**MINUTES**

**GILFORD PLANNING BOARD**

**MONDAY**

**JULY 19, 2021**

**CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Planning Board met on Monday, July 19, 2021, at 7:00 p.m. in Conference Room A of the Gilford Town Hall, and via GoToMeeting video.

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 Emily Drake; and Alternate Members Gaye Fedorchak and Rick Notkin.

W. Hall announced that Secretary Richard Vaillancourt had resigned as a member of the Planning Board after many years of service. He also announced that Emily Drake was appointed to be a Regular Member to replace R. Vaillancourt.

Member absent was Regular Member William Johnson.

Also present were John Ayer, Director of Planning and Land Use, and Sandra Hart, Technical Assistant.

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

**1. PUBLIC HEARINGS**

**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. *Tabled from the June 21, 2021 meeting*.

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

Motion made by C. Scattergood, seconded by E. Drake, to take the application off the table.

Motion carried with all in favor.

Presentation

Christopher A. Swiniarski, Attorney from McLane Middleton, represented the applicant. He stated that there were really just two outstanding issues from the last meeting. The first was regarding wetland delineation. He said a written statement dated June 14, 2021 by Cynthia Balcius of Stoney Ridge Environmental, LLC had been submitted stating that “the Wetlands Map in the ordinance is incorrect” under the terms and requirements in the Zoning Ordinance, Section 15.2.1, Wetlands Incorrectly Delineated. He said there was not finding with a contrary conclusion by another Certified Wetland Scientist. He said the Board was going to review the information provided with its counsel.

C. Swiniarski said the second issue was regarding the open space or green space. He said that the green space issue was a non-issue. He said there was a 1983 subdivision and site plan that show the language, but it’s on a different lot and not this lot. He said the Planning Board has authority to modify subdivision and site plan approvals. It is, in fact, the only authority that can do so. No charitable trust is created by the words on the historic plans. C. Swiniarski said the statute RSA 674:21-a was passed into law in 2002. The historic plans were approved just shy of 20 years earlier than that. He said to apply a new law to affect what occurred 20 years prior to claim that a charitable trust was created is both an ex-post facto law and a taking, both of which violate the United States Constitution.

C. Swiniarski said that even if he is wrong and the Board finds that a green space restriction applies, green space is grass, trees, or other vegetation, which is what the applicant is proposing here. He said he thinks this is ready to resolve and move forward.

C. Scattergood asked how the green space will be maintained. Will it be fertilized and maintained like a regular field. We all worry about and want to make sure that the aquifer will not be damaged. Marc Bourgeois said that they would like to use whatever is being used for the Meadows Field. C. Swiniarski said that we could find out what they are using. C. Eddy said that it is school property and if he knows the school, they use what is best.

J. Landow said that the application refers to building two soccer fields, but what is it exactly. He asked if it is green space because the application refers to soccer fields. C. Swiniarski said that they will be lined for soccer fields, but can be used for anything. He said these are lawns that will be lined and shaped for soccer. These will only be used for members, but can be used for any number of activities.

G. Fedorchak said it is her understanding that C. Balcius delineated the wetlands. C. Balcius said that she did and she followed the state, federal, and the Gilford Zoning Ordinance requirements. G. Fedorchak asked if there is data for drainage to conform to that specific area. C. Balcius said the area where it’s going is not considered poorly drained anymore and noted that it is explained in the drainage report.

J. Landow asked if we are referring to the drainage as it exists today not before it was filled, because it was probably poorly drained before. C. Balcius said that it was a very small area.

C. Swiniarski said that there was an after-the-fact permit issued.

W. Hall asked if there were any members of the public who wished to speak.

Public Input

Stephan Nix, attorney, representing Heidi Kephart of 296 Old Lake Shore Road, said that after the last meeting there were representations made regarding historical things, so he went to the Planning Department and he was able to get some information from the file. He put it into a letter and sent it to John Ayer. He said that in a letter dated April 16, 2021 from the applicant’s attorney the proposal was described as being simply lawns. He asked if these are soccer fields or not. S. Nix said it’s represented that these will be for members of the club only. The definition of club in the zoning ordinance is not what this place is. This is open to the public if you pay a $10.00 per day use fee or a monthly fee. This is a business so it is open to the public. He said the use described fits the use described in Section 4.7.3(o), Outdoor Recreation, but the site does not meet the 25-acre threshold.

S. Nix said that there was much discussion as to the delineation of wetlands. There were questions as to the Bryan Bailey plans, then there were questions as to another plan, and in reviewing the plans, he found one from 1983 by Soil Scientist Frank Viera. He had a copy of it and he put the plan up for review. It shows the tennis building, the tennis courts and the soils muck and peat. However, on today’s plan it’s just not shown, so what happened? He heard that there was some excavation. He posted plans showing excavation of the area and fill. The question here is what happened if the Zoning Ordinance required it, this would have required permits for those removals, and there aren’t any. He said they would like an independent wetlands scientists be hired to do this mapping. The Board will see that there were poorly drained soils shown on the plan done in 1983 and they aren’t there now. S. Nix said there was a plan submitted in 2000 for the addition of the cabana which shows the muck and peat and also a plan dated 2004. S. Nix said at that time they could have done another plan but they did not and they used the same plan. He said he didn’t know what’s in the town counsel opinion, but he said he knows that they didn’t have this information. This is a site plan for Gilford Hills with green space being a development restriction. The argument of putting in lawns doesn’t or is not supported by the Conservation Easement status.

J. Ayer read the Zoning Ordinance definitions of Club and of Green Space for everyone.

S. Nix said that the YMCA was the only club mentioned in the definition and they are a not-for-profit organization.

J. Landow asked him to elaborate on the issue of green space as to the restrictive definition. S. Nix said that under RSA 674 the restrictions were created by statute, that those areas would not be developed.

S. Nix said that he didn’t know when the green space definition was developed in the town zoning ordinance. J. Ayer said it has been in the zoning ordinance since at least 1984 and the definition is unchanged since then.

Andrew Howe, 300 Gunstock Hill Road, said that he is not an abutter but that he does have a long-term lease on the abutting lot. He said that it would be prudent for the Board to table this application, to at least find out all the information and to get the legal issues straightened out. It’s prime wetlands and has an abundancy of wildlife. He said he is concerned about an increase of human activity next to their crops.

Isaac Howe, 264 Old Lake Shore Road, said that green space is defined in the zoning ordinance. He said that in the 1983 plan in the file it shows it and much effort was done with regard to mapping the soils. There are many letters with regard to this in the file. He said that prior to the tennis courts there were stipulations to that. He said the soils can’t be tested once they are removed. He said it is great that there was a soil scientist there, but the work was already done. One of the roles of the Planning Board is to make sure that these approvals are done right. I. Howe said that he would follow S. Nix’ comments and rely on the original approvals dated 1983.

C. Balcius said that she knows Frank Viera personally and trained with him. She stated that the 1993 standards were very different and that’s why now in the wetlands rules they require these to be tested every 5 years. She then reviewed in detail what she did to delineate wetlands.

G. Fedorchak asked if what she tested was below the fill. C. Balcius said that the fill was recently put in there and it was clear when you stood over the pit. J. Landow asked if she encountered peat and muck when she went below the fill. C. Balcius said she did not. J. Landow said it was there in 1993. C. Balcius replied that she did find peat and muck but it was up in a different area. What she found in this area were sandy soils. R. Notkin said that it appears that the standards were different those years ago.

With no further comments, W. Hall closed the hearing and introduced the next application. I. Howe said he would remain recused for the next application as well.

**1.2 McCollias, LLC** – Applicant proposes to operate a Food Truck on the Beans and Greens site as an accessory use. The property is located at 245 Intervale Road on Tax Map & Lot #224-020.000 in the Resort Commercial (RC) Zone and in the Aquifer Protection District. Amended Site Plan Review. Application #2021000397.

J. Ayer said that the application was complete and ready to be accepted. Motion made by C. Scattergood, seconded by E. Drake, to accept the application as complete. Motion carried with all in favor.

Presentation

Nick Sceggell of Steven J. Smith & Associations, Inc., represented the applicant McCollias, LLC.

He explained that this is an application for a permanent location for a food truck or trailer. The food truck site will have a water connection as it will be ten (10) feet from the building. It will be placed on a gravel pad in a flat area. There will be no grading required, just removal of top soil.

J. Landow asked if there would be just one truck. N. Sceggell said that is correct. C. Eddy asked if electricity will come from the barn so no generator would be required. N. Sceggell said that is correct. J. Landow asked how long it will be there. N. Sceggell said that it will be open during the same time frame as the farm stand. C. Scattergood asked to confirm that no one will live in the truck. N. Sceggell said that is correct.

Public Input

W. Hall asked if there were any members of the public wishing to speak.

A. Howe said that he is the former owner of this property and that he owns 264 Intervale Road which is across the road. He said that he is in favor of this application, that this will create an outlet for locally grown produce.

W. Hall closed the public portion of the application and introduced the next application.

I. Howe returned to his position on the Board.

**1.3 Governor’s Island Club, Inc.** – Applicant proposes to remove three (3) existing tennis courts and construct new tennis courts, pickleball courts, basketball court, and two (2) pavilions for outside activities at the GIC community beach property located at 500 Edgewater Drive on Tax Map & Lot #218-043.000 in the Single Family Residential (SFR) Zone. Site Plan Review. Application #2021000398.

C. Scattergood and E. Drake recused themselves from this application. R. Notkin was asked to take the place of C. Scattergood for this application.

J. Ayer said that the application was complete and ready to be accepted. Motion made by C. Eddy, seconded by G. Fedorchak, to accept the application as complete. Motion carried with all in favor.

Presentation

N. Sceggell of Steven J. Smith & Associates, Inc., stated that he was representing the applicant.

He said the proposal is to remove the existing clay tennis courts and build new tennis courts, a pickleball court, and a basketball court, and to add two gazebos. He stated that during the Site Study meeting he received notes from the Department of Public Works and he has revised the drainage plan per those notes. There will be a catch basin on both ends of the pavilion that will allow for clean-out. N. Sceggell said a chain link fence will surround the tennis courts, and there will be a fence between the basketball court and the pickleball court. He said the gazebos will be open, timber frame structures.

J. Ayer said that they have submitted a revised drainage plan as requested by the DPW Director. He said there is no parking calculation table but parking is not affected by these changes since it is the club facility and will continue to serve just club members. He suggested that the Board consider a condition of approval that this be used by Governor’s Island Club members only and not be made available to the public.

Public Input

W. Hall asked if there were any members of the public wishing to speak.

Donald Leone of 466 Edgewater Drive, an abutter, said he has a few issues. He said he is worried about drainage going onto his property. He didn’t see any gutters. He asked about the pavilion and if they really need a 40’ x 60’ structure. D. Leone said that would provide cover for 100 people plus. You never see more than 50 people at the beach. He said if they are adding this for weddings where will those people be parking? There doesn’t seem to be a need of it, unless they are adding these for commercial use and a variety of functions. D. Leone said the beach is designed for island residents. They are putting a building in an area where we have beach rights too. Parking is going to be a problem, so where are they going to park? He said he’s been there for 30 years and up until now everything seemed logical. He would like to see something that will not be used as a commercial venture. There is certainly not enough use of that beach to warrant this size pavilion.

G. Fedorchak asked what would be reasonable for this to work. D. Leone said that he would like to see more drainage with the courts, so that it doesn’t spill out and run down into the lake. He said the thing that brought this to his attention was the recent rain that has caused flooding in that area. He said this doesn’t make sense. It is a residential area and always has been. He said in the past they’ve had tents for weddings. Tents can be put up and taken down for each occasion.

C. Eddy said it appears that the grade is the same on both properties in that area. D. Leone replied that it is. He said he would like to see the water go in the other direction.

Jeff Holland, President of Governors Island Club, said that he would like to have this approved as non-commercial. He said they plan to use it in the same fashion as they have been using it for years. He said he hopes people will use their bikes or walk to this area. J. Holland said in terms of water runoff they have a drainage system designed. He said they aren’t adding parking and don’t need more. He said they are removing two existing clay tennis courts and putting in two tennis courts where they should be. J. Holland said they have member outings and they would like to have a covered area for those. The intention is to get about 10 tables under the pavilion roof.

C. Eddy said it appears on the drawings that the impervious area will be moved up to higher ground. N. Sceggell said that the drainage system is designed for a first flush and to provide treatment, particularly this close to a large body of water. He discussed the swale, the water runoff, and pipe size. He said the changes will control rate and volume of runoff and not cause erosion. N. Sceggell said their project should not create flooding risk on the neighbor’s property.

J. Ayer asked if the catch basins are designed to be sumps. N. Sceggell said that they are designed to sump, which he explained. He said the area between the catch basins will go into the trench drain in the center, and then underneath the tennis court. It is designed to infiltrate as soon as possible.

J. Holland said that a shoreland permit application has been submitted to the state.

N. Sceggell said that there is a stone drip edge around the pavilion and the details are on sheet #6.

Barbara Leone of 466 Edgewater Road said she has been an abutter for 31 years. She said when there is a party next door people don’t ride their bikes or walk over, they drive their cars and park there.

With no further input, W. Hall closed the public portion and introduced the next application. C. Scattergood and E. Drake returned as voting members on the Board.

**1.4 Craig Bailey, PE, LLS of Bryan L. Bailey Associates, Inc.** – Applicant proposes to subdivide the existing 7.06 acre lot into three (3) residential lots of 2.08 acres, 2.9 acres, and 2.08 acres, with two (2) of the lots having less than minimum frontage which requires approval of a Conditional Use Permit pursuant to Section 5.1.2(d) of the Gilford Zoning Ordinance, on property located at 150 Young Road on Tax Map & Lot #207-002.001 in the Limited Residential (LR) Zone. Subdivision and Conditional Use Permit Review. Application #2021000399.

J. Ayer said that the application was complete and ready to be accepted. Motion made by G. Fedorchak, seconded by E. Drake, to accept the application as complete. Motion carried with all in favor.

Presentation

Craig Bailey of Bryan L. Bailey Associates, Inc., was present to represent the applicant. He said they are proposing a three (3) lot subdivision. The existing lot is just over seven (7) acres. There is a two family home currently on the property. The proposal is to create two additional lots. He said that plan sheet #1 shows that this property has many challenges. There are many easements on it, which are to provide access to different properties. Both of the new proposed lots have access over the Turcotte lot. He said on sheet #1 there is a schematic diagram showing access to the two back lots. He said that he was using the lot numbers from previous approvals. J. Ayer said that the tax map & lot numbering should be fine. C. Bailey said that this lot’s frontage on Young Road is split on both Class V and Class VI roads.

C. Bailey reviewed Sheet #2. He acknowledged that it is a busy plan. He said it shows that the proposed driveway will be over the existing home’s driveway, and the driveway will be constructed in an area that wouldn’t allow for a home to be built. He said they have been working on this project since 2008 but the wetlands are current and have been remapped and recertified.

C. Bailey reviewed Sheet #3. He described the proposed driveway easements/rights-of-way and showed the existing and proposed homes. He said on the north side there are rights-of-way that provide access to both the Roper and Caldwell lots. These are in existence now and were put in place in 2012. The northern driveway has not been built and is not part of this application.

C. Bailey reviewed Sheet #4. He said the plan shows a garage and a retaining wall within the driveway easement, so that existing garage will have to be destroyed and rebuilt somewhere else. He said the plan also shows drainage for the proposed driveway. He said the driveway wraps behind the existing home and a ledge outcropping. C. Bailey said they have drainage across the driveway and down the slope and there will be riprap to hold that. He said a driveway serving just the easterly lot forks off from the main driveway on the right hand side of the plan. C. Bailey noted that Sheet #2 shows a turnaround proposed on the southerly lot for emergency vehicles.

C. Bailey reviewed Sheet #5. He said if the driveway to the north is constructed, they propose the right hand driveway come off of that. It fits within the right-of-way. He also noted the handful of driveway cross sections shown on the plan. C. Bailey also said that there is an index of the plan set shown on Sheet #1.

C. Scattergood said that there is so much here. There is just a lot going on and yes, it is confusing.

C. Bailey went over the driveway plan for everyone, color-coding each right-of-way as he was going over it.

G. Fedorchak said it looks as though they are not proposing something that will interfere with anyone’s access to Young Road. C. Bailey said that is correct. He said they are proposing one driveway to the two proposed back lots.

J. Ayer said that there was concern at Site Study with regard to the overlapping of the proposed driveway right-of-way over the existing rights-of-way. C. Bailey said that the ordinance requires at least a 50 foot access and there is a radius at the end of the driveway which is part of the driveway, which he shaded in red. He said the Ropers and Caldwells both have 50 foot wide deeded easements to their properties from Young Road.

J. Ayer said that a radius is drawn in for each right-of-way and we don’t normally see that. He said normally it is a straight 50 foot right-of-way off the road and when the physical driveway is built, it is built with a radius at the apron for smooth turning access into and out of the driveway, but the entire driving surface with both radii and driveway would normally fit within that 50 feet. J. Ayer said also that there is 10 foot wide overlap of the new right-of-way where it runs alongside the Caldwell 60 foot wide right-of-way for that entire distance. C. Bailey said the 60 foot right-of-way is not utilized for anything. J. Ayer said it would be nice to extinguish that. C. Bailey said that has been discussed.

Philip Brouillard, attorney, of Brouillard & Brouillard, PLLC, said that he might be the cause of all this because he drew up the easements/rights-of-way. He said that they thought that they were going to put a town road in there and these things happen. He said they have discussed and they are in the process to extinguish that 60 foot right-of-way. He said that he wanted everyone to know that Mrs. Turcotte gave these easements to others so that they could go over her property. The rights she gave them are not where this new driveway is located.

J. Ayer said that at the Zoning Board meeting there was discussion as to the possibility of extending the Class V road to possibly create normal frontage and to at least move the new driveway away from the other two rights-of-way. C. Bailey said that right now construction costs to build the driveway are high and it would not be beneficial to the applicant. He said it is close on the cost but the materials the applicant plans to use for the subdivision will make this a less expensive option, and it meets the ordinance regulations.

W. Hall said that the easterly lot is going right into the garage if they were going to use the other access. C. Bailey said that W. Hall is probably looking at Sheet #5. He said he would like to get that 60 foot right-of-way extinguished because the other approach is a better driveway. He said this is a terrible driveway and he designed it.

J. Ayer asked about the stone shown in the 60 foot Caldwell right-of-way on Sheet #4. C. Bailey said that there is a natural swale there which they will use for drainage until a driveway is built there. He noted that the Caldwell driveway is just a snowmobile trail.

Public Input

W. Hall asked if there were any members of the public wishing to speak.

Wendy Roper said she is an abutter and owns a lot on Young Road. She said this is very complex. She said she has no problem with this conceptually, but there are some issues that she wanted to raise. As of last week, the applicant had not submitted an application to remove the extra (third) apartment unit. She said this needs immediate action so that it complies with the rules. She said on May 18th, there was a site visit made by a Town official and there was a request made that certain items must be removed. The plans submitted show a wetlands buffer near the proposed home on the easterly lot and she would like to be assured that no harm will be done to the wetlands. She said these wetlands were harmed and they were finally resolved in 2014. She just wants to make sure that damage isn’t done to that area again.

Bryan Roper, abutter, said there should be some kind of easement with regard to snow removal and a restriction to not block any driveways that maybe should be added to the deeds.

Ron Fulmer, abutter, of 140 Young Road said that it is his understanding that these lots will have a septic system. He asked if there had been a perc test done on the property, and what steps are in place with regard to the wetlands. He asked how many feet are the proposed driveways from the Ropers’ property line.

C. Bailey said that the test pits and the perc tests have been done in the 4k areas shown on the plan, and they meet all the requirements with all three lots, but that State approval is pending. He said scaling off the plan, the proposed driveway is going to be 125 to 130 feet from the northernmost point of the northerly right-of-way.

J. Ayer asked what the closest point is from the new driveway to the northerly driveway. C. Bailey said that they are parallel, so the centerline is 75 feet and it’s about a 14-foot driveway in both easements. The snow removal can be worked into the plan and that is a reasonable request.

C. Bailey said that Mrs. Turcotte did submit a building permit which was for the removal of one unit so this would make it a two unit dwelling. C. Bailey said he thought that there was a letter saying that the planning office was satisfied with the piles of leaves from the City of Laconia and that the commercial stuff had been cleaned up. J. Ayer said that he didn’t know about a letter. C. Bailey said that he would submit a letter and will ask the Code Enforcement Officer to reply.

W. Hall closed the public portion of the application.

**2. ACTION ON ABOVE**

**1.1 A to Z Fitness, LLC**

I. Howe recused himself and R. Notkin was asked to take his place.

C. Scattergood said that we certainly can’t ask for any more data than what we’ve already gotten.

She said she knows that someone asked about getting a third party but she said she thinks we’ve asked everyone for more than enough information on this and we should make a decision tonight. What we are talking about is an area that is going to be grass, and she said it seems to her that it’s green space. She said she is almost having a problem with it just being grass. She said she feels for Andy Howe and his care of the land and understands his concerns. She said she doesn’t see any issue with it being grass provided it’s not going to be anything else.

G. Fedorchak said that this has been going back and forth in her head and landing on each side of the question. She said hearing the very clear testimony that the testing was done of the soil down below the fill, she does have a problem with the fill and the fact that it’s there, but that’s not the issue here. She said the issue is with the drainable soils underneath and if they are, and the testimony is that yes they are currently drainable soils. J. Landow asked if by “testimony” she meant the testimony from Cynthia Balcius. G. Fedorchak said that was correct.

E. Drake said that the applicant hired her so maybe we should have a third party review. G. Fedorchak said that her testimony sounded clear.

C. Eddy said that the sedimentation and the layers that something that’s been there for a long time you don’t get that type from a fill. It was his understanding that it was sedimentary and that tells him it’s been there for a long time.

J. Ayer said that our own town attorney was able to review the correspondence and said that it didn’t change the interpretation. The suggestion from counsel was to have C. Balcius make a statement whether she followed the delineation of wetlands as defined in the Zoning Ordinance, and she has done that.

C. Scattergood said that there are two options and that’s to approve or deny the application. She said if it’s approved they will remove trees and they will add the trees, and if it’s denied, they will do nothing.

J. Landow said that he didn’t hear any mention if the DPW Director’s concerns had been addressed. J. Ayer said that she had reviewed and approved the revised drainage information, and he said he had also included that as a possible condition of approval in the staff report if the Board were to approve the application.

J. Landow said that the Board isn’t addressing additional parking in any way, or at least saying no overflow parking is allowed on Old Lake Shore Road. G. Fedorchak said that it could be one of the conditions, that no overflow parking would be permitted. She said if the Board were to approve it, she liked the point made with regard to the limit of fertilizers. C. Eddy said that it’s more of a NHDES issue and he’s not sure that it can be limited. J. Ayer said there is a prohibition on the use of phosphorus-containing fertilizers in the wetland buffer in the Zoning Ordinance under Section 15.5.1.

J. Ayer said the other issue is does it require a special exception for what they are trying to do within the wetlands district. G. Fedorchak said that it’s a moot point given the testimony.

G. Fedorchak said that there was a question raised of do we have objective testimony as to the presence or absence of drainable soils. J. Landow said that someone did suggest a third party review. G. Fedorchak asked if there was any reason to go down that road. W. Hall said that as per the earlier discussion there doesn’t seem to be a need.

W. Hall asked about district boundaries and do we need a variance for that. J. Landow said that he didn’t believe so because C. Balcius isn’t using just the state’s wetlands delineation standards but she is following the town’s as well. So we are really getting down to the DPW requirements needing to be met. J. Ayer said that should be a condition as well as the parking being on site. Those conditions or requirements should be stated. J. Ayer said that the Board may also want to make a finding somehow to reference the statements made by the wetlands scientist.

C. Scattergood said that she was confused by attorney S. Nix’s statement with regard to when certain things were made and accepted. C. Eddy said that some of it deals with ex post facto application of law. One of the things he brought up would require applying the law after the plan was reviewed. He said you can’t go back, it’s unconstitutional.

J. Landow said that whatever decision we make is it subject to appeal? C. Eddy said it is. Discussion ensued.

W. Hall read a possible motion. He said that given the evidence presented, we accept the wetlands report as presented. We approve the application subject to the following conditions:

a. The applicant shall amend the plans to address the drainage system comments of the Director of Public Works. The drainage layout and design shall be subject to her review and approval.

b. The applicant shall assure that there is no overflow parking on Old Lake Shore Road.

c.The applicant shall obtain any other federal, state, or local approvals that may be required.

E. Drake said she would make that motion as stated by W. Hall, seconded by G. Fedorchak.

J. Landow said in reference to the overflow parking that maybe the Board should say that all parking shall be on-site parking without any reference to overflow. It would all have to be on site, period. Discussion ensued.

Motion made by J. Landow, seconded by R. Notkin, to amend the wording of the second condition to require that all parking shall be on site, rather than “the applicant shall assure that there is no overflow parking on Old Lake Shore Road”. Motion to amend the original motion carried.

W. Hall called for a vote on the amended motion. Motion carried, with C. Eddy opposing.

I. Howe remained recused.

1.2 McCollias, LLC

Motion made 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.

I. Howe returned as a voting member of the Board.

**1.3 Governor’s Island Club, Inc.**

E. Drake and C. Scattergood recused themselves.

C. Eddy said that he has some heartache with this one. He has concerns with the drainage issue and said something isn’t quite right. G. Fedorchak said that it sounds like there is already a problem. C. Eddy agreed and asked if this will this make it worse.

G. Fedorchak said that the DPW Director’s recommendations were good. J. Ayer said that the drainage plans were changed based on her comments.

Motion made by I. Howe, seconded by J. Landow, to approve the application subject to the following conditions:

a. The recommendations of the DPW Director regarding drainage on the site shall be followed.

b. This facility shall be used for Governor’s Island Club members and shall not be used for commercial purposes or draw in other additional users.

c. The applicant shall obtain any other federal, state, or local approvals that may be required.

Motion carried with all in favor.

E. Drake and C. Scattergood returned as voting members.

**1.4 Craig Bailey, PE, LLS of Bryan L. Bailey Associates, Inc.**

G. Fedorchak said that she was looking at the issues with regard to wetlands. She heard one of the abutters ask if we would add that into the approval as a condition. W. Hall said that they would need an Alteration of Terrain permit.

C. Eddy said that right now the subdivision doesn’t allow for any alteration. G. Fedorchak said it would be covered under other state approvals.

G. Fedorchak asked what about the snow removal issue. J. Ayer said that it’s a private matter really. W. Hall said that he didn’t think it was under this board’s review. C. Eddy said that he also didn’t think it was this board’s purview. I. Howe thought that they must have some wording in the easement about keeping that clear.

C. Eddy said that there were a couple of different plans and one other with a 10-lot subdivision that never was developed. He said the 60-foot easement is not really up to the Board and the applicant said that easement would go away. W. Hall said that it becomes an issue between two property owners. I. Howe said that it might be a non-issue because the new proposed driveway will be just for them.

Motion made by I. Howe, seconded by C. Eddy, to

a. Approve a Conditional Use Permit to allow two (2) lots with less than minimum frontage finding that the lots meet all of the requirements of Section 5.1.2(d) of the Gilford Zoning Ordinance.

b. Approve the application subject to the applicant obtaining any other federal, state, or local approvals that may be required.

Motion carried with all in favor.

**3. OTHER BUSINESS**

Northeast Self Storage Inc. – J. Ayer stated that we received an opinion from Town Counsel.

I. Howe recused himself from this discussion.

J. Ayer said the question is can a building permit be issued at this point and have the applicant resolve the issues with the buffer as the building is under construction. He said it does make some sense. He said DPLU could hold back on issuing a certificate of occupancy and bond for the unplanted trees required in the buffer.

J. Ayer said that this would allow the applicant to get going on the building and resolve his buffer issue in the meantime. He said Mr. Letendre went back to the ZBA for confirmation from that board that the buffer as shown on the site plan is in compliance with their condition of approval, trying to comply with the Planning Board’s condition of approval, but the ZBA said that it was not their issue and sent it back to the Planning Board. Town counsel said that the applicant could submit an application to amend the conditions of approval in the future. J. Ayer said it seems like an issue that could be resolved easily. He said in the future when we have conditions of approval of this type we may want to incorporate other options for the conditions.

With regard to the abutter, J. Ayer said that he talked to the person living there who is the father of the owner. That man said that Mr. Letendre talked to him about planting more trees and he told Letendre that he didn’t care to have him plant more trees. The property owner said that he would not sign a letter. J. Ayer said that if the Board agrees with allowing the applicant to begin construction and site development then it would be good to authorize the chairman to sign off on the site plan provided that we are able to secure what we need regarding the conditions. J. Ayer said this would mean that no Certificate of Occupancy will be issued until all of the conditions of approval are satisfied and that we take a cash bond for any tress that have not yet been planted.

G. Fedorchak asked if we would be referencing a plan. J. Ayer said that it would be the site plan that the Board approved.

W. Hall asked if we need a motion for this. J. Ayer said yes. He added that if the Board is not inclined to allow it, then we will make Mr. Letendre amend the conditions first.

C. Scattergood asked how it would get worded. Do we grant permission to start construction of the building?

J. Ayer said that we don’t typically issue a building permit until the site plan is signed so it would be to authorize the chairman to sign the site plan to allow the issuance of the building permit subject to taking a bond, not allowing occupancy of the building until all conditions are met. J. Ayer said that this is an unusual case because we sent something back to the Zoning Board of Adjustment only to have them say they would not address it. C. Eddy said yes, they washed their hands of it.

C. Eddy asked if this would have to be noticed. J. Ayer said he didn’t think so because the Board has already approved the site plan subject to conditions. It’s not amending anything, it would be requiring the conditions to all be met, but it would be allowing the site plan to be signed and the building permit to be issued to allow the work to commence on the building. J Ayer said that he will not allow the building permit to be issued until he has a bond in place if the bond is required.

J. Ayer said that typically we would take a bond for the full amount of the landscaping work to be done plus an extra 10% contingency. We would hang on to the contingency for a year after the last trees are planted to make sure that the trees survive. He said the process is for the applicant to give us an estimate of the cost of all the trees and verify with the DPW Director that the costs are consistent with costs to the Town to make sure that it’s accurate. In this case, most of the trees have been planted already, but he said he will do an inventory to determine how many additional trees to bond for.

Motion made by C. Scattergood, seconded by E. Drake, to authorize the Chairman to sign the site plan to allow issuance of the building permit subject to the applicant posting a bond for the landscaped buffer. Motion carried with C. Eddy opposing.

Motion made by I. Howe, seconded by C. Eddy, to continue past 10 p.m. Motion carried with all in favor.

Golden, LLC – Craig Bailey of Bryan L. Bailey Associates, Inc., said he submitted a plan for a minor change for Golden, LLC. J. Ayer said that we approved this site plan about six months ago. C. Bailey said that this is on Lily Pond Road and Dunbar Drive next to the gun range. The applicant is asking to add four paved parking spaces shown in the yellow area and to change the shape of the treatment swale without having to seek a full-blown amendment to the site plan. W. Hall said that this would be an item to show on an as-built plan. C. Bailey said they can provide an as-built for the board.

C. Bailey said that this will be to create parking spaces for four company vans. J. Landow asked if the only change is the four parking spaces and the shape of the swale. G. Fedorchak asked how the shape of the swale has changed. C. Baily said it’s shorter and wider because it’s being pushed over because of the four additional parking spaces. He said it has the same hydraulics, however. J. Ayer asked if he had run it by DPW with regard to the drainage change. Not yet, replied C. Bailey.

Motion made by C. Eddy, seconded by I. Howe, to approve the change that will be reflected on the as-built plan and subject to the DPW Director approving the change to the swale. Motion carried with all in favor.

**4. MINUTES**

Motion made by C. Eddy, seconded by J. Landow, to approve the minutes of June 7, 2021 as submitted. Motion carried with G. Fedorchak abstaining.

**5. ADJOURNMENT**

Motion made by C. Eddy, seconded by Scattergood, to adjourn the meeting at 10:15 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary