GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 11, 2021

 **CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, February 11, 2021, at 7:00 p.m.

In Conference Room, A and by Telephone

Under the emergency order provision related to the COVID-19 pandemic.

Chairman Scott Davis led the Pledge of Allegiance.

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

Also present were Sandra Hart, Technical Assistant, Daniel Tousignant, Code Enforcement Officer and John Ayer, Planning Director and Attorney Laura Spector-Morgan and Joseph Driscoll of Mitchell Municipal Group, P.A.

S. Davis asked the board about making a motion with to not accept any new business after 9:00 p.m. and to end the meeting at 9:30 p.m.

Motion made by A. Howe, seconded by L. Routhier to not accept any new business after 9:00 p.m. and to end the public meeting at 9:30 p.m. Motion carried with all in favor.

On the conference call were: Leslie Gibbons, Heidi Thomas, James Kennell, Robert Heinrich, Anthony Zagame

**1. Applications**

S. Davis introduced the first application.

 **1.1 Jason & Elizabeth Soukup**

 **Application #2020000587** – Applicants are proposing to build a new 5,446 square foot single family home (includes attached garage) and are requesting a Variance from Section 5.1.1(d), Buildable Area, of the Gilford Zoning Ordinance, which allows Planning Board approval of new lots that do not have minimum lot size or buildable area if such lots are designated as non-buildable; a Variance from Section 5.1.3, Front Setback Area, and Table 2, Dimensional Regulations, to allow a five (5) foot front setback where a minimum front setback of thirty-five (35) feet is required; a Variance from Section 5.1.6, Lot Coverage, and Table 2, Dimensional Regulations, to allow thirty-six percent (36%) lot coverage where lot coverage is required to be no greater than twenty-five percent (25%); and a Variance from Section 5.2.1(a) which requires a minimum setback from Lake Winnipesaukee of fifty (50) feet where the applicant proposes a setback of thirty-five (35) feet. The property is located at 98 Belknap Point Road on Tax Map & Lot #242-215.000 in the Single Family Residential Zone and Island and Shore Frontage District. This notice was amended to add requested Variances from Section 7.1.1, Parking, to allow parking to be five (5) feet from the front property line (inside garage), and from Section 6.22, Excavation and Slopes, to allow slopes over 25% to be excavated and filled and various other provisions proposed. **Application was tabled from the December 22, 2020 meeting.**

Motion made by B. Knightly, seconded by A. Howe to take the application off the table. Motion carried with all in favor.

A. Howe said that for the record one of the abutters is being represented by Attorney Ethan Wood and that Ethan Wood was and is currently representing him. He asked if there was anyone that had any objection to him sitting in for this hearing. No objections were heard by any members of the public or applicants representation.

K. Hayes said that he did some work about 2 years ago on this lot for the applicant, although he is not a voting member tonight, he just wanted to make sure there were no objections to his sitting as an alternate. There were no objections.

Presentation

Christopher Swiniarski, McLane Middleton, P. A. representing Jason & Elizabeth Soukup and with him was Chad Branon, Fieldstone Lane Consultants, PLLC. He said that they were technically here to discuss 6 variances, but it is not clear that all of them were needed and some of them do to tend to blend together.

C. Swiniarski referred to Tab 2 in the packet. This proposal is simple, a single family home in a small lot. The specific variances are set out in the application. He then went over the lot coverage, square footage proposed, setbacks, driveway, parking, garage and steep slopes.

C. Swiniarski said that the new steep slopes section was added in March of 2020, which came into effect after the property was purchased. So, it is very possible that it doesn’t apply here, because this lot may not be part of that due to this lot being purchased before that section was added and it was an existing lot.

L. Routhier said that he had different bedrooms listed on different plans, including the shoreland permit plan and that the square footage was different in the notice and on the plans. C. Swiniarski said that it may have been a typo on the notice as to the square footage. C. Branon said they are proposing for 4 bedrooms as stated on the building permit application.

C. Swiniarski went over the Variance criteria:

*1. Granting the Variance will not be contrary to the public interest because:* A variance will not be contrary to the public interest contrary to the public interest unless it unduly, and in a marked degree, conflict with the ordinance such that grating the variance would violate the ordinance’s basic zoning objectives. The project does not create street congestion, it provides off street parking. It does not crate overcrowding or overconcentration of population; only a single family home is proposed. The project does not pose any threat or impedance to the health or general welfare of the community as well as all regulations for sanitary sewer and water are observed. Further the project improves treated of water runoff flowing into the lake. The project is most reasonable consideration of the district in which is located as its design and use are consistent with the existing neighborhood of single family waterfront homes.

*2. The spirit of the ordinance is observed because:* The application at hand provides the low-intensity and responsible land use of a single family home that the ordinance contemplates for the district, while simply requiring a variance from certain dimensional regulations that cannot be achieved on the specific property. Further, the project achieves all the foregoing objectives of the ordinance without creating any environmental, traffic or safety impacts on the community.

*3. Substantial Justice is done because*: The guiding rule on determining substantial justice is weighing the loss to the individual versus the gain to the general public. The fact that so many other similar ones exists on similar lots in Gilford makes it implausible to assert that an additional home of similar nature would cause any public determine whatsoever.

*4. The values of surrounding properties will not be diminished because:* The proposed project is only likely to enhance those values, not diminish them.

*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:*

It’s impossible to say, if you were to apply this ordinance and many of these homes don’t fit because the ordinance came after many of the homes were built.

1. *The proposed use is a reasonable use:*

*(B) If the criteria in subparagraph (A) are not established, an “unnecessary hardship” will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance if therefore necessary to enable a reasonable use of it.*

It’s a hardship to be taxed on the lot, but not be able to build on it, the use is allowed, it’s a simple application, and it’s a matter of building a single family home on a lot that is too small. Many homes in this and other Gilford neighborhoods do not have the setbacks and areas called for the ordinance as shown on the tax map. Applying those regulations to the property renders in unbuildable, as the front and rear setbacks collide, among other things. This is precisely type of unnecessary hardship that warrants the variances sough in the application.

C. Branon discussed the existing property, saying that the slopes had already been altered. Constructed when the road was created. There is a buildable area but it is closer to the lake. The town and the state have a 50 ft. setback. You can create them but not alter them to build. It doesn’t say you can remove them. We are proposing to build a house where those slopes are located. This project is really an improvement, as we going to stabilize these slopes and adding landscape. He explained that the currently drainage is discharged on a steep slope and it is bad, and there no easements, so there is no right for this to be on this property at this time but it exists there.

The existing conditions don’t meet EPA storm water standards, because they want storm water to be treated. We are proposing to reroute and discharge it to a better location. We are constructing a rain guard, so the water coming out of the culvert will be treated and mitigated. It is a significant improvement. They have submitted this plan to the state and have received approval.

He said that typically you don’t want to disturb the steep slopes, but we are proposing to remove them and we are also proposing to improve the water quality.

This house will be built in harmony with the neighborhood and what is best with the environment.

If you look at the front setback, it is in harmony with many structures along the road.

A. Howe asked where you proposing to install a hammer head, tour cutting out steep slopes but aren’t you creating a steep slope on the site? Yes, you’re right, because we are filling the area, we are adding a retaining wall in that area. How tall will that wall be asked A. Howe. It will be about 6 to 8 feet and it will terrace/step along.

A. Adrianna said that yes that it’s just a single family home, but it will be way over onto the green space and she would much rather see green space. Also being a single family home it’s a huge house compared to her single family house and others in that neighborhood. Will they be living there? C. Branon replied that is proposed to be a primary residence potentially. The house is designed to be a primary with a basement. The lay out isn’t standard, it’s narrow. It’s a 4 bedroom home, so it’s not really large when you talk about the amount of bedrooms.

J. Ayer said that the buildable area can’t include anything within the setback.

C. Branon said it’s the area below the slope.

A. Howe said that he drove out there and looked at the other houses and garages, granted many of them are of an older age, and there were some encroaching into the setbacks. There are some garages right on the line, you drive out and you’re right on the road.

C. Swiniarski said yes it’s a tight area.

A. Howe this would be much closer to the road than the other properties.

C. Branon said that the house would be 22 feet off the pavement and 5 feet off of the right of way

Then you look at what is acceptable or more acceptable and do we build it closer to the lake or closer to the road. If you look at the homes in that area they are really close to the lake, so when considered the balance, the factors. We are 22 feet off the road and that will be set back further then many of the structures in the road. If the board would like us to move it further away, closer to the lake that is fine.

A. Howe said that it is a small lot. How much thought went into this to try and balance the size of the house with the size of the lot and how does the balance fit in with that of the neighborhood.

C. Branon said that this structure has a sizeable garage the architectural has been designed for the land its only 2 stories and many homes are 3 stories and you don’t count the basement area for square footage….this could be misconstruing. We can visit that.

A. Howe asked how many square feet is the garage. C. Branon said that we had to change the configuration, it is a 2 car garage. C. Swiniarski said that it’s in the shape, the house is not a typical square house it’s wider and it’s not deep. We would still need variances for the depth. He asked if the board wants us to make it squarer, we thought that it would be better to leave more undeveloped land near the water.

S. Davis said that highways claim 25 feet, so he just wanted to try to nail down what you were saying in that it was not in the center of the highway.

K. Hayes said that the wetlands approval doe say for a 2 bedroom primary structure. C. Branon said it doesn’t matter about how many bedrooms.

J. Ayer said that he stepped out earlier in the meeting and missed the conversation with regard to steep slopes and those were actually approved in 2014. C. Swiniarski wondered if the town forgot to update the changes, because it was not updated on the online ordinance that he looked up. We did ask several times and no one pointed that out. He said that he looked and did not see it on the online ordinance. J. Ayer looked it up real quick and it did come up on the town’s website. Well, C. Swiniarski said it’s not really significant here since we are asking for a variance.

L. Routhier said that they many of these requested variances are with regard to the house size, a smaller house would be more amicable.

K. Hayes pointed out the garage parking is for 2 cars what happens when they have a party where will the other people park. C. Branon said that its parking for the property only as required, but they would have to discuss it with neighbors or whatever to park on the road.

K. Hayes was concerned about the parking safety on the road and for other folks walking along the road etc. C. Branon said many of these lots don’t have the extra parking and you just have to figure out a way to park just like they do in the cities.

S. Davis asked about if they have some friends come to visit for dinner where would they park. C. Branon said that the will have two spaces in the garage, and two spaces in front of the garage door.

A. Howe said that as you know we are contemplating your neighborhood and the affect that all these variances will have. If we allow this here then we are looking at other neighbors coming in to us and wanting to build 5 feet away from the property line as well.

C. Swiniarski said that it’s not the variance it’s the magnitude, but we understand. It’s not a decision we can make on the spot. We can look at it and come back to you with revision, but it will take a little work. Sometimes we have to make changes to address the concerns of the community.

A. Howe said that he’s have never seen anything like this, it’s dramatic that virtually you’re asking for every variance imaginable.

A. Howe asked if there was a reference or impact or consideration on the shoreland permit with regard to the retaining wall. C. Branon said that we would have to amend the shoreland approval with regard to the wall.

Public

S. Davis opened it up to the public.

Andrew & Kathy Olney of 88 Belknap Point Road. He said that a number his points had already been brought up. Back in December there was a request for 3 variances and now there are 6. He’s concerned that they are going for a big house in hopes that the board will let them come back with a smaller house proposal, which will still need all the variances. Yes there are houses including our house that don’t meet all of the setbacks, but they’ve been there for a long time. Also, he did like what was said as far as there many lots are similar to this one even on Scenic Rd., so even if you scale this back you’ll have many people that will want to come with a similar proposal.

He said that he hadn’t met the owners, but they do own across the road as well, and it’s an Airbnb and there are constant issues, such as parking, dumpster, trash and noise.

B. Knightly just wanted to make sure that they were aware that these were Police and Fire dept. matters.

Christina Hurst of 89 Belknap Point Road, said that she doesn’t have water access, but she does like to look out and enjoy the view. The Soukup’s own across the street and they do have plenty of space and green space across the street, why is it necessary to be so close. They have already removed trees. Are they going to build it and sell it, are they going to live there, what is the importance of the building being on the road.

C. Swiniarski said that those concerns are not relative to this.

Mary Facques owns 134 Belknap Point Road and she agrees with was said as to setting a precedence here because so many other folks will want to do the same thing Also, why do we have zoning laws if we give exceptions to these types of things? S. Davis without zoning laws it’s obvious that it would be a free for all everywhere in town. Mary said that to give 6 variances negates zoning.

Ethan Wood with Normandin, Cheney & O’Neil said that he was representing Heidi & James Thomas

And they did submit a letter back in December. The applicant has noted that many other neighbors have houses or garages near the setback, but many of them predate the zoning ordinance. If they wanted to build their homes today they would be in the same position as these applicants. We just want to make sure that development is done in a responsible manner. The lot coverage variance wouldn’t be needed if they had a smaller house. He refereed the board to look at the picture that was submitted along with their letter. The board should deny the application for the reasons stated in the letter.

Terry Pratt 78 Belknap Point Road said that he is not a direct abutter but he’s 150 yards away and it was interesting to hear that they made the presentation as a residential property, but the one across the street is used as a commercial property. He wanted to know what will happen to the property that is currently used as an Airbnb. Will the new house be used as an Airbnb as well? You mentioned earlier the parking will be an issue. What’s going to happen with all of the customer vehicles that come to rent a 4 bedroom? I’m not against being able to build in the area, that lot is beautiful. He said that they actually looked at that property and loved it. But we were told that the property across the street was non-buildable. He was sure that anybody that looked into it before they spent the money, and I’m sure that they were told that it was not buildable before they purchased it as well.

Leslie Gibbons of 139 Belknap Point Road said that just like Mr. Pratt she also looked at the property and she too was told that it was a non-buildable lot. She said that if you’re going for a variance you would need to show a hardship. If you looked at that property and you did your du diligence you would know that it was not buildable. Yes, the one across the street is a party house and the police have been contacted and she won’t walk by that house anymore.

I live at the Lincoln Cottage the original house on the street and the slippery slope started when they did the work on the road. In any event in the past was that you could have a dwelling on 1 side or the other, not both sides. We are looking at changes that were made by the selectmen I guess. This proposal is not consistent with our neighborhood, we have cottages and this is exactly what we don’t need in our neighborhood. The fact that you folks are even considering this is sad, it’s totally wrong for this area.

C. Swiniarski said that we do have a criteria, and a lot of discussion isn’t relative, this is not a rental property or a commercial property. He does understand that hearing from the board that this proposal is too big. He suggested that continue and come back to the board with a smaller house.

S. Davis closed the public meeting portion

Motion

Motion made by B. Knightly, seconded by A. Howe to continue the application until March 23, 2021. Motion carried with all in favor.

S. Davis said that the front setback is an issue. B. Knightly said that the steep slopes, drainage and vegetation are also an issue. The reason that lot has not built on, was because it had always been part of the lot across the street. Also this proposal is for a big house on a small lot. K. Hayes said that lot coverage is an issue as well.

S. Davis asked for cross sections to see what exactly is going on there, and what will the structure look like in the ground and its position? And we have no structural plans, it would be nice to see a floor plan.

J. Ayer said that we just got a general information with the application so we would need the additional information with the building permit application for it to be approved.

A brief break was taken.

S. Davis introduced the second application.

 **1.2 Susan Turcotte**

 **Application #2021000016** – Applicant wishes to pursue a 3-lot subdivision of their 7-acre parcel of land. An existing driveway serves two back lots, both of which have less than minimum frontage on a Class V road. Section 5.1.2(d)(4) of the Gilford Zoning Ordinance allows no more than three (3) such lots to share a driveway. The applicant is requesting a Variance from Section 5.1.2(d)(4) to allow a driveway providing access to four (4) lots with less than minimum frontage, namely Tax Map & Lot #207-002.002, Tax Map & Lot # 231-001.000, and two (2) proposed lots not yet created. The property is located at 150 Young Road on Tax Map & Lot #207-002.001 in the Limited Residential (LR) Zone.

Presentation

Craig Bailey of Bryan Bailey & Associates representing the applicant Susan Turcotte at 150 Young Road. The parcel is 6.76 acres and she would like to pursue a subdivision with the Planning Board.

The hardship is that we have more than the allowed amount of shared lots from a driveway. We need a waiver for the ability to have more than 3 lots which have less than 150 frontage on the road.

C. Bailey went over the Variance criteria:

*1. Granting the Variance will not be contrary to the public interest because:* Members of the public are currently able to travel along the class V portion of Young Road and benefit from the town maintenance. The granting of this variance will not hinder or remove any of the public’s right to enjoy the Yong Road Right of Way. The public at large current enjoys zero rights, title or interest in any of the 4 lots currently, and granting this variance would not change that. No changes in the publics’ use or rights in this residential area would result from granting of this variance.

*2. The spirit of the ordinance is observed because:* The purpose of the ordinance is normally intended to prevent a quasi-public access way over residential lots of record. This variance is sought because the town classification of the highway has been set by local legislation- the Select Board – and prevents further public access due to minimum frontage requirements. The spirit of the ordinance is to provide adequate residential uses in residential zones. No commercial or public rights are being sought.

*3. Substantial Justice is done because*: two district issues should be considered with respect to justice; 1. With the limited frontage available on the Class V (five) portion of Young Road, a significant expense to the land owner’s, applicants, and the citizens of Gilford would not be expended in seeking an extension of the class V portion of Young Road. And 2. The lot being taken under consideration has be encumbered several times by parties no longer holding any title or rights to the neighborhood, namely the previous owners of Tax Map 207 Lot 2-2 and Tax Map 231-1. These encumbrances are in addition to any previous deeded rights of access, and in effect over-encumbered the Turcotte Lot.

*4. The values of surrounding properties will not be diminished because:* Residential uses on Residential lots need access, and the addition of a fourth deeded access way – to be held privately among the land owners and not being conveyed in any way to any pubic rights will maintain the rural character of the neighborhood. Currently, Tax Map 207- Lot2-1 (the Turcotte lot) has one, single family residence. The ability to construct a driveway to serve (4) total lots would only permit the construction of (3) additional homes, on lots raging in minimum size of 2acres up to 200 acres. Single family homes do not diminish the value of residentially zoned neighborhood.

*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 properties in question are located at the end of the Class V (five) portion of Young Road. The property owner of Tax Map 207 Lot 2-1 would like to have the ability to pursue a future 3- lot subdivision of land, resulting in (2) additional homes, for a total of (3) single-family house lots from the existing 7-acre lot. To enforce the limitation of 3 lots minimum on a shared driveway would create a hardship for both the land owner and the town, since the resolution would be an extension of Young Road. The extension of Young Road for a single house lot is a very real hardship, and would become a permanent hardship on the tax base.

*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:*

The land owner and applicant are seeking relive from section of the ordinance designed to prevent de-facto public roads form being constructed. The proposed future development would result in single family residence of essentially the minimum lot area of the zone once the buildable area computation is factored in. There is no reasonable path to ever allowing a de-facto public road to emerge from the allowance of this shared driveway, since a right of way in fee would reduce the proposed lots 207 2-3 and 207 2-4 below their minimum buildable area based on “buildable land.”

*ii. The proposed use is a reasonable use:* A residential use of land, in a residentially zoned area is reasonable.

C. Bailey in summary the 7 acre lot has been encumbered by 2 lots behind it. The 2nd consideration is the problem with the back lots having less than the required minimum frontage. The resolutions is to create another town road. It is a hardship to the property owner and the town. This is a reasonable request and a reasonable use of the land. A good use of that property.

A. Howe said that he was around when the encumbrance happened.

C. Bailey said that there are several encumbrances, and he highlighted them for everyone. He went over the right-of-way, the easements and the access to the back lot. The access for the Ropers and the Caldwell’s will not change.

S. Davis said that if she was going to extend the driveway wouldn’t that be more costly. C. Bailey said that they haven’t designed the driveways, we are asking for access to the lots at this time.

B. Knightly asked about maintenance. L. Spector-Morgan said that there is a new statute that was adopted in the last year that would address these types of issues, she would have to get them that information.

C. Bailey said that they driveway would be part of the subdivision process.

K. Hayes asked, aren’t there two access points currently. Yes, there are gravel ways to get there responded C. Bailey. C. Bailey said it is the legal frontage for the 7 acre lot that it is there today.

We are asking for 1 additional home in amongst all these lots.

C. Bailey said that there is some construction debris, such as leaves and that stuff will be incorporated into the landscape of these lots.

Public

S. Davis asked if there were any members of the public that wished to speak.

Wendy Oeller- Fulmer of 140 Young Road pointed out that they had always gotten along well when they lived there, but now it’s difficult with the huge piles of leaves.

J. Ayer said that a letter had been sent out to cease and desist.

A. Antonopoulos said that you can see the entire property on google earth.

W. Oeller read her letter for the record.

J. Ayer said that he was told that it was considered agricultural and that they would be using the debris for compost and landscape. He explained to them that if was being be sold for commercial purposes than they would need to come for a site plan approval.

It was pointed out that they have 3 boats and a boat trailer stored. And that there are 3 units in the house, but only 2 were approved.

Wendy and Ryan Roper said that they sent in emails a few weeks ago regarding this application.

We as relative new comers, we have owned this parcel since June 2019 and she read her letter for the record.

B. Knightly asked if the Roper’s could access the property form the easement. Yes, we could.

Can you build your own driveway at this time, yes we can replied the Roper’s.

S. Davis closed the public hearing

Motion

Motion made by B. Knightly, seconded by A. Howe to continue the application for deliberation to the March 23, 2021 meeting. Motion carried with all in favor.

**MINUTES**

January 26, 2021

Motion A. Howe, seconded by B. Knightly to approve the minutes of January 26, 2021. 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 February 11, 2021 at 9:39 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary