



**FINAL**

## TOWN OF GRANTHAM NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENTS MEETING MINUTES

OCTOBER 24, 2019

300 Route 10 South, Grantham, NH 03753

Interim Chair Guillette called the meeting to order at 7:00 p.m., October 24, 2019, in the Jerry Whitney Memorial Conference Room located at 300 Route 10 South, Grantham.

### **Roll Call**

Present: Peter Guillette, Tanya McIntire, Andy Gelston, Peter Gardiner, Alternate Quinn Colgan, and Clerk Emily Owens. Interim Chair Guillette requested Quinn Colgan serve as a full member for this meeting.

Absent: Myron Cummings.

Public: James Billings, Shawn Hayward, Applicants Adam Howard and Janet Gilson, Tod Lloyd, Town Counsel Sheridan Brown, Selectmen's Representative Constance Jones, and Town Administrator Melissa White.

### **Approval of Minutes**

Interim Chair Guillette asked the board if there were any corrections or additions required of the minutes from September 24, 2019. Interim Chair Guillette made two corrections to add Peter Gardiner under the Public section and change the Adjournment section to reflect the proper names. Andy Gelston made a motion to approve the minutes with the previously mentioned changes, seconded by Peter Gardiner.

***Unanimously Approved***

### **New Business**

#### **Election of Chairman and other officers**

Present for voting are Peter Guillette, Tanya McIntire, Andy Gelston, Peter Gardiner, and Quinn Colgan. Interim Chair Guillette asked for nominations for Chair, Peter Gardiner nominated Peter Guillette, seconded by Andy Gelston. Tanya McIntire nominated herself for Chair, seconded by Quinn Colgan. A discussion followed with Board Member McIntire expressing concern about Peter Guillette having a potential conflict of interest with his serving on both the Zoning Board of Adjustments and Planning Board. Interim Chair Guillette felt there were no conflicts because the statutes are very clear, but if there were, he would step aside, and the Board would nominate an Interim Chair for that meeting. Interim Chair Guillette asked for each member to state their vote for either Peter Guillette or Tanya McIntire. The Board voted 5-0 unanimously in favor of Peter Guillette as the new Chair for the Zoning Board of Adjustments.

#### **Application #10-2019-01 for Variance from Article IX Section 8**

Variance: ZBA Case #10-2019-01; Adam Howard and Janet Gilson, 29 Cote Road; Map 241 Lot 004.

Next Chair Guillette opened the meeting for the Applicants Adam Howard and Janet Gilson to present their Variance application to the Board. Mr. Howard stated he would like to park his dump truck in his

yard. He considers the dump truck his commuting vehicle and would like to step outside his house and drive to work. Additionally, he would like to be able to service the dump truck in his garage. He defined servicing the vehicle as changing the oil, repairing hoses, greasing fittings, repairing brakes, and changing tires. Peter Gardiner asked what specific equipment was located in the yard. Mr. Howard stated he has the dump truck, excavator, and trailer. Andy Gelston mentioned shrubbery covering the area and him not seeing anything unsightly. However, he did have concerns about the equipment leaking fluids because the property is near the river. Mr. Howard and Ms. Gilson assured the Board that any leaks or spills would be cleaned up.

Chair Guillette asked if this was a home business and read the definition of a home business from the Grantham Zoning Ordinances Section IX. Based on his interpretation, this is not a home business because Section 8 specifically prohibits the equipment Mr. Howard is stating is part of his business in the rural district. Ms. Gilson clarified that they are not asking for a special exception; they are asking to be able to perform maintenance on the dump truck, excavator, and trailer and used the dump truck as a commuter vehicle. Mr. Howard does not understand why parking a vehicle at his residence is such an issue. Ms. Gilson clarified that the dump truck can be contained inside the garage and that every other aspect of the business is contained in the residence except the excavator and trailer.

Mr. Howard stated that when he purchased the property, he was led to believe that the house was in a commercial district because there were businesses that operated out of the residence previously. Tanya McIntire asked how the Zoning Ordinances can be applied because they state something can't be done. Chair Guillette asked they focus on the issue brought forth, not arguing about the Zoning Ordinance that the Town of Grantham voted on and approved.

At this time, Chair Guillette opened the meeting up to the public for comments. Shawn Hayward spoke that he thought the property Mr. Howard owned was also commercial. Additionally, he felt that the property looked clean and that a dump truck would not detract from the appearance of the area. James Billings, a neighbor directly across the street, spoke about how clean the property was, and he did not have a problem with the dump truck, excavator, and trailer. Lastly, Town Counsel Sheridan Brown provided a packet to the Board and spoke on behalf of the Town at the request of the Board of Selectmen. He stated that the property had been the subject of code enforcement action for a number of years because of the operation of a home business in a residential district dating back to 2015. Mr. Brown stated that the pictures clearly show that the house had numerous pieces of equipment parked or for sale at the residence. The property has been cleaned up, but only since this past year. Mr. Brown explained that this past year, the Town has dealt with other code enforcement actions in the same area, not just specifically 29 Cote Road. Mr. Brown stated that the corporation filing list an address of 29 Cote Road but the registered agent address is a property in Goshen that Mr. Howard no longer owns. The only business listed is 29 Cote Road and Mr. Brown argued that a commute is a back and forth trip to a consistent location. In his opinion, Mr. Howard is operating a home business out of 29 Cote Road in a rural district involving heavy equipment. Mr. Brown does not feel that Mr. Howard meets the requirement for a special exception for a home business because of the heavy equipment.

Next, Mr. Brown reviewed the 5 questions asked on the Variance Application and if Mr. Howard was able to meet the criteria. Criteria 1 states that the granting of a variance will not be contrary to the public interest. Mr. Brown is before the Board today to represent the public interests. To do that, the Town looks at the Zoning Ordinances as a reference to promote good civic design and development, preserve

the Town's character and environment, and ensure wise and efficient expenditure of the public funds. Mr. Brown stated that by granting this variance, it will be contrary to the public interest because enforcement of the code will be more difficult by the Town, and more residents in rural districts will decide to follow the same direction. The Town will have a difficult time deciding and proving what equipment is being stored, what equipment is being maintained, and what equipment is being used for commuting. There will be more ambiguity to the Zoning Ordinances and make code enforcement that much harder. Mr. Brown stated the Town has worked really hard to clean up areas where these types of issues are occurring and the only reason the Town has been able to do this is because the Zoning Ordinance is very clear. Mr. Brown also reiterated that maintaining a vehicle in their rural district is not allowed.

To summarize, public interest will be contrary because code enforcement will be more difficult and more residents will apply for the same variance. Criteria 2 asks if the spirit of the ordinance is still being observed and for the same reasons previously mentioned Mr. Brown stated that granting a variance would be against the spirit of the ordinance. Criteria 3 asks if substantial justice is being done and Mr. Brown stated that the OSI Board of Adjustment Handbook states in Roman Numeral II Section 13 substantial justice is done when a variance alleviates an injustice. An injustice is characterized by any loss to the individual that is not outweighed by a gain to the general public. In this case, Mr. Brown feels that preserving the Zoning Ordinances as they are written and intended by the legislative body of the Town helps alleviate an injustice,

Additionally, the justice must be supported by the Applicant meeting the other 4 criteria and the Board cannot alleviate an injustice by granting an illegal variance. Criteria 4 states that the value of surrounding properties must not be diminished. Mr. Brown stated that the burden to prove this criteria falls on the Applicant and the application fails to meet the other 4 criteria. However, Mr. Brown argues that if other rural residents follow suit then this will lead to a diminish of property values. Criteria 5 states that the special conditions of the property must provide an unnecessary hardship. Mr. Brown stated that all the properties in rural district 1 and specifically Cote Road have the same restrictions. The Applicant's address of 29 Cote Road does not have a different layout or setback that would make their property different in some way. Mr. Brown provided a handout from the Board of Selectmen to the Zoning Board, stating their opposition to granting a variance.

The Board reviewed the handout provided by Mr. Brown and Board Member Gardiner asked how recent the photos were. Mr. Brown replied that they were taken from 2015 through October of 2018. Ms. Gilson stated that the property looks beautiful now and Mr. Brown argued that the changes only occurred because legal action was threatened. Mr. Brown stated DES came out and investigated the property because they cut the shoreline. Included in the handout was the letter from DES dated October 31, 2018, stating that the property had indeed incurred violations, but since the area had been "properly loamed and seeded and there is no imminent threat of erosion or water quality violations, NHDES will take no further action relative to these issues at this time".

Board Member McIntire asked about the barn located on the property; that she believed was a fruit stand, and if this was a situation where the property might be grandfather as a business. Mr. Brown stated that a fruit stand is agricultural and not the same issue. Board Member Colgan stated that it did not matter if the residence has previously been used for a business unless the use was continuous.

Ms. Gilson clarified that most of the issues on the property were due to renovation prior to October 2018 and have since stopped because they completed renovations. She stated that Mr. Howard and herself

worked with DES to resolve the issues that they unknowingly created. She stated they submitted a building permit with the enlarged garage door and it was approved, so she is unclear as to what the issues are with the garage. Ms. Gilson stated that the entire process has been stressful and not a cooperative process. Ms. Gilson stated that the registered agent address on file is just an error and will be corrected.

Mr. Brown addressed the concern of this being an overly punitive process and stated that is not the case. However, sometimes, the enforcement of the Zoning Ordinances through legal means is the only way that change occurs to a property. Without clear Zoning Ordinances, there is concern that the property will return to the previous state. Ms. Gilson stated this is not a gateway to returning the property to its previous state; all they are asking for is to park and maintain a dump truck, excavator, and trailer.

Chair Guillette closed the public session and restated that the application is to park a dump truck, excavator, and trailer on a property zoned as a rural district. Several board members were still unclear if this is a home business. Mr. Brown stated that the application was completed accurately because Mr. Howard is requesting a variance from the Zoning Ordinance Article IX Section 8. Mr. Brown stated this is not a special exception for a home business because he has the heavy equipment on-site and doesn't meet the home business requirements. Mr. Brown clarified that a home business special exception can be obtained with the exception of having heavy equipment, so in essence, Mr. Howard is requesting a variance from Section 8 of the Home Business requirements. However, he reiterated that the position of the Board of Selectmen is that a variance not be granted.

Board Member McIntire requested that the Board table the discussion until the next meeting so she can read through the handout provided by the Town. Chair Guillette entertained the motion, Board Member Colgan made the motion, and Board Member Gelston seconded the motion. Chair Guillette will speak with other towns that have had similar issues and ask how they ruled. **The motion passed 3-2.** Mr. Howard was told at this time that there are no additional applications that need to be completed.

### **Old Business**

#### **Adjustment of Zoning Board Application Fees**

Town Administrator White presented a Memo detailing the application fees of surrounding towns. The request was for an increase from \$75.00 to \$150.00; the last increase occurred roughly twenty years ago. Town Administrator White will find out the legal requirement for the Zoning Board approving an increase in the fees.

### **Other Business**

**Andy Gelston made a motion to enter non-public session under RSA 91-A:3, II, (I), Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present, seconded by Peter Gardiner. Chair Guillette conducted a Roll Call of all Present Members, a vote was taken to enter the non-public, and all Board Members indicated "Aye," affirming the entering of the non-public. Non-Public Entered 8:30 p.m.**

The Board entered a Non-Public Session under RSA 91-A:3, II, (I), Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

**Quinn Colgan made a motion to exit non-public session, seconded by Peter Gardiner.**

**Non-Public Exited 8:43 p.m.**

**Tod Lloyd – Alternate ZBA**

Town Administrator White introduced Tod Lloyd as a potential alternate for the Zoning Board of Adjustment. He was a Library Trustee and interested in becoming an alternate board member. The Board welcomed him to the group.

**Adjournment**

Chair Guillette stated there being no further business a motion was made by Andy Gelston and seconded by Quinn Colgan to adjourn the meeting at 8:54 p.m.

The next meeting of the Zoning Board is scheduled for November 21, 2019, at 7:00 p.m. in the Jerry Whitney Memorial Conference Room of the Grantham Town Hall.

Respectfully Submitted,

Emily Owens, ZBA Clerk