from the side boundary line. The minimum setback from a waterbody is 75' and side boundary is 20'. The property is located at 115 Lakeshore Dr, Map/Lot 132-004, consisting of .21 acres, located in the Rural Zone:

- A. The granting of the variance would not be contrary to public interest because the board saw no impact to the health and safety of the people or surrounding properties.
- B. The spirit of the ordinance would be observed by the granting of this variance because the proposed use is a reasonable one, as the current deck is in a state of disrepair.

- 186 C. Substantial justice will be done by the granting of the variance as there are other properties in the
187 area with similar decks.
- 188 D. The Board saw no evidence presented and formed the opinion that granting of the variance would
189 not create diminution of value to the surrounding properties; rather, construction of the new deck
190 would be an improvement over the existing deck.
- 191 E. Literal enforcement of the ordinance would result in unnecessary hardship owing to special
192 conditions of the property that distinguish it from other properties in the area:
- 193 (i) No fair and substantial relationship exists between the general public purposes of the
194 ordinance provision and the specific application of that provision to this property in that this
195 property is located in an area where homes with access to a lake have decks that are used for
196 recreational purposes.
- 197 (ii) The proposed use is a reasonable one as the proposed deck will be safer and more
198 aesthetically pleasing than the current deck.
- 199 Condition – The proposed deck shall never be enclosed or used as living space.

200
201 Member Onion seconded. **Motion approved 4-0.**
202

203 Member Richards asked if there was a size restriction and there was not. Chair Hackett stated this
204 will be an 8'x30' deck replacing an 8'x12' deck. Member Richards clarified the steps were coming
205 down the side. Member Teunessen added they are not encroaching to the water.

206
207 **Case #2022-16**

208 Chair Hackett explained this is to construct a garage on vacant land at 126 Sawtooth Rd in
209 preparation of building the house when the architect finishes the plans. The garage is a 3 bay garage
210 with a size of 39x26.

211 Member Onion made a motion to approve the application in Case #2022-16, applicants Jeffrey Clark
212 and Miriam Perkins are requesting a variance from Article IV, Table 1, to construct a garage on
213 vacant land prior to the construction of a dwelling. The property is located at 126 Sawtooth Rd,
214 Map/Lot 410-041, consisting of 83.86 acres, located in the Rural Zone:

- 215 A. Granting a variance would not be contrary to public interest because the eventual house and
216 garage will offer no traffic or other problems to the public.
- 217 B. The spirit of the ordinance would be observed by the granting of this variance as this property
218 would eventually have no isolated structure.
- 219 C. Substantial justice will be done by the granting of the variance as new condition would be
220 temporary.
- 221 D. The board saw no evidence presented and formed the opinion that granting the variance would
222 not create diminution of value to the surrounding properties because it is so isolated.
- 223 E. Literal enforcement of the ordinance would result in unnecessary hardship owing to special
224 conditions of the property that distinguish it from other properties in the area as:
- 225 (i) No fair and substantial relationship exists between the general public purposes of the
226 ordinance provision and the specific application of that provision to this property because
227 the issue relates to a temporary status for the structure.
- 228 (ii) The proposed use is a reasonable one because it allows the grantees to build their house
229 more easily.

230 Advisement Condition – Completion needs to be within four years of this variance per the
231 ordinance. After the construction of the garage a building permit must be obtained within one
232 year for the house.
233

Member Teunessen seconded.

Member Richards asked if they don't start work in the 1st year does that negate the variance. Member Teunessen asked if they don't start the house after the garage is done what recourse is there. Staff Daigneault stated the variance expires four years from date of decision. The recourse would be the on the use of the building. If there is a property owner going against the ZBA variance then the ZBA can go to the selectman to start legal action to bring the property into compliance.

Motion approved 4-0.

Case #2022-17

Chair Hackett stated this case is Patricia Baldi requesting a variance at 299 Crystal Lake Rd.

Member Richards, said she really struggled with this property. She would like to have seen pins for exact location of the ADU. There is no real determination as to how close it will be to the fence and hill side. Chair Hackett stated it is 3.3 acres but it is all in the back as the lot is not wide. Is there an alternative as you are squeezing this 20'x30' into an area that has many obstacles. Chair Hackett asked if this is something the board can agree too. They need to look at density for the population on that lake, so should there be a condition for use of the handicap individual. Member Onion stated that the decision needs to go with the property, not the individual. Chair Hackett stated that is correct, we are to look at the use of the property first. Member Onion asked if down the road they are not seeing it as an ADU but more an addition to the property. This ADU is not fitting with his thoughts as to what an ADU is.

Member Richards stated the lake runoff is an obstacle. There is the massive hillside in many of the yards which have runoff which causes a road nightmare. Member Onion didn't feel there was any evidence presented to divert the water. Chair Hackett asked if the board is concerned enough to deny, is more information needed or are the board concerns able to get by with just conditions. Member Richards stated it would have made a difference if it was staked out to see how far back into the hill side and how close to the side as there is a lot of stuff on the property. Mike Teunessen stated they had a case on Sawyer Lake and the environmental concern was the massive amount of water coming off the hill being directed to the lake. The complaint here is the culvert is backed up. The reason that is happening is there is a lot of material going through it and the culvert can't handle it. Member Richards stated with all the water issues in that area, the board needs to look at that for this ADU. Mike Teunessen stated he would like more information. He is just not comfortable with the water issue not being addressed. Chair Hackett asked Staff Daigneault if there is something on the application stating that the area needs to be marked out. Staff Daigneault replied, "yes". Chair Hackett stated she does not like anything on a property line and that is why setbacks are there for a reason. Member Richards stated she would like more information. Chair Hackett stated at this point they would need to deny or motion for exact information. Chair Hackett stated what steps would need to be done next. Staff Daigneault suggested they continue the case and request possibly a stormwater management plan and exact placement for the next meeting. Member Onion suggested if they do continue, they should get a revised plan with more distance. Chair Hackett stated there is a problem with the plan so she would need a correct plan to get honest distance. Member Onion mentioned there have been a few distances mentioned, so can the board settle on a distance. Chair Hackett would not like to see less than five feet. Member Onion suggested the storm drainage system should include the area between ADU the other property.

Member Onion motioned to continue Case #2022-17. The commission needs to see the following:

- Stormwater Management & System

- Placement of ADU, 10' minimally off the side property line
 - Accurate plans submitted
 - Before the board reconsiders the case the exact location of the ADU flagged or marked
- Member Teunessen seconded.

Chair Hackett added that if the property owners can't get the stormwater management plan by the November 17th meeting, they can ask for an extension.

Chair Hackett stated that for all cases, if the area is not marked the case will automatically be continued.

Motion to continue approved 4-0.

Case #2022-18

Chair Hackett stated Mr. Weber is looking for a variance to increase his deck. If a variance isn't granted, then he is looking for a special exception to replace in kind.

Member Teunessen made the motion to approve the application in Case #2022-18, Property owners John and Doreen Weber are requesting a variance from Article IV, Table 2 to replace and enlarge a deck from 8'x28' to 10'x32', which is 13' from the road front boundary line, where the setbacks require 35'. The property is located at 52 Justamere Ln, Map/Lot 110-051, consisting of .22 acres, located in the Rural Zone:

- A. Granting of the variance would not be contrary to public interest because the board found there would be no impact to the health or safety of the general public or surrounding properties.
- B. The spirit of the ordinance would be observed by the granting of this variance as reconstruction of the deck would replace the current structure that is in a state of disrepair.
- C. Substantial justice will be done by the granting of the variance as there are other properties in the area that have similar decks with their homes.
- D. The board saw no evidence presented and formed the opinion that granting the variance would not create diminution of value to the surrounding properties, in that the new deck would be an improvement over the current structure.
- E. Literal enforcement of the ordinance would result in unnecessary hardship owing to special conditions of the property that distinguish 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 in that the new deck would be a marked improvement over the current structure.
 - (ii) The proposed use is a reasonable one as it seeks to improve the safety and the viability of the deck to the property and to those living in the home.

Condition – The deck will not be enclosed or used for general living purposes.

Member Onion seconded.

Member Richards stated she likes it when abutters send in statement saying it is ok or not. Chair Hackett mentioned she appreciates it when department heads send in comments as well.

Motion approved 4-0.

Case #2022-19

Member Onion made a motion to dismiss as not required because it has a conditioned variance on Case# 2022-18. Member Teunessen seconded.

Motion approved 4-0.

Case #2022-20

Member Onion made the motion to grant a variance in Case #2022-20, Susan Grenier is requesting a variance from Article IV, Table 2 to construct a 10'x14' shed 6' from the rear property boundary, where the setbacks require 20'. The property is located at 10 Bear Ave, Map/Lot 120-051, consisting of .14 acres, located in the Residential Lake Zone:

- A. Granting of the variance would not be contrary to public interest because there would be no change to traffic patterns or aesthetics of the area.
 - B. The spirit of the ordinance would be observed by the granting of this variance as the lot predates the ordinance and is part of the community design to have compact spaces.
 - C. Substantial justice will be done by the granting of the variance as the shed will enable occupants to store property safely and more aesthetically.
 - 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 because a neater appearance would mean the opposite.
 - E. Literal enforcement of the ordinance would result in unnecessary hardship owing to special conditions of the property that distinguish 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 shed will have no impact on the needs of the public.
 - (ii) The proposed use is a reasonable because most other properties in the area have sheds.
- Member Teunessen seconded.

Condition – The shed will not be made into living space.

Member Richards asked if they were taking any of the hillside into consideration. Chair Hackett stated she is putting it on the flat and not cutting into the hillside.

Motion approved 4-0.

OLD BUSINESS - None

APPROVAL OF MINUTES – August 18, 2022

Member Onion made the motion to accept the minutes of August 18, 2022 as amended. Member Teunessen seconded. **Motion Approved 3-0**

The next meeting is November 17, 2022.

Member Teunessen made a motion to adjourn at 9:43 pm. Member Richards seconded. **Motion approved 4-0.**

Elizabeth Hackett, Chair