**MINUTES**

**GILFORD PLANNING BOARD**

**MONDAY**

**JUNE 21, 2021**

 **CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Planning Board met on Monday, June 21, 2021, at 7:00 p.m. in Conference Room A of the Gilford Town Hall, and via GoToMeeting video and phone.

Chair Wayne Hall welcomed everyone, led the Pledge of Allegiance, and read the rules of procedure for the meeting.

Planning Board Members present in Conference Room A were Chair Wayne Hall; Vice-Chair Carolyn Scattergood; Selectmen’s Representative Chan Eddy; Regular Members Jack Landow, Isaac Howe, and William Johnson; and Alternate Members Emily Drake and Gaye Fedorchak.

I. Howe was on the phone on GoToMeeting originally, but came into the meeting shortly after it started.

Members absent were Secretary Richard Vaillancourt and Alternate member Rick Notkin.

Also present was Sandra Hart, Technical Assistant.

Election of officers

Motion made by G. Fedorchak, seconded by J. Landow, to maintain the same slate of officers that is in place currently. Motion carried with all in favor.

W. Hall asked G. Fedorchak to take the place of R. Vaillancourt as a voting member.

**1. PUBLIC HEARINGS**

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**1.1 A to Z Fitness, LLC** – Applicant proposes to amend the site plan for the Gilford Hills Tennis and Fitness Club to add two (2) new outdoor U12 sized (210’ x 135’) soccer fields to the site. The proposal includes a request for a Conditional Use Permit, pursuant to Section 15.5.2 of the Gilford Zoning Ordinance, to allow excavation and/or filling within the 25 foot wetland buffer. The property is located at 314 Old Lake Shore Road on Tax Map & Lot #224-068.000 in the Resort Commercial (RC) Zone and Aquifer Protection District. Site Plan and Conditional Use Permit Review. Application #2021000083.

I. Howe recused himself from this application and E. Drake was appointed by W. Hall to sit in as a voting member for this application.

Motion made by C. Scattergood, seconded by J. Landow, to take the application off the table.

Presentation

Christopher A. Swiniarski, attorney from McLane Middleton, represented the applicant. He said that they were here to answer some questions with regard to the proposed soccer field and parking area. He explained that this is more of lawn and an amenity for the Tennis Club and that it is important to keep that in mind. We don’t expect this to generate any new membership from construction of the playing fields.

C. Swiniarski then replied to the information that Attorney Stephan Nix, representing abutter Heidi Kephart, submitted at the last meeting. He said that they had wetlands scientist Cynthia Balcius of Stoney Ridge Environmental LLC present. C. Swiniarski said that the bottom line is that these are not wetlands. He said that the letter also referred to open space. He said that it is in the law today and became effective in 2002, but we can’t go back and make it effective retroactively. He said that the plan, with regard to green space, shows what it is. It is not fair to go back and apply the law to something that was approved years prior. It can’t be done. It renders it irrelevant for this application. C. Swiniarski said that engineer Chris Nadeau with Nobis Engineering is also present to answer any technical questions.

G. Fedorchak asked about the buffer area. What is the allowable space around it and what if someone goes over that boundary during a soccer game or while watching a game? C. Swiniarski said that this isn’t the type of thing that will be rented out; this is an amenity to the club. The owner might say yes to someone who wants to use it.

J. Landow said that from the site visit he thought it was going to be a multi-use field, so there might be a few other athletic events which could affect parking. He said that the Board was originally told it was just going to be for practice. C. Swiniarski said that it’s a lawn for club members and it will not be open to the public.

W. Hall said that the plans/drawings make it look like there is a possibility of expansion. C. Eddy said that is future possibilities and not part of the proposal before the Planning Board. We can’t decide on what’s going to be done in the future. Yes, that’s true replied W. Hall.

C. Eddy said that the only time he remembers that parking lot being full was when Northern Computer rented it. He said the most he has ever seen the parking lot was half-full.

C. Scattergood asked about the fields and aren’t soccer fields lined as soccer fields. So, it’s not just going to be a lawn if it’s lined. C. Swiniarski said that it can be lined when they need it, but it’s not something that lasts, so it would be relined when needed.

G. Fedorchak said that she was reading the material on the stormwater retention pond and she wondered if there is a need for more retention. She said they followed the 25 and 50-year storms, but will that be adequate? C. Nadeau said that these are similar questions that Meghan Theriault, Director of Public Works, brought up. He then went over the treatment, the pond, the runoff, and stormwater standards. G. Fedorchak asked if the fields be permeable. C. Nadeau said they will.

W. Hall said that he received a lot of information, but he didn’t get a response from the DPW Director and he would also like to hear from our town attorney on this. C. Swiniarski submitted a letter that we could submit to the town attorney. G. Fedorchak said that this is definitely something that would need to be reviewed by the town attorney.

Public Input

Stephan Nix, attorney representing Heidi Kephart of 296 Old Lake Shore Road, said that he disagreed with C. Swiniarski’s comment regarding RSA 674:21-a. He said it’s his opinion that the statute does apply and he will follow up with that. He brought up a case from 1803 and another from 1983 with regard to land remaining as open space.

S. Nix said with regard to the soils mapping and the report done by C. Balcius, that it did not look at the 1983 plan for this site. He explained that the plan was signed by the Planning Board and that was the plan recorded at the Belknap County Registry of Deeds. He said the report from Cynthia Balcius of Stoney Ridge Environmental LLC doesn’t really focus on the muck and peat soils. He said that in regard to wetlands mapping it’s really a minor issue but on this application it is still an issue. S. Nix also read the statute adopted in 2012 prior to this, which says green space shall remain in effect. It specifically reaches back and says “thou shalt”.

G. Fedorchak said that it’s different from the zoning ordinance. She thought it was an update to the 1983 plan. S. Nix said that would be a different question from the prime wetlands.

S. Nix said his client’s position is that what is shown on the map is what is delineated, and trying to reach back and say that map was incorrect at the time is not appropriate. He added that he didn’t see the plan showing the high intensity soil survey done by Stoney Ridge. He said there was a lot of information, but not any specifically addressing the 1983 information. He didn’t believe that the Planning Board could change that now. S. Nix said he stands by his original letter and he will get the Board additional information before the next meeting.

C. Swiniarski replied to S. Nix saying that nobody is contesting the law. The issue is that the words “open space” don’t exist on open land, but the words “green space” do. C. Swiniarski said it’s a site plan condition and the Board has authority to modify that. He said the Board can grant a site plan amendment. If the plan shows green space, we will be using it as green space. We are talking about green space, not open space.

C. Balcius spoke regarding the prime wetlands. She said that Gilford was one of the first

towns to have prime wetlands. She said that back in 1994 there was a required 100 foot buffer around prime wetlands. That is not in the current rules, and it is misleading. The online map is what we have to use in your community. C. Balcius said that for the record she is a soils scientist. She explained that she had to use soils to map the wetlands. She explained how she did the mapping and so the poorly drained soils are the end of the wetlands. She said that it’s all in the report and acknowledged the report is long.

Isaac Howe, of 264 Old Lake Shore Road, said that what is important is that in 1993, it was a subdivision application that was approved and that was why the conditions were made and the plan was recorded at the Registry of Deeds. He agreed that without the Public Works comments or hearing back from the town attorney that this application should be tabled, but he would ask the Board to keep the public hearing open.

With no further public input, W. Hall introduced the next application, and I. Howe returned to the Board.

**1.2 Laurence & Sharon Roth** – Applicants are proposing to amend the site plan for Timber Bay Condo Association to construct a 91 sq. ft. (7’ x 13’) addition to the existing deck on the rear/side of Unit #3. The property is located at 403 Weirs Road on Tax Map & Lot #216-003.000 in the Single Family Residential (SFR) Zone and Aquifer Protection District. Amended Site Plan Review. Application #2021000330.

Motion made by C. Scattergood, seconded by C. Eddy, to accept the application as complete. Motion carried with all in favor.

W. Hall stated that there was a request for waivers that would need to be discussed.

Presentation

Larry Roth, applicant, stated that they have received Condo Association approval and Zoning Board of Adjustment approval and they were required to come before the Planning Board with this application, because they are in a condominium association and have a site plan.

W. Hall asked if that was a driveway. L. Roth said that it was a driveway and that it was a garage that is no longer there, and the surface will remain the same. They will not be changing the surface. L. Roth said they are just requesting to expand the existing deck over to the end of the condominium unit.

W. Hall said that there were some waivers being requested. L. Roth said we are amending a residential site plan where zero grading is proposed, no parking adjustments are proposed no changes of use are proposed, and no updates to utilities are proposed. He said they will not alter the existing approvals on file. The only change proposed is the expansion of an allowed accessory structure. The applicant is seeking waivers from checklist items #20, 22, 23, 32, 37, 38 and 41. The other items, #24, 33, 34, and 36, are not applicable according to Planning Director John Ayer who was out of town at a family reunion and could not attend the meeting.

Public Input

W. Hall asked if there were any members of the public wishing to speak. Hearing none, he closed the public portion of the application and introduced the next application.

**1.3 Ashley Geddes** – Applicant proposes to excavate and/or fill slopes over 15%, which, pursuant to Section 6.22.2 of the Gilford Zoning Ordinance, requires approval of a conditional use permit, to allow construction of a single family home. The property is located at 32 Barefoote Place on Tax Map & Lot #252-127.000 in the Single Family Residential (SFR) Zone. Conditional Use Permit Review. Application #2021000331.

Motion made by C. Eddy, seconded by C. Scattergood, to accept the application as complete. Motion carried with all in favor.

Presentation

Ashley Geddes, applicant, was present to discuss her application. Board members reviewed the staff report notes stating that the applicant may not need the conditional use permit approval under Section 6.22.2 since she was not filling or excavating more than 15,000 square feet of steep slopes. After a brief discussion the Board was ready for a motion.

Motion made by C. Scattergood, seconded by C. Eddy, that no conditional use permit is required since less than 15,000 square feet of slopes will be excavated or filled for non-driveway purposes. Motion carried with all in favor.

Public Input

W. Hall asked if there were any members of the public wishing to speak regarding this application. Hearing none, he closed the public portion of the application and introduced the next application.

**1.4 Heidi Englert** – Applicant is proposing to expand the existing fenced daycare playground by adding an 800 sq. ft. area (23’ x 35’) to the playground on property located at 401 Gilford Avenue on Tax Map & Lot #210-014.200 in the Professional Commercial (PC) Zone and the Aquifer Protection District. Amended Site Plan Review. Application #2021000332.

Motion by C. Eddy, seconded by I. Howe, to accept the application as complete. Motion carried with all in favor.

Presentation

Heidi Englert, applicant, was present for this item. She said that she expanded the inside of the daycare and would now like to expand the outside playground and separate the preschoolers from the toddlers.

G. Fedorchak asked about the gates and how they would be accessed and if this will be made accessible to children who are in wheelchairs or handicapped. H. Englert explained the gate, fence, and separation of age groups. She said the playground will be fully accessible to all.

H. Englert said that there would always be a teacher on each side of the play areas.

Public Input

W. Hall asked if there were any members of the public wishing to speak. Hearing none, he closed the public portion of the application and introduced the next application.

**1.5 Frank Yerkes, LLC** – Applicant is proposing a lot line adjustment to transfer 0.33 acres (14,242 sq. ft.) from the lot at 1 Natalies Way on Tax Map & Lot #217-031.000, to the lot at 2 Natalies Way on Tax Map & Lot #217-030.000, in the Single Family Residential (SFR) Zone. Boundary Line Adjustment Plan Review. Application #2021000333.

Motion made by C. Eddy, seconded by G. Fedorchak, to accept the application as complete.

Motion carried with all in favor.

Presentation

Frank Yerkes, applicant, was present and stated that he was representing both of the properties. He said they submitted a plan showing both lots and are proposing to transfer 0.33 acres from one lot to the other lot. He explained that 1 Natalies Way (Lot #31) will be reduced to 3.38 acres, and that 2 Natalies Way (Lot #30) will be enlarged to 3.76 acres after the adjustment.

W. Hall asked if there was a reason for this. F. Yerkes said that he really didn’t know why.

Public Input

W. Hall asked if there were any members of the public wishing to speak. Hearing none W. Hall closed the public hearing.

**2. ACTION ON ABOVE**

**1.1 A to Z Fitness, LLC**

I. Howe recused himself.

Motion by C. Eddy, seconded by C. Scattergood, to table the application to the July 19, 2021 meeting to get answers from the town attorney and comments from the DPW Director.

W. Johnson asked if there was any additional information that will be coming.

G. Fedorchak said that we have an opportunity to direct any new information to the attorney.

Motion carried with all in favor.

**1.2 Laurence & Sharon Roth**

I. Howe returned to the Board.

Motion by C. Scattergood, seconded by W. Johnson, to grant waivers for Checklist Items #20, 22, 23, 32, 37, 38, & 41. Motion carried with all in favor.

Motion by C. Scattergood, seconded by W. Johnson, to approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required. Motion carried.

**1.4 Heidi Englert**

Motion by G. Fedorchak, seconded by C. Scattergood, to approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required. Motion carried.

**1.5 Frank Yerkes, LLC**

Motion by C. Eddy, seconded by C. Scattergood, to approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required. Motion carried.

3. OTHER BUSINESS

Staff had advised the Board that Craig Bailey of Turning Point Land Surveyors and Land Planners would likely be present to discuss minor change for a site plan at this meeting, but nobody was present to discuss the changes. The Board decided to take it up at the next meeting.

**4. MINUTES**

There were no minutes to review at this time.

**5. ADJOURNMENT**

Motion made by C. Scattergood, seconded by C. Eddy, to adjourn the meeting at 8:10 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary