

**Gilsum Zoning Board of Adjustments**

**Public Hearing**

**April 20, 2023 7:00 pm**

**Gilsum Public Library**

**Approved Minutes**

Members of the Zoning Board Present: Bruce Murphy, Eric Zablowky, Heidi Bukoski, Jane Wing, Clem Louder

Public Present: Howard Dicey, Charmine Dicey, Dave Dauphin, Betsy Cushing

Meeting called to order at: 7:05 pm by Chair Murphy

**Purpose of the Public Meeting:**

A Public Hearing was being held to hear any new information being presented from the Dicey's related to their appeal of our Gilsum Zoning Board's decision to deny their request for a variance on their 218 Belvedere Road property. The announcement was posted both at the town office and in the Keene Sentinel.

Amendment requested by the Diceys to make a change to the correct section in the article III of the variance.

They are requesting a variance from Gilsum Zoning ordinance Article 111 Section B4b (NOT B4a). Motion was made to amend; all in favor, none opposed.

This is the second hearing for 218 Belvedere Road: On January 12, 2023, their request was denied. The required set-back is 50 feet, the current building has a 17 foot set-back.

In order to grant variance, you need to meet 5 areas of criteria.

**1. Is granting the variance contrary to public interest?**

The Dicey response: Charmine responded to say that granting the variance would not be contrary to public interest because their proposed use would not threaten the public. She also mentioned that their planned upgrades to the building will be

completed with the NH standards in mind. A single family use in the building will not threaten the public's health, safety or welfare.

The Gilsum ZBA did not have any questions or discussion.

**2. Would the spirit of the ordinance be observed if the variance were to be granted?**

The Dicey response: Charmine responded by reading from the submitted report.

Gilsum ZBA asked: What do you consider the spirit of the ordinance? What is the purpose of the set-back ordinance?

Dicey: Purpose of ordinance is public safety. To make sure people are not building right on the road.

We all agreed that the Gilsum zoning laws were created to stop building right on the road.

**3. Would substantial justice be done, granting the variance?**

The Dicey response: Charmine responded by reading from the submitted report.

Gilsum ZBA asked: If damage is done by a road agent snow plow would there be substantial justice for the town?

Dicey response: This has not happened.

Gilsum ZBA asked: Would you be willing to sign a waiver from the town to release liability?

Dicey response: Charmine feels that hold harmless agreements are pretty useless. She also suggested they wouldn't be opposed to possibly signing a hold harmless agreement.

Gilsum ZBA responded with: We are concerned for the safety of both the possibly parked car interference as well as residents living in the home such as children.

Dicey response: We live across the street and use it as our driveway. They agree there is a chance of something happening; but feel can't be penalized for something that might happen.

Gilsum ZBA reminded the Diceys: We asked at our first meeting if you would be willing to park off of this area (directly between the house and the road) and we were told 'no'.

Dicey response: They believe that they said yes.

Gilsum ZBA stated: Current status of what's going on is why our zoning laws are put in place.

Gilsum ZBA asked: If we were to approve with conditions, would you agree to not park in front

of the house?

Dacey response: We (Howard) is becoming handicapped, he states he can't park in the back. He feels he would have to review any restrictions before he would possibly approve.

Dacey also stated: The building has been there for 100 years. He knows that a septic permit is on file, but still there is no driveway permit. He admits it has been used as a garage.

Gilsum ZBA reminds Mr. Dacey: Changing the use means a driveway permit.

#### **4. Will granting the variance diminish the value of surrounding properties?**

The Dacey response: They wanted for us to read from their submitted report.

Gilsum ZBA response: (Clem) He agrees with #4.

#### **5. Do special conditions exist that would cause an unnecessary hardship if the variance is not granted?**

The Dacey response: Charmine read from the submitted report.

Gilsum ZBA response: We've viewed all property cards and photographed surrounding properties.

Gilsum ZBA (Heidi) asked: Under #5, on the last page of your submitted report, within the paragraph #5, the first line reads, "The unique location, and features of the subject property creates a situation where there is no area around that is usable to move the existing building." My question is: Do you have proof that this is a state mandated wetlands?.

The Dacey response: Well, the septic engineer, Freighoffer put it on the septic design map. Feighoffer was on site using his maps and his measurements to designate "wetlands areas".

Heidi then read from the septic plans map in the lower left hand corner (in red fine print.) Reviewed and Approved in accordance with the requirement of the NHDES Water Division. Also above that is a statement from the septic engineer and designer, Eric Freihofer.

“Minimum area of 75 feet around the OWTS has been delineated per the Corps of Engineers Wetlands Delineation Manual Technical Report..... And unless otherwise shown on the plan, it was determined that no wetlands are present.”

The Dicey response: There could be a septic where the camper was put, but it would have to be pumped up and this would stop them from driving down there.

The Dicey additional comment: They must have delineation from the state showing wetlands, somewhere.

Another Dicey comment: The septic system has to have subsoil above ledge, it needs to have 3 feet above ledge, jackhammered ledge down. The guy who will be installing, said the tank could be put up a little higher.

Gilsum ZBA (Eric) responded: He understands the complexity of not being able to move the building back but that the Dicey's already have a reasonable use of their building. As a reminder, the hardship can not be financial.

We (the Gilsum ZBA) also noted the RSA 673:34,1,5 (B) If the proposed use does not meet this test, you may find an unnecessary hardship, if and only if, owing to special conditions that distinguish the property from others in the area, “the property cannot be reasonably used in strict conformance with the ordinance” and a variance is necessary for it's reasonable use. The Dicey property has an already reasonable use.

The Dicey response: They both feel they can't use the building. Also, they had to have the whole thing jacked up above the “driveway”, to save the building as the Belvedere water runoff was causing the building to rot and erode. (Reminder, the Dicey's have not requested a driveway permit which would be required for a change of use, to residential.)

Bruce then asked: Is anyone here willing to speak in favor of the variance? Is there anything else that they want to add or request?

The Dicey's responded: They understood we denied the variance due to it not being unique enough.

Bruce responded: we still don't believe you submitted anything to change our minds on that. Other property cards don't have a reason to show the wetlands, since the main reason the Dicey property card noted the wetlands was due to having a former issue with NHDES.

Then Dave Dauphin asked: If the Gilsum ZBA grants a variance permit now, for the future would the town have to grant others if a similar situation came up?

Then Bruce responded: Yes, if a similar request was submitted, the Gilsum ZBA would have to use the Dicey variance as an example or foundation to base our next decision upon.

Charmine Dicey asked: If we want to look at other cases, where do we go for more information?

Bruce stated: The specific cases are all noted in the ZBA handbook.

Howard Dicey then asked about the renovation of the RJ's building into Restoring Eden and that it is too close to the road. (Thinking it was a residence.)

Clem clarified it is a business.

Howard asked if we could help them to locate any old cases.

Betsy Cushing then asked: If on all that acreage on that side of the road, (218 Belvedere Road) is there any acreage that could be used? Is there another place on that parcel to build a house?

Diceys responded: We spent \$2500 on a septic design. So if we are not approved, this money and hours are all lost. To get a building permit, a Gilsum resident must do a prep test and get a blueprint design for a septic.

The Diceys stated : They first went to the planning board and were told they weren't approved. They feel it doesn't make sense to have to spend money on a septic design and then not get a building permit after spending the money. Charmine said she will be going to the select board or planning board to complain and request a change. She thinks it should be a contingent. If a building permit is granted, then a septic design will need to be designed and approved, instead of the reverse.

Jane then asked: In our first public hearing/meeting the Dicey's stated that their daughter and her children were living with them and needed a place to live and this home would be for her. Then later in that meeting stated that they would be making it handicap accessible for them to live there; tonight the Dicey's said they would be living there.

Bruce then read a letter from the chairman of the selectboard raising concerns with both the septic and the parking area having an interference with the town road right of way. The Gilsum town road agent, Harlan Macguire had a statement within the letter that read:

" The septic system appears to be very close to the town road. Unsure if this is allowed and unsure if the state knows and approves of this present excavation location and the unknown portion of the property that is town right of way"

The Diceys stated that the septic system has been state approved.

Eric wanted to clarify that the design and the exact location on the map was approved by the state.

Clem states that a septic cannot be in the town's right of way.

Heidi asked for clarification regarding the map of the design which included a fence. This was a note to put a required fence up to keep the vehicles off. Fifteen feet from the edge of the town road will be the fence. This then indicates that the septic is to be 15 feet from the road, and that the house is only 17 feet from the road. If a fence is a requirement of a septic system, doesn't this indicate a concern for the lack of space for the house from the road, as well? The Gilsum ZBA needs more information regarding the right of way on a town maintained road.

It was then discussed about the distance of 75 feet being the distance from the wetlands, and on the septic map it showed a ring around the well proposed location. Seventy five feet also is the necessary minimum for the well to be away from the wetlands.

Charmine then discussed: There is definitely runoff water from Belvedere Road that dumps into their acreage.

Jane asked: If the septic is based on a well location and the well has not been dug or approved, has the well location been decided?

Betsy (being the retired town clerk) reported: That if it was a game room would that have had to have a well to have a game room? On the tax card, on 4/1/2018, French doors were added. Avitar assessed as having no plans of being a house.

Bruce asked for any other comments from the public or the board.

Heidi asked about the Substantial Justice, #3, the reference to the applicant's words: "the applicant will be able to utilize, lease and enjoy the subject property"... were the Dicey's planning to lease the building, if the applicant had their variance granted?

Bruce added: The applicant's use of the building as a residential home, if approved, is not of our concern as a zoning board.

Betsy asked Charmine: Where is the front of the structure?

Charmine answered: We have always used the road entrance as the front, and since it does not receive any sun and therefore does not grow grass, we use this as a place to park.

Bruce asked: Any other comment from any part regarding this matter?

Charmine asked: What are the next steps?

Bruce answered: We have to deliberate. We will probably make a motion to continue the public meeting on April 23, 2023 to give us time to digest all the information instead of a quick decision tonight

Dicey requested a week's stay, they are away this next Sunday 4/23. They can be here for April 30th.

The Dicey's were notified that we will be continuing our meeting with deliberation, on Sunday, April 23. If we felt we had further questions for the Dicey's we would continue on April 30,

2023.

Bruce asked for a motion to close the public input section of the meeting; Eric made a motion, Heidi seconded, all in favor, none opposed.

The Public input portion of the meeting was closed at 8:39pm.

Deliberation Portion of the Meeting:

Number one concern will be Safety. If the septic tank were to break, it could close Belvedere Road.

We went through the five criteria list:

1. Would be contrary to public interest because it would remove future expansion of the road.

2. The spirit of the ordinance would not be observed due to safety issues, and the future maintenance of the road.

3. Allowing the variance would not do substantial justice because the safety concerns outweigh the need of the applicant to change the use of the building from a garage or game room, into a residential home.

4. Allowing the variance will not diminish the value of the surrounding properties.

5. The property already has a reasonable use.

Heidi made a motion to continue the public hearing on April 23, at 4:00 in the Library, Eric seconded, all in favor, none opposed.

The deliberation portion of the meeting was adjourned at 9:19pm

April 23, 2023, Deliberation Portion of Meeting Continued:

Members of Gilsum ZBA Present: Bruce Murphy, Eric Zablowsky, Heidi Bukoski and Jane Wing

No public were in attendance

Chairman Murphy called the meeting to order at 4:09 pm to continue the deliberation portion of the meeting of 4/20/23.

A motion was made by Eric, to accept the minutes from the last meeting, seconded by Heidi; minutes approved.

Bruce emailed the Dicey's stating we were continuing today and if we felt we had more questions we would notify them and meet on the 30th.

We continued a discussion regarding the five criteria:

- 1. Would be contrary due to future maintenance and widening of the road, impede maintenance of road and widening.
- 2. Spirit would not be observed due to safety issues of septic being too close to the road and not be observed due to the proximity of the septic to the road. Could possibly extend into the town's right of way into the road.
- 3. Would not do substantial justice as the structure can and has been used consistently. Public not realize a gain from the variance.
- 4. Will not affect property value.
- 5. Not a special condition (a)
- 5b can be used as it already is being used in a reasonable manner. No distinguishing characters leading to hardship.

Role Call:

Motion to vote: Heidi made a motion to vote on the Diceys requirements. Eric seconded, all in favor, none opposed.

Bruce: deny based on the ability to not meet 4 out of the 5 bases of variance criteria.

Eric: also denies based on not meeting 4 of 5 criteria and currently has a reasonable use.

Heidi: deny based on public interest of future safety and maintenance of the town road.

Jane: deny based on not meeting 4 criteria as well as the future safety and maintenance of the road.

Motion to adjourn made by Jane, Eric seconded. All in favor, none opposed.

Meeting adjourned at 5:17 pm.



Respectfully submitted,

Heidi P. Bukoski

Heidi Bukoski

Jane Wing

Jane Wing

NPB  
JW See attached documents:

- 1) Application for a variance from the Diceys.
- 2) Letter from the town of Gilsum to the Diceys.