GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 23, 2021

 **CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, November 23, 2021, at 7:00 p.m.

The public, the applicant, and Board members were able to join via GoToMeeting.

Chairman Bill Knightly led the Pledge of Allegiance.

Members present were Chairman Bill Knightly; Vice-Chairman Larry Routhier; Regular members; Andy Howe, Scott Davis, Adrianna Antonopoulos, and Alternate member Kevin Hayes.

Also present were Sandra Hart, Technical Assistant, Daniel Tousignant, Building Inspector-Code Enforcement Officer, Eric Maher, Town Attorney and Scott Dunn, Town Administrator.

B. Knightly stated that his only rule is that when you wish to speak you come over to the microphone.

Motion made by L. Routhier, seconded by A. Howe that no new cases would be heard after 10:00pm.

Motion carried with all in favor.

**1. Applications**

 **1.1 Jeffrey Spear & Jennifer Kernan**

**Application #2021000669** - A Variance is being required from Article 5. Dimensional Regulations, Section 5.2 Special District Standards, 5.2.1 Island, and Shore Frontage Districts (a) to construct an elevated deck within the 50-foot shoreland setback on the property located at 7 Lockes Island on Tax Map & Lot #243-025.000 in the Island Residential (IR) Zone. *Tabled from the October 26, 2021 meeting.*

Motion made by S. Davis, seconded by L. Routhier to take the application off the table. Motion carried with all in favor.

Presentation

Ethan Wood of Normandin, Cheney & O’Neil represented the applicants Jeffrey Spear & Jennifer Kernan.

A. Howe asked if there were any objections with him hearing the case, because E. Wood is his attorney. There were no objections from the board or members of the public.

E. Wood stated that the applicants are proposing to add a deck to the side of the house on the southerly side, 12-feet wide where it faces the lake. The deck would be elevated above the lake and the closest would be 15-16 feet above the water.

Ethan Wood went over the Variance criteria:

*1. Granting the Variance will not be contrary to the public interest because:* The applicant’s property is in the Island and Shore Frontage Zoning district. The house, when it was built in the 1920’s was constructed close to the shore and is almost completely located within the fifty-foot (50’) setback. The Island and Shore Frontage Zoning District is an overly district that imposes additional requirements upon the shorefront properties of Lake Winnipesaukee. The purpose of this overlay district is “to protect water quality, to reduce sedimentation and erosion, to protect aquatic habitat, and to protect the natural beauty along major water bodies in the town.

Permitting the construction of an elevated deck would not alert the essential character of the neighborhood and, given the height at the point closes to the water, would be unlikely to increase sedimentation or erosion or negatively impact the beauty of the location, the aquatic habitat or the water quality. Granting the variance to construct an elevated deck would also no threaten the public health, safety or welfare of the neighborhood or the community as the proposed elevated deck will no create street congestion or contribute to overcrowding and is reasonable in both design and use, given its location.

*2. The spirit of the ordinance is observed because:* The proposes variance from a setback requirement would be consistent with the spirt of the ordinance, because granting the variance would not have an impact on the public health, safety, or welfare.

*3. Substantial Justice is done because*: Because denial would yield no benefit to the Town, the variance to construct an elevated deck within the shorefront setback should be granted.

*4. The values of surrounding properties will not be diminished because:* Many of the properties on Locke’s Island already have decks or patios that are within the shorefront setback. Granting this variance will help ensure that this property’s value will increase in a commensurate fashion with the neighbors so that this property does not tact as one that decreases the values of the surrounding properties because it lacks features common to those properties

*5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship because:*

*(A) For purpose of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:*

1. *No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property:*
2. *The proposed use is a reasonable use:*

The proposed use is residential, as is the current use and is an approved use per zoning.

The best way that they can maximize the sunlight, is to add this deck on the easterly side.

It is a reasonable use and a reasonable request, and fits the criteria.

S. Davis commented that at least two sides have a screened in porch now, and you said that the property doesn’t have a deck like the other properties. E. Wood explained that a deck allows for grilling and a closed deck isn’t quite the same as an open feel as you get from a deck, while it has an enclosed porch it doesn’t cover what they are wanting to do.

A. Antonopoulos said that it shows an existing deck there also. J. Kernan stated that yes there is, but its rotted because it doesn’t get any sun.

How far from the lake asked B. Knightly. At its closest 12.5 feet replied E. Wood.

D. Tousignant stated that his concerns would be the structural and the safety.

L. Routhier stated that on the application it does say that piers will support it.

E. Wood explained that the new deck would be built as to proper building codes.

K. Hayes asked about the approval from the NHDES. He read the conditions for everyone on the application from the NHDES.

K. Hayes referred to a photo in the packet on page 1 that shows a pile of timber. J. Kernan replied that they had a few trees that were damaged; she hired a licensed professional to come in and take care of those trees and that’s how they were stacked.

E. Wood stated that to the west of the house, there are many trees and those impact the ability of sunlight and this deck would give them the capability to enjoy the outdoors and sun a little more on the southerly side of the house.

J. Kernan stated that it’s cold where the current one is and she would like to add one in front to have the sun.

D. Tousignant referred to drawings that were submitted and brought that the existing stairs and deck. J. Kernan said that those stairs would be removed and the deck is rotted, because it’s always in the shade.

Public

B. Knightly asked if there was any members of the public that wished to speak. Hearing none, he closed the public hearing portion of the meeting.

Motion

Motion made by L. Routhier, seconded by A. Howe to approve application #2021000669 for a variance. That it has met all the criteria for a Variance and that it has met all the Specific Requirements under Article 12, Section 12.1.

S. Hart took a roll call:

S. Davis – yes

A. Howe – yes

B. Knightly - yes

L. Routhier - yes

A. Antonopoulos - yes

Motion carried with all in favor.

 **1.2** **NAQ Guilford, LLC**

 **Application #2021000522**

Applicant is seeking a Special Exception pursuant to Article 6, Section 6.13, Condominium Conversion, of the Gilford Zoning Ordinance, to allow conversion of an existing house and six (6) seasonal cabins to condominium ownership on property located at 46 Glendale Place on Tax Map & Lot #242-196.000 in the Resort Commercial (RC) Zone. *Tabled from the October 26, 2021 meeting.*

Motion made by L. Routhier, seconded by S. Davis to take the application off the table. Motion carried with all in favor.

\*This application would have to be in conjunction with Application #2021000748.

Presentation

Sarah Rubury, Attorney at Law, Westcott Law P.A. and Bryan Bailey of Bryan Bailey & Associates, Inc. She explained that this application is for a change of ownership only that the property would remain the same, so there will be no change in use to the property.

B. Bailey went over the conditions:

*(a) A denial was issued by a Town official on matters under their jurisdiction on (date):* John Ayer issued a denial on 8/4/2.

*(b) The site is appropriate for the proposed use or structure because:* The subject property known as Glendale Cabins has seven existing seasonal cabins serviced by municipal sewer. The proposal to convert the property only includes the change of ownership from rental into condominium ownership, and does not include any proposed changes to the existing units.

*(c)The proposal is not detrimental or injurious to the neighborhood because:* The proposal does not include any change to the property or existing units. These will be only seasonally, they are small and the largest is 16’x16’, so they are not going to be year round.

*(d)There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because:*

The proposal does not change the current pedestrian or vehicular traffic. This will make this more of a consistent stay, which will be less traffic then a weekly rental.

*(e)Adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use of structure, as follows:* All existing units are services by municipal sewer. The units all have electrical; telecommunications are all on an existing well.

*(f)The proposal is consistent with the spirit of the zoning ordinance and the Master Plan because:*

The proposal does not change the intended use of the property only the form of ownership of the individual units.

B. Knightly asked about the main house and if that was going to be a condo as well. The applicants said that it’ll be a separate condo for the family.

A. Antonopoulos asked if you have association guidelines drawn up for this. As to what’s going to be the restriction with regard to the rentals of those condos.

Derek and Meredith Desharnais for NAQ Guilford, LLC., stated that they would allow for rentals of the condos.

Public

B. Knightly asked if there was any members of the public that wished to speak.

Gail Degangi, Real Estate Agent and a neighbor. She stated that the former owners had rented them nightly or weekly.

Any further comments or questions, hearing none B. Knightly closed the public hearing.

Motion

Motion made by A. Howe, seconded by L. Routhier that the General Rules for Special Exception under Section 11.2 of the Gilford Zoning Ordinance have been met.

S. Hart took a roll call:

S. Davis - yes

A. Howe - yes

B. Knightly - yes

L. Routhier - yes

A. Antonopoulos - yes

Motion carried with all in favor.

\* This application was taken out of order.

**1.10 NAQ Guilford LLC**

**Application #2021000748** – Applicant requests an Equitable Waiver of Dimensional Requirements from Article 5, Section 5.1.3, Front Setback Area, of the Gilford Zoning Ordinance, to allow “The existing cottage shown as Cabin 1/Unit 2… to remain in place as a cottage unit despite its lack of building permit and despite its being within the setback area”, on property located at 46 Glendale Place on Tax Map & Lot #242-196.000 in the Resort Commercial (RC) Zone and Aquifer Protection District.

Presentation

Sarah Rubury, Attorney at Law, Westcott Law P.A. and Bryan L. Bailey of Bryan Bailey & Associates, Inc., were representing this application as well.

S. Rubury stated that what we have are preexisting non-conforming situation, there have 3 different owners over the years. A cottage that has been used in that way for several decades, but somehow it has no permits. The existing cottage shown as Cabin 1/Unit 2 on the plan is to remain in place as a cottage despite its lack of building permit and despite it being within the setback area.

S. Davis asked how does the equitable waiver apply. S. Rubury stated that’s what John Ayer and she discussed and we thought that maybe this would be the best way to go about this situation. But we can also consider a withdrawal. The thought would be that this would simply be to ratify the cabin, as it exists.

S. Davis asked about the setback. B. Baily explained that it’s 6.9 feet to the road right-of-way.

E. Maher wanted to know if it’s the only cottage in the setback.

A. Howe stated that through no fault of the applicant, it’s been there a long time.

E. Maher asked if there was issue as to where it is, and does it pre date the building code?

Both S. Rubury and B. Baily didn’t know when it was constructed.

A. Howe asked about the tax assessors and when those buildings first appeared on the tax roll?

B. Bailey stated that yes, they are, but it’s inconclusive.

B. Bryan Bailey stated that on the tax cards there were only 6 cabins never seven so that’s why John Ayer and had to go this path, and there was no permits.

D. Tousignant stated that he has been out to the site and has done many inspections, and he went over the current permits. During his inspections of the cabins they looked as though they were built around the same time. He believes that they meet the standards of the current code.

A. Howe asked about the foundation of cabin 1. D. Tousignant stated that as far as the footings go they look like they are in great shape.

S. Davis asked when the cabins were built? S. Rubury said that they look like they may have been built around 1950’s.

E. Mayer said that the relief that is being sought is for an equitable waiver, and it is limited as if this qualifies to this being an equitable waiver, and does it qualify as a pre-existing non- conforming use. He encouraged the board to exercise if this is a lawful use.

Public

B. Knightly asked if there was any members of the public that wished to speak.

Gail Degangi, Real Estate Agenda stated that she sold them the property and that she has lived next door to this property for almost 30 years. She stated that when she went to the assessing office, she found 8 tax cards for this property, and the old survey also shows these as existing units.

Any further comments or questions, hearing none B. Knightly closed the public hearing.

Motion

Motion made by A. Howe, seconded by S. Davis to approve the application has having met the criteria for an Equitable Waiver, in this particular application, as outlined in RSA 674:33-a

S. Hart took a roll call:

K. Hayes - yes

S. Davis – yes

A. Howe - yes

B. Knightly - yes

L. Routhier - yes

A. Antonopoulos - yes

Motion carried with all in favor.

**1.3 MG Holdings, LLC**

 **Application #2021000525** - Applicant is seeking a Variance from Article 6, Section 6.22.3 to allow excavation and/or filling of slopes greater than 25% to allow construction of a house on property located at 69 White Birch Drive on Tax Map & Lot #253-366.000 in the Single Family Residential (SFR) Zone. *Tabled from the October 26, 2021 meeting.*

Motion made by S. Davis, seconded by L. Routhier to take the application off the table.

Motion carried.

Presentation

Attorney Roy Tilsley Jr., of Bernstein Shur represented the applicant MG Holdings. Mike Gallo, Principal of MG Holdings was also present.

B. Knightly asked if what had been requested at the last meeting was added to this plan. R. Tilsley replied that they reworked the retaining walls so they are no more than 4’ high. They also added the drainage and they added the note.

The one thing that we haven’t done was with regard to what Mr. Hayes noticed with regard to the

property lines adding up, because we realized that the surveyor had assumed the datum. Which is different on the two plans. It doesn’t give you the answer on the plans, because each property as shown shows the actually grades. The drainage was reviewed and there doesn’t seem to be any drainage concerns.

Mike Gallo stated that originally we’ve had an 8’ walls and we have 4’ walls that step down, which the plans shows. The height of the slab is at 301.5 shown on the contour.

Attorney R. Tilsley stated that he thought everything the board was looking for had been done.

L. Routhier stated that due to his lack of his construction knowledge he recused himself and K. Hayes was asked to sit in,

K. Hayes reviewed the plans showing the height of the walls and the contours, he came up with a 14 ft. difference in two walls, and he didn’t see how they could make that work.

M. Gallo said that we could slope off the bottom of that wall.

K. Hayes that you can move it back but you will have the same contours.

A. Antonopoulos said that this is why there is a Zoning Ordinance, and that is why this is not a buildable lot.

K. Hayes asked about the other lot and if the water drains into White Birch Road, because he didn’t know what the capacity, because it’s not labeled. If you’re adding an impervious driveway, we should know that information. He suggested coming back with a more polished plan.

A. Howe said given all these concerns, his suggestion is to possibly withdraw this application.

Discussion ensued.

K. Hayes stated that he went out there and he didn’t think this plan would work on this lot.

Public

B. Knightly asked if there was any members of the public that wished to speak. Hearing none, he closed the public hearing portion of the meeting.

Motion

Motion made by K. Hayes, seconded by A. Howe to table application # 2021000525 to the December 28, 2021 meeting. Motion carried with all in favor.

**1.4 MG Holdings, LLC**

 **Application #2021000526** - Applicant is seeking Variances from Article 6, Section 6.22.3 to allow excavation and/or filling of slopes greater than 25%, and from Article 5, Section 5.1.3 to allow construction of a house within the front setback, on property located at 77 White Birch Drive on Tax Map & Lot #253-365.000 in the Single Family Residential (SFR) Zone. *Tabled from the October 26, 2021 meeting.*

Motion made by S. Davis, seconded by A. Howe to take the application off the table and to table it to the December 28, 2021 meeting.

**1.5 MG Holdings, LLC**

 **Application #2021000527** - Applicant is seeking a Variance from Article 6, Section 6.22.3 to allow excavation and/or filling of slopes greater than 25% on property located at 94 Sagamore Road on Tax Map & Lot #252-143.000 in the Single Family Residential (SFR) Zone. *Tabled from the October 26, 2021 meeting.*

Motion made by K. Hayes, seconded by S. Davis to take the application off the table and to table it to the December 28, 2021 meeting. Motion carried with all in favor.

An email request was submitted to table this application.

**1.6 Heidi Kephart**

 **Application #2021000591** - Applicant is requesting an Appeal from an Administrative Decision of the Gilford Planning Board for a conditional site plan approval made on July 19, 2021 for A to Z Fitness, LLC at 314 Old Lake Shore Road on Tax Map & Lot #224-068.000 in the Resort Commercial (RC) Zone and Aquifer Protection District. *Tabled from the October 26, 2021 meeting.*

A. Howe recused himself from this application. K. Hayes was asked to stand in for A. Howe.

Motion made by S. Davis, seconded by K. Hayes to take the application off the table. Motion carried with all in favor.

B. Knightly had a letter from the town attorney that he, S. Davis and K. Hayes read for the record.

Having held public hearings on the administrative appeal on October 26, 2021 and November 23, 2021, the Gilford Zoning Board of Adjustment denies Heidi Kephart’s administrative appeal based upon the following findings:

On July 19, 2021, the Gilford Planning Board conditionally approved a site plan application for A to Z Fitness, LLC to allow it to create a lawn area on the property. The lawn area is intended to be used as sports fields to be used by the members of the Gilford Hills Tennis Club and, on occasion, by youth soccer clubs. Ms. Kephart raises five claims of error regarding the planning board’s approval. This Board will address each in turn:

**1. Approval of the Site Plan violated Article 15.2.1 of the Gilford Zoning Ordinance because the applicant did not submit a written report addressing the 1983 Re-Tech Soils Report**

Article 15.2.1 of the Gilford Zoning Ordinance states:

**15.2.1 Wetlands Incorrectly Delineated** – When it is alleged an area has been incorrectly delineated as a wetland, or an area not so designated meets criteria for wetlands designation, the Planning Board shall render a decision only upon the determination by a qualified soil scientist(s) and/or plant scientist(s), on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands Map is incorrect. This evidence shall be accepted only when presented in written form by said scientist to the Planning Board. Any necessary soil testing procedures shall be conducted at the expense of the landowner or developer. Prior to ruling on this, the Planning Board shall request Conservation Commission review and comment on the reclassification.

It is undisputed that A to Z Fitness, LLC did provide a written submission from a certified wetlands scientist regarding the boundaries of the wetlands. See June 14, 2021 letter from Stoney Ridge Environmental, LLC, attached to Appeal at ZBA 70. Ms. Kephart’s complaint is that there was no written submission from A to Z Fitness, LLC addressing the 1983 Re-Tech Soils Report that she located in the town’s files and provided to the planning board following that June 14, 2021 letter.

There is nothing in the Ordinance which requires the applicant to respond to every allegation made by an abutter. Rather, in the event of a dispute regarding the boundaries of a wetland, the ordinance allows the planning board to render a decision regarding the disputed boundary “upon the [written] determination by a qualified soil scientist . . . on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands Map is incorrect.” A to Z Fitness, LLC here submitted such a written determination, and therefore, the requirements of Article 15.2.1 of the Gilford Zoning Ordinance were met.

1. **Approval of the Site Plan violated Article 15.2.1 of the Gilford Zoning Ordinance because the Conservation Commission did not review and comment**

Ms. Kephart next claims that the planning board erred in approving the plan without first obtaining the input of the conservation commission. Article 15.2.1 of the Ordinance does not require that the conservation commission actually review and comment upon the reclassification of the wetland boundary; it requires the planning board to request such review and comment.

In this case, the conservation commission did consider this issue at its April 20, 2021 meeting. It is unclear why the commission never submitted a review and comment; however, the fact that it did not is irrelevant to the issue of whether it was requested to do so, as required by the Ordinance. Additionally, a site visit was held on May 14, 2021. Two members of the conservation commission attended this site visit. While it is true that two members do not constitute a quorum, again, the Ordinance does not require that the conservation commission actually take any action.

Since the conservation commission did consider the application, this Board finds that the requirements of Article 15.2.1 were met.

 **2.** **Approval of the Site Plan violated Articles 15.2 and 15.2.1 of the Gilford Zoning Ordinance because the Planning Board unlawfully remapped Prime Wetlands**

Ms. Kephart claims that the planning board illegally remapped prime wetlands by approving the application, in violation of RSA 482-A:15. This Board disagrees. As Ms. Kephart correctly notes, “the planning board relied upon the testimony of the Applicant’s wetland scientist” in approving the application and accepting the boundaries of the wetlands. Article 15.2.1 of the Zoning Ordinance allows the planning board to do so, and while RSA 482-A:15 allows the conservation commission to “designate, map, and document prime wetlands within its boundaries,” this is not the action the planning board took with regard to this application.

**3.** **Approval of the Site Plan violated Article 4.7.5(c) of the Ordinance because Gilford Hills Tennis and Fitness Club is not a Club as defined in the Ordinance**

Ms. Kephart claims that the use of the property is not a permitted use under the ordinance, because it is operated for profit, and, she claims, “clubs” as defined under the Ordinance must be non-profit entities.

First, there is nothing in the definition of “club” which requires the use to be operated as a non-profit, and Ms. Kephart’s citations to state law are irrelevant to that issue. Second, it is undisputed that the existing use of the property is a nonconforming use, which is entitled to continue under state law and which may be expanded under the criteria set forth in New London Land Use Assn. v. New London ZBA, 130 N.H.

510 (1988). Specifically,

Nonconforming uses may be expanded, where the expansion is a natural activity, closely related to the manner in which a piece of property is used at the time of the enactment of the ordinance . . . However, enlargement or expansion may not be substantial and may not render premises or property proportionally less adequate . . . We must also consider the extent to which the challenged use reflects the nature and purpose of the prevailing nonconforming use, whether the challenged use is merely a different manner of using the original nonconforming use or whether it constitutes a different use, and whether the challenged use will have a substantially different impact upon the neighborhood.

 The creation of a lawn area to be used for recreational activities such as soccer is a natural activity, closely related to the manner in which the property has been used. We therefore find it is a lawful expansion of a nonconforming use.

**4. Approval of the Site Plan violated Article 4.7.3(o) of the Ordinance because the proposed use is Outdoor Recreation which is not a permitted use**

Article 4.7 of the Ordinance includes descriptions of permitted uses. They are not intended to be definitions, but instead are examples of permitted uses. This article includes a description of Outdoor Recreation as “Passive, low intensity outdoor recreational uses which are not primarily structure oriented. Typical uses are golf courses, horseback riding stables, and hiking and cross-country ski trails. Minimum lot size shall be twenty five (25) acres.”

Ms. Kephart claims that since the A to Z Fitness, LLC property is not 25 acres, it may not be developed as an Outdoor Recreation facility. This Board finds that the proposed lawn area is not Outdoor Recreation. Instead, it agrees with A to Z Fitness, LLC that it is an accessory use of an existing non-conforming Club use, which may be constructed on a lot of less than 25 acres.

For the foregoing reasons, the administrative appeal is denied in its entirety. Any party aggrieved by this decision may seek a rehearing from this Board within 30 days and thereafter may appeal to superior court, pursuant to RSA 677:2 and RSA 677:4.

Motion made by K. Hayes, seconded by S. Davis to deny to the request of an Appeal from and Administrative Decision based on the letter just read for the record.

S. Hart took a roll call:

K. Hayes - yes

S. Davis - yes

B. Knightly - yes

L. Routhier - yes

A. Antonopoulos - yes

Motion carried with all in favor.

A. Howe came back to the table.

**1.7 Joseph W. Conti, Esq., Welts, White & Fontaine P.C.**

 **Application # 2021000744** – Appeal of an Administrative Decision regarding a Notice of Violation issued by the Deputy Code Enforcement Officer dated September 21, 2021 regarding 63 Sand Hill Road on Tax Map & Lot #209-007.100 in the Limited Residential (LR) Zone.

A. Antonopoulos and K Hayes recused themselves from this application.

B. Knightly stated that there was now a 4-member board and referred to RSA 674:33, III.

Attorney J. Conti stated that they would like to have a 5-member board.

E. Maher stated that it would be at the discretion of the board.

B. Knightly said that he can’t promise anything, but that he could request a temporary appointed member from the Board of Selectmen.

J. Conti explained that they are in some settlement discussion and that extra month would offer extra help, so he would in favor of tabling this application.

B. Knightly stated that he would make a formal request to the Board of Selectmen for a pro-temp member to sit on this case.

Motion made by L. Routhier, seconded by A. Howe to table the application until the December 28, 2021 meeting. Motion carried with all in favor.

**1.8 Thomas and Joellen Space**

**Application #2021000746** – Applicants are seeking a variance from Article 5, Section 5.2.1(a), of the Gilford Zoning Ordinance, regarding special setback requirements in the Island and Shore Frontage District, to allow construction of a screened porch having a setback from Gunstock Brook less than the minimum 50 feet required, on property located at 18 Tannery Hill Road on Tax Map & Lot #226-061.000 in the Single Family Residential (SFR) Zone, Historic District, Island and Shore Frontage District, and Aquifer Protection District.

Presentation

Matthew McGowan Contractor, Lakes Property Management and the homeowner Joellen Space were present.

M. McGowan stated that they just purchased the house early fall, there was an existing porch on the house and the minute he looked at it he had to remove it. The deck hadn’t been built correctly and the siding was rotted. So, we would like to build a screened porch a little bigger than what was there. He explained that the majority of the porch will conform to the setbacks.

D. Tousignant stated that he had out to the site and that he measured and marked where the previous location was and he marked out the closest point to the Brook was 47 feet and it’s really close. But, it’s the only a corner of the porch that’s within that.

K. Hayes noted that in this case the owner owns all the way down to the river so there is not detrimental effect to the river and they now have a door that is blocked because it had to be removed.

S. Davis stated that he was sympathetic but there is no site plan and we typically ask for a site plan showing the location of the house and the proposal. He said that he wasn’t asking for a huge expense here, just something drawn out to scale. He wondered if there was anything in the file that they could refer to.

A. Howe said that you’re asking for relief form the rules that everyone else has to apply to. So we want it in the record as to what you want and what we can approve.

M. McGowan went over the Variance criteria:

*1. Granting the Variance will not be contrary to the public interest because:* The proposed porch will not affect the public. J. Space said that it faces town property.

*2. The spirit of the ordinance is observed because:* The proposed porch would not affect the general welfare and the safety of the public or environment.

*3. Substantial Justice is done because*: The proposed porch would add value to the property. The proposed porch would allow homeowners to enjoy the property without being prey to mosquitos.

*4. The values of surrounding properties will not be diminished because:* The proposed porch would add value to the property.

*5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship because:*

*(A) For purpose of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:*

The previous porch was built incorrectly and caused damage to the house. The 8’ x 10’ porch did not have footings or flashing and was barely attached to the house. The previous porch has been removed to fix damage.

*(i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property:*

Proposed porch almost conforms to Article 5, Section 5.2. Asking for a variance for less than 1/3 of proposed porch 2/3 pf proposed porch conforms to Article 5 section 5.2

*(ii)The proposed use is a reasonable use:* The proposed porch is an egress from the house.

J. Space stated that they are new to Gilford and that they are improving the property and that its no longer an Airbnb and the neighbors are happy about that.

K. Hayes are you going to have access to the ground. Yes, we will replied M. McGowan.

A. Howe said that the board grants variances on a specific number would you be okay with us granting it as per 47.5 feet, so they would encroached 2.5 feet. Would you be comfortable with us approving it this way? Yes, that would be fine relied M. McGowan.

This would be conditional to providing a drawing or a plan with that information submitted with the building permit application, said A. Howe.

K. Hayes asked them to make sure that the plan would be drawn to scale.

K. Hayes asked if was safe to assume that the deck is outside the front setback. Yes, it is, replied M. McGowan.

Public

B. Knightly asked if there was any members of the public that wished to speak.

Meryl Fay said that this was his great, great, great Uncle that was the original owner Ebenezer Smith and he would be in favor of this improvement. He explained that they back in the dame in that dam they made shingles and lumber.

Motion

Motion made by A. Howe, seconded by L. Routhier to grant the Variance as requested as having met all of the criteria for a Variance under Article 12, Section 12.1 Specific Requirements with the following condition:

 That a drawing be submitted to scale showing the setbacks from the proposed screened porch to Gunstock Brook and that the encroachment is not to exceed 2.5 feet.

S. Hart took a roll call:

S. Davis - yes

A. Howe - yes

B. Knightly - yes

L. Routhier - yes

A. Antonopoulos - yes

Motion carried with all in favor.

**1.9 William J. Fidler 2020 Family Trust**

**Application #2021000747** – Motion for Rehearing regarding the September 28, 2021 decision of the Gilford Zoning Board of Adjustment denying the applicant’s request for a variance to build within the 50-foot minimum setback from Lake Winnipesaukee as required by Section 5.2.1(a) of the Gilford Zoning Ordinance, on property located at 8 Varney Point Road Left on Tax Map & Lot #223-420.000 in the Single Family Residential (SFR) Zone and Island and Shore Frontage District.

M. Mayer stated that typically you don’t open this request up to the public.

B. Knightly asked if the board members had a chance to read the information submitted. They replied yes.

K. Hayes stated that this is really about the lake setback, because they had redesigned it so that they met the side setback. One thing that bothered him is that they didn’t include the deck as the front offset of the setback, so the square footages are off. The deck encroaches in the front setback.

A, Howe didn’t see anything new or different that was considered or discuss during the application process.

A. Howe said that the request would need new or compelling information, which he didn’t see.

Motion

Motion made by S. Davis, seconded by A. Howe to deny the request for a rehearing based on the lack of evidence that there was any new and compelling information presented that wasn’t available at the public meeting and that there was no evidence that the Zoning Board had made an error of law.

S. Hart took a roll call:

S. Davis - yes

A. Howe - yes

B. Knightly - yes

L. Routhier - yes

A. Antonopoulos - yes

Motion carried with all in favor.

**1.11 Gilford Retail Management, LLC**

**Application #2021000749** – Applicant requests approval of a Special Exception, pursuant to Sections 4.6.14 and 4.7.6(m), Drive-Through Window, of the Gilford Zoning Ordinance, to allow a drive-through window for a restaurant, on property located at 1429 Lake Shore Road on Tax Map & Lot #201-023.000 in the Commercial (C) Zone, Aquifer Protection District, and Island and Shore Frontage District.

Presentation

Daniel Muller, Jr. of Cronin Bisson & Zalinsky P.C. was present on behalf of the applicant, with

Rachel Miller of Alrig, USA was on GoToMeeting.

D. Muller explained that the applicant was going to purchase the property. The property currently has two buildings, and has a bank on one side and a Hannaford and Lowes on the other side. There is a Wendy’s across the street.

D. Muller stated that they are looking to add a drive-through window and need the Special Exception for that. He went over the site, parking, brook, driveway and etc.

L. Routhier stated that your representing the Starbucks is there anyway the other restaurant would have a drive-through as well. D. Muller replied that he didn’t see that as being possible and that is not the intention.

*(a) A denial was issued by a Town official on matters under their jurisdiction on (date):* 11/4/21

*(b) The site is appropriate for the proposed use or structure because:* It is accessed from Lake Shore Rd, Route 3 and 11, a well-traveled road suitable for a Starbucks, It is located in the middle of a commercial zoning district. There are other drive-through facilities in the immediate area. The property will represent a standalone development so that nay traffic cannot spill over onto the access dries or parking areas of adjacent properties.

*(c)The proposal is not detrimental or injurious to the neighborhood because:* Gilford Retail management is not introducing drive-through facilities or similar uses in the area. The redevelopment will be towards the back of the property, further away from the Black Brook. GRM will be redesigning the access drive and parking areas on the property to allow for the property flow of traffic. The current development on the property dates back to the early 1980’s when the property was first created. The existing buildings will be demolished and replaced with a single updated building. This new development should be a benefit to the neighborhood by improving the property.

*(d)There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because:* While it intends to use the existing curb but on Lake Shore Rd, GRM intends to improve the same. GRM proposed to install a stop sign by the exit. It also proposed to establish a dedicated entrance lane as well as left and right exit lanes. As such, the proposal shall improve traffic in and out of the property.

Sidewalks around the buildings and crosswalks connecting islands in the parking area will assist with the safe movement of pedestrian traffic on the property. With the drive-through facility and the access to the same along the perimeter of the property.

*(e)Adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use of structure, as follows:* The drive-through facilities will consist of both an outdoor menu and intercom and a drive-through window within one of the restaurants. The drive-through access lane access way will be separated from the main parking area by island and sidewalks. The drive-through lane itself will be of sufficient length to accommodate a number of cars both before and after an order is placed. The proposed development on the property will be generally served by underground utilities, including gas service and therefore should not impediment to the proposed drive-through facility. The proposed redevelopment will be served by both water and sewer, the drive-though facility will not impact any well or septic design.

*(f)The proposal is consistent with the spirit of the zoning ordinance and the Master Plan because:* The drive-through facility will be attached to a drive-in restaurant, a permitted us in the Commercial Zoning District. Drive-through facilities or similar arrangements are becoming much commonplace in connection with more commercial uses. While drive-through facilities may have historically been associated with banks and restaurants, other industries, such as pharmacies, are now expected to have drive through facilities. In light of the am, the allowance of a drive through facilities have drive through facilities. In light of the same the allowance of a drive-through facilities such as the one proposed here allow for a wider range of business to consider the commercial zoning district.

Similarly, the Master Plan speaks of creating attractive and functional commercial areas, which serve both the town and the region. The property is currently improved by buildings dating back to the early 1980’s with a simple field of pavement. GRM, consistent with the goals of the Master Plan, seeks to replace the tired development with a new commercial building, which includes a patio area, served by a well-designed and delineated parking area broken up with islands and other features. The drive-through facility, which is essential for one of the proposed tenants of the site, will allow this redevelopment.

A. Howe said that I should let you know that I don’t drink coffee I’m a tea toddler. He said that there was another location that has issues at the drive-through and vehicles going into the road. This proposal shows that you have 2 lanes going into one, why two lanes. D. Muller explained that typically they have 1 lane go through the drive then the second is for all traffic to go out and he explained the parking spaces.

K. Hayes said that there looks to be room for 5 more cars.

A. Howe said that it could render a difficult parking area at certain times of the day.

A. Howe said that the bottom line is that he is concerned due to there being another attached proposed venue.

S. Davis said that you have a token area shown for snow storage and it’s near Black Brook and he doesn’t know what you are going to do with salt and how you’re going to get rid of it. He does know that the Brook is a big concern to many folks in the area. He understood that it’s irrelevant to the special exception.

Rachel Miller stated that they are working with the NHDOT and that there has been a traffic study done, which is currently being reviewed.

R. Miller said that they have gone before the Planning Board, Site Study, and the Conservation Commission as well.

K. Hayes said that in looking at the plans and thinking ahead your showing grass between the islands and those will be covered with snow, along the q line during the winter so those crosswalks won’t be functional. He seconded the concern with regard to Black Brook.

R. Miller stated that Black Brook was the first thing that they heard about when they looked at this property.

The have also disused the bottleneck at the end of the driveway.

John Ayer, Planning Director called in to share a couple of thoughts.

One was regarding the drive-through, and the plan that they looked at originally showed 12 spaces, and they have since modified it significantly to 18. And that’s better. The other site discussed earlier was the Duncan’s site and they only have 8 stacking spaces on site. The other thing if you notice there are two lanes, which he explained. He said that there was a meeting with NH DOT and they were low key as to this proposal. Many things have been discussed and it’s been going fairly well with site plan review process.

A. Antonopoulos asked what are the options for the snow removal. S. Davis stated that they could hall it away to a designated area. Or they just don’t sand and salt, said K. Hayes.

B. Knightly said you always seem to lose some parking spaces in the winter.

B. Knightly asked if there was any members of the public that wished to speak. Hearing none, he closed the public hearing portion of the meeting.

Motion

Motion made by S. Davis, seconded by L. Routhier that the General Rules for Special Exception under Section 11.2 of the Gilford Zoning Ordinance have been met.

S. Hart took a roll call:

S. Davis - yes

A. Howe - yes

B. Knightly - yes

L. Routhier - yes

A. Antonopoulos - yes

Motion carried with all in favor.

**OTHER BUSINESS**

B. Knightly asked if everyone received the meeting schedule for 2022.

Motion made by S. Davis, seconded by L. Routhier to approve the 2022 schedule. Motion carried with all in favor.

**ADJOURNMENT**

Motion made by A. Howe, seconded by L. Routhier to adjourn the Zoning Board of Adjustment meeting of November 23, 2021 at 9:39 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary