



FINAL

TOWN OF GRANTHAM NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENTS MEETING MINUTES

NOVEMBER 21, 2019

300 Route 10 South, Grantham, NH 03753

Chair Peter Guillette called the meeting to order at 7:00 p.m., November 21, 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 Tod Lloyd, and Board Clerk Emily Owens. Chair Guillette requested Tod Lloyd serve as a full member for this meeting.

Absent: Alternate Quinn Colgan and Myron Cummings. Chair Guillette mentioned Alternate Quinn Colgan resigned from his position and Myron Cummings passed away on October 31st. He praised Mr. Cummings for his many years of service to the Town of Grantham and stated that his dedication will be missed.

Public: Applicant Dean K. Lizotte, Penny Palmer, James Ward, Shawn Hayward, Applicants Adam Howard and Janet Howard, Grantham's Code Enforcement Counsel Sheridan Brown, Selectmen's Representative Constance Jones, and Town Administrator Melissa White.

Approval of Minutes

Chair Guillette asked the Board if there were any corrections or additions required of the minutes from October 24, 2019. There being none, Peter Gardiner made a motion to approve the minutes, seconded by Andy Gelston. ***Unanimously Approved***

New Business

Application #11-2019-01 for Variance from Article V Section A

Variance: ZBA Case #11-2019-01; Dean K. Lizotte, 19 Bouldervale Road; Map 242 Lot 013.

The application was withdrawn by the Applicant, Dean K. Lizotte, after Code Enforcement Counsel Sheridan Brown stated that the Board of Selectmen reviewed the property and recognized that the property has been under non-conforming use. The Board of Selectmen will provide a letter stating this matter and place a copy in the property file. Additionally, a copy will be given to Mr. Lizotte and the Board Clerk for the Zoning Board files.

Chair Guillette acknowledged resident Penny Palmer with a question regarding the storage units. She asked if the storage units decided to add a fence, high powered lights, a sign, and a security system would it then need a variance. Mr. Brown clarified that any changes to the property would require further approval.

Old Business

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.

The Applicant Janet Howard restated the purpose of the application is to allow the resident, Adam Howard, to park his commuting vehicle, a dump truck, at his residence and bring equipment on the property to maintain it, but not store it there. Janet has some concerns that every time the truck is parked at 29 Cote Road, during the day, the Town will take action against them.

The floor was open to the public for comments. Shawn Hayward spoke reiterating his support for Adam Howard and Janet Howard's application and he felt the approval of a variance is all based on opinions. Next the Board heard comments from Town Counsel Sheridan Brown regarding the Office of Strategic Initiatives (OSI) and their opposition of granting a variance from a special exception. Chair Guillette asked if there were any other comments, there being none, he closed the public session.

Next, Chair Guillette opened up discussions from the Board. Board Member Lloyd had questions about regulations and designations. Town Administrator Melissa White suggested he come to her office so that she could answer his questions. Board Member McIntire stated that Mr. Brown clearly states in his letter that the Applicant can commute in any vehicle he chooses. She agreed that the Board can't grant a variance to an article in a special exception but had been in communication with OSI regarding the issue. She advised the Applicants to withdraw the application without prejudice and reapply under Article V-A, a (7) which allows "Non-profit landowner community association owned recreation, social, and health facilities including but not limited to regulation golf courses, outdoor or indoor tennis and racquetball courts, indoor or outdoor swimming pools, athletic fields and necessary administrative, maintenance or support facilities, which facilities must be within the boundaries of the contiguous planned residential development of not less than seventy-five (75) acres." Board Member McIntire thought that Route 10 should not be considered rural residential (RR1) and should be changed. Chair Guillette reminded the Board that the issue before them is not to change the RR1 designation of that area of Town. Board Member McIntire argued that the Town is implying that a home business is being run out of 29 Cote Road, but the Applicants have clearly stated that the business is located in a different town. Board Member Gelston argued that there is no reason for a business registered excavator or trailer to be parked on-site if they are not operating a home business at 29 Cote Road. Board Members McIntire and Gardiner stated that this process seems excessive for such a small issue.

Janet Howard had questions about withdrawing the application and what the differences would be between the application being denied and withdrawn. Board Member McIntire opinion that the issue is there is no home business being operated at 29 Cote Road, so she felt the Applicants should not be applying for variance from a home business. Mr. Brown argued that running a commercial business from someone's rural designated residence is not just a filing with the State but also a history of what equipment has been stored and the activities going on. He continued to elaborate that the Zoning Ordinance does allow for operating equipment not specifically listed in the Business and Business Light Industrial Districts with a variance. Lastly, Mr. Brown clarified that changing the district designation of only 29 Cote Road is called "spot zoning" and illegal, so the entire area of Route 10 would have to be changed. This is contrary to the Master Plan and would have to be approved by the Grantham voters. Finally, the last page of the Master Plan clearly indicates the desired protection of districts designated RR1.

Board Member McIntire argued that the speed limit should be changed on Route 10 to reflect a rural residential district. She stated that the road experiences speeds up to 90 mph and needs to be changed. Selectmen's Representative Constance Jones stated that she would ask to have the speed reduced and would request that the Grantham Police increase patrol in that area of Route 10. Additionally, Ms. Jones asked about changing the entire rural residential district to allow for more selling of items from resident's front yards. Currently, the Grantham Zoning Ordinances allows for three times per year, and Ms. Jones wanted to know if this should be increased. Board Member McIntire stated that she did not have an opinion on this matter. She argued that the Town currently has "spot zoning" in Eastman because they are allowed equipment to maintain their facilities. Mr. Brown clarified that these are cluster developments and non-profit organizations, neither of which 29 Cote Road is. Board Member McIntire asked why there have been no issues regarding a tractor at her residence and Mr. Brown responded that she was not running a business. Board Member McIntire argued that neither are the Howards, but Mr. Brown stated that by any reasonable standard they are. Town Counsel Sheridan Brown's legal perspective is based on the Grantham Zoning Ordinances that clearly define this as a commercial use in a rural residential district. Board Member McIntire continued to argue that the Applicants are not running a business. However, Mr. Brown stated that the property was renovated with a high bay garage strictly for the purpose of maintaining vehicles. Janet Howard clarified that the Town only sees one vehicle when the company owns seven. She stated they were sited at a time when they were bringing equipment in to renovate the property, and if they brought all their vehicles on the property the Town would know. Board Member McIntire stated her belief again that the Applicants should withdraw their application, use their dump truck as their commuting vehicle and the Town should leave them alone. Further, she feels that the issues mentioned here tonight should be brought before the Planning Board to be resolved.

Chair Guillette brought the meeting back to the application and asked what the Applicants wanted to do. Adam and Janet Howard decided to have the application voted on and a decision reached. Chair Guillette clarified that the application is for the parking of a dump truck during the evening and using the garage to maintain equipment. Board Member Gelston asked if the applicant is still looking to have the excavator and trailer brought on-site to be maintained. The Applicants clarified that the excavator and trailer would only be maintained and not stored.

Board Member Tod Lloyd asked to abstain from voting due to being new to the board and the complexity of the issues. As explained by the Chair, the vote is recorded as follows (support, against, abstention), and in the event of a tie the question will fail to pass.

1. Granting the variance would not be contrary to the public interest. Mr. Gelston felt granting the variance would be contrary to the public interest, Mr. Gardiner, Ms. McIntire, and Chair Guillette felt it would not be contrary to the public interest. (3, 1) **Approved**
2. The use is not contrary to the spirit of the ordinance. Mr. Gelston and Chair Guillette felt the use would be contrary to the spirit of the ordinance, Mr. Gardiner and Ms. McIntire felt the use would not be contrary to the spirit of the ordinance. (2, 2) **Fail**
3. Granting the variance would do substantial justice. Mr. Gelston felt granting the variance would not do substantial justice, Mr. Gardiner, Ms. McIntire, and Chair Guillette felt it would do substantial justice. (3, 1) **Approved**

4. The proposed use would not diminish surrounding property values. Mr. Gelston felt granting the variance could diminish surrounding property values, Mr. Gardiner, Ms. McIntire, and Chair Guillette felt it would not. (3, 1) **Approved**
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Question 5 parts a and b were voted on together. Ms. McIntire felt that enforcement of the provisions of the ordinance would result in an unnecessary hardship. She felt that granting this variance would not be correct because the Applicants are not running a home business. She changed her vote to reflect an abstention and Mr. Gardiner abstained. Mr. Gelston voted against approving question 5 based on his understanding of the Town of Grantham's Master Plan. Ms. McIntire argued that she is not here to enforce the Master Plan but instead provide people a life. Chair Guillette stated his position that there would be no unnecessary hardship. (0, 2, 2) **Fail**
 - a. For the purpose of this subparagraph, "unnecessary hardship" means that, 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 the property; and
 - ii. The proposed use is a reasonable one.
 - b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The criteria **failed** to pass, and as a result, the application for a variance is **denied**.

During discussions about why Board Member Gelston voted the way he did, he quoted the Master Plan's Land Use Section as stating "continue to discourage commercial and industrial activities from infringing upon residential neighborhoods." Board Member McIntire argued that the area is not rural residential but Mr. Gelston stated that the Town map has designated it as such. Ms. McIntire stated the map should be updated.

Adam Howard asked if this means he can park his dump truck at his house to commute to and from work. Board Member McIntire restated that Mr. Brown wrote in his letter that he can commute in whatever vehicle he likes. Chair Guillette stated that Claremont had a similar issue and the gentleman was allowed to commute with his work vehicle. There was some confusion about Adam Howard's understanding of his conversations with Mr. Brown and Town Administrator Melissa White. Mr. Brown responded that he would be happy to sit down with Mr. Howard and discuss the code enforcement issues. Chair Guillette ended further discussions by summarizing what the Applicant can do, which is park his commuter vehicle at his residence but not service equipment on-site. Adam Howard asked if he was able to maintain equipment in the garage and the Board would not comment on what Mr. Howard chooses to do in his garage. Adam Howard stated that there are two trailers on-site for personal use and he wanted to make sure this would not be an issue. Chair Guillette felt that this should not be an issue.

Board Member McIntire asked why there seemed to be more issues lately with Zoning Ordinances. Selectmen's Representative Constance Jones stated that residents are taking more notice of issues and bringing their concerns to the Board of Selectmen. The Board of Selectmen are tasked with enforcing the

Grantham Zoning Ordinance and acting if they see something that is not right. Several comments were made about other properties in the area and their appearances. Mr. Brown mentioned that those properties are also under code enforcement action. A question was asked regarding the Master Plan and the last time it was revised, Chair Guillette and Selectmen's Representative Constance Jones both stated September 7, 2017. Selectmen's Representative Constance Jones described the process of changing the Grantham Zoning Ordinances.

Adjournment

Chair Guillette stated there being no further business a motion was made by Peter Gardiner and seconded by Andy Gelston to adjourn the meeting at 8:09 p.m.

If an application is received the next meeting of the Zoning Board is scheduled for December 19, 2019, at 7:00 p.m. in the Jerry Whitney Memorial Conference Room of the Grantham Town Hall. This is a change from the regularly scheduled 4th Thursday meeting due to the holiday.

Respectfully Submitted,

Emily Owens, ZBA Clerk