GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 23, 2021

 **CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, February 23, 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 Larry Routhier and Alternate members Kevin Hayes and Adrianna Antonopoulos

Also present were Sandra Hart, Technical Assistant, Daniel Tousignant, Code Enforcement Officer and

Member absent was A. Howe.

On the conference call was: Mark Rines

**1. Applications**

S. Davis introduced the first application.

 **1.1 Robert Small & Mark Rines** – Applicants propose to convert two (2) condominium units (Unit 9 and Unit 10) at Spinnaker Shores Condominiums from nonconforming seasonal uses to nonconforming year-round uses. A Variance is being requested from Section 9.2.3, Nonconforming Seasonal Uses, to allow the conversion. Property is located at 289 Dockham Shore Road on Tax Map & Lot #216-009.000, #216-009.009, and #216-009.010, in the Single Family Residential (SFR) Zone. Application #2021000055.

Presentation

Attorney Ethan Wood of Normandin, Cheney & O’Neil, PLLC representing Robert Small & Mark Rines owners of Unit #9 and #10 at Spinnaker Shores.

E. Wood explained that this was once a cottage colony, before becoming a condominium and two (2) of existing ten (10) units were permitted to be used year round. They are requesting that two (2) additional units become year round use. The rest of the units will remain as seasonal use only.

You have received the reasons as to why we believe that we should get the variance for this. This request does not change anything on the ground or anything on site or impact the abutters. This is a prime example for with a variance should be granted. E. Wood stated that the point being made was that what we are proposing is to permit the existing owners to live there more than 6 months out of the year.

Discussion

K. Hayes asked what other Units were year round use. E. Wood said that Units #’s 6 and 7 are year round.

E. Wood said nothing these Units being year round will not have a real impact to the town or schools.

E. Wood went over the Variance criteria:

*1. Granting the Variance will not be contrary to the public interest because:* Most of the surrounding properties are currently used as year-round residences or are capable of being used in that manner. There are also a number of multiple unit properties in the vicinity, but this variance would not increase the density as it does no increase the number of units or the footprint of any unit. The condominium association is responsible for the maintenance of the property but is permitted to assess individual owners costs directly attributed to their properties if the benefits insures to fewer than all members.

Permitting two additional units in this association to be used on a year-round basis would not alter he essential character if the neighborhood. Permitting the use of these two units on a year-round basis would also not threaten the public health, safety, or welfare of the neighborhood or the community. The requested variance would not have a negative impact on the public interest,

*2. The spirit of the ordinance is observed because:* The proposed variance does not conflict with the purposes and intents of the District and does not violate the basic objectives of the Gilford Zoning Ordinance. There would be no alteration of the basic and essential character of the neighborhood by the granting of the variances as the variance would only permit two additional units to be used year-round, bringing the total number of permitted year-round units in this ten (10) unit association to four (4).

*3. Substantial Justice is done because*: Denying the variance to convert the two units from season use to year-round use would not be a reasonable trade-off for the substantial benefit to the town.

*4. The values of surrounding properties will not be diminished because:* The conversion from seasonal use to year-round use will have no impact on the value of surrounding properties. There is no change on the ground and the only impact would be change in the amount of time the owners could use their properties. As the two units are already existing it is unlikely the neighbors would even be aware of the change in use.

The property has existed for many years, originally as a cottage colony and then in the 1980’s as a condominium. Having these properties be occupied on a year-round basis would not be inconsistent with the neighboring 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:*

*(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.*

The Applicant’s property has unique characteristics that would make the conversion form seasonal use to ear-round use a reasonable use of the Applicant’s property. There are already two existing units that are year-round units. The proposal is to permit two additional units to be used year-round, which would be a reasonable extension of the property. The character and the integrity of the neighborhood will not be negatively impacted. The applicant believes the requirements to establish unnecessary hardship have been met under the first method.

In reviewing under the second method. The Applicant’s property is well situated to permit the year-round use of the residential units without any impact on the association or the character of the surrounding properties. The Applicants property cannot be used on a year-round basis without relief from this board. The variance needed to permit the conversion of seasonal use to year-round use would not be reasonable and would be in keeping with the goals and objectives of the Gilford Zoning Ordinance.

Public

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

Robert Small said that his particular Unit was rebuilt in 2012 up to code to be year round and they would like to live there and make it a year round.

Mark Rines stated that he and his wife really enjoy the area and enjoy the seasons. He said that they do have a full foundation and they are on town sewer and that they would love to be full time residents.

S. Davis asked if there were any other members that wished to speak, hearing none he closed the public hearing and introduced the third (3rd) application. (Applicant #2 switched with #3)

 **1.3 Brendan & Karen Regan** – Applicants are requesting a Variance from Article 5, Section 5.1.3, Front Setback Area, to allow a deck to encroach six (6) feet into the front setback, and from Section 5.1.5, Rear Setback Area, to allow a landing platform and steps for egress to encroach four (4) feet into the rear setback. Property is located at 40 Varney Point Road Right on Tax Map & Lot #242-017.000 in the Single Family Residential (SFR) Zone. Application #2021000057.

Presentation

B. Regan represented himself and his family. He explained that they had demolished the existing structure that was on site and they would like to build a new home and they would like to add the four (4)’ steps and platform in the rear and to add a deck in the front that would extend six (6)’ out into the setbacks.

He states that they went around and received letters from abutters in favor of this project. They also received a letter from the real-estate agent saying that this will not devalue the neighborhood.

B. Regan went over the Variance criteria for both the front and rear setback request:

*1. Granting the Variance will not be contrary to the public interest because:* Allowing this home to be built in replace of existing structure will allow for a more aesthetically pleasing property. It will not impact traffic in the area nor will it overcrowd the area. The home being built will not have an impact on wetlands and will not change the environment adversely.

*2. The spirit of the ordinance is observed because:* Current structure violates front yard and side yard setbacks. New home would only seek relief from the front yard setbacks. The new structure will be further away from side neighbor.

*3. Substantial Justice is done because*: In this neighborhood with undersized lots there are structures built up to the property lines thaw re built prior zoning. New home will not cause any harm to the general public or neighbors.

*4. The values of surrounding properties will not be diminished because:* Currently there is a mobile home with an existing deck and sunroom that is in disrepair. By removing this mobile home and building a new single family home will only benefit the neighbors and abutters.

*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 shape of the lot limits the size (depth) of the home available to build. This property will be our retirement home in the future. So having a single level living option as designed would be ideal.

*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 home will fit nicely on the loft with relief given. The area is full of similar homes of this style.

*ii. The proposed use is a reasonable use:* The new home will blend nicely into the neighborhood.

K. Hayes asked about the existing location of what was on site. B. Regan said that they are staying pretty much in the same footprint.

D. Tousignant said that roughly 10’ x 10’ that sticks out into the front setback and roughly 12’ x 6’ into the side setback. The new proposal will not encroach into the sides, only 6’ of deck will be in the front and the 4’ in the rear for steps and landing.

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

Public

Bob McDonald of 48 Varney Point Road Right said that this will be great for the neighborhood and will not impact anyone’s view. He’s spoken to many people in the area and they’re very happy to see this.

S. Davis closed this hearing and introduced the 3rd application. (Applications 2 & 3 were taken out of order)

 **1.2 Cellco Partnership d/b/a Verizon Wireless** – Applicant is requesting a Special Exception pursuant to Article 4, Sections 4.3.18 and 4.7.3(r), to allow installation of an FCC-licensed personal wireless services facility (aka “cell tower”). Property is located at 1328 Cherry Valley Road on Tax Map & Lot #271-002.100 in the Natural Resource Residential (NRR) and Limited Residential (LR) Zones. Application #2021000056.

B. Knightly recused himself from this application. Due to the fact that he was a form employee.

S. Davis said the applicant if would like a full board, that we could try for the next meeting. C. Gehring stated that he would like to continue with the meeting at this time.

Presentation

Carl Gehring of Gehring & Associates, LLC on behalf of Verizon wireless and also present were

Don Haes, Certified Healthy Physicist (RF Emissions), Dough Sheadel, Acoustical Expert, Keith Vellante, Radio Frequency (RF) Engineer and Egor Evsuk, Verizon Wireless’s Real Estate Department.

C. Gehring referred to the binder and went over the tabs for everyone. He then went over the color maps that displayed the areas of coverage and the areas that were an issue. The area where there is a big coverage problem is Route ll. The real-estate is very un-complicated it’s a pole really. A simple real-estate development and then he went over the science behind how it works is.

He said that they have had many complaints with dropped calls, it’s fine in the off season, but in the summer there is a problem. We are sort of limping along with coverage coming in from Wolfeboro, Alton and Gunstock, but those can only have so much bandwidth.

He referred to the Tab #7. We commissioned an outside expert Don Haes, and they went over the charts.

He said that under Tab #8 they had the FAA approval.

C. Gehring referred to Tab #9 where there is a report from Doug Sheadel with regard to there being no noise from the tower, only the generator, which we will only be powered up once a week. And then actually powered on when there is a black out.

L. Routhier asked when it would be powered up during the week and how long will it run? C. Gehring replied that it runs for about ½ hour, and it will be done remotely and it can be done whenever you would like it.

C. Gehring said that they also did some photo simulations. There was a balloon test done and we scanned in the tower to show where it would go and where it might be seen.

C. Gehring explained that there were two (2) wetlands areas. He said that they will have those areas protected, we will be using only the existing path and we will go up to the area that will not have any wetland.

He stated that this is a pole, it is something that is needed and this is a good site for it. There will be no negative impact and will be very limited visibility. This is a 50’ x 50’ area with no water or sewer and no occupancy.

C. Gehring went over the General Rules or a Special Exception (a) – (f).

*(a) A denial was issued by a Town official on matters under their jurisdiction on (date):* John Ayer signed the letter of denial on 11-16-20.

*(b) The site is appropriate for the proposed use or structure because:* The subject property was chosen because it fits within the parameters of where a new site needs to be located within the Applicant’s existing communications network to satisfy the coverage objectives needed to optimize network performance in the area. The site location was chosen because it is set back off the road and set back away from neighboring properties thereby minimizing impact on those neighbors.

*(c)The proposal is not detrimental or injurious to the neighborhood because:* The proposed use, that of a wireless telecommunications radio tower facility, is really more of a “non-use’ in the conventional sense because once constructed no activity will occur on site. The use is completely passive in nature. The proposed tower is needed simply to hang antennas at such a height that they can properly function and connect to the surrounding network. Other than an occasional, monthly, maintenance visit, nothing will occur on site. The use will have no impact whatsoever to the surrounding neighborhood.

*(d)There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because:* The proposed installation will be unmanned and unoccupied and will host no employees or guest. Occasionally, once per month, a maintenance technician will check on the site. The proposed use then will generate less traffic then a single-family home, so pedestrian and vehicular safety are a compete non-issue.

*(e)Adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use of structure, as follows:* The proposed unmanned, unoccupied, remotely monitored wireless telephone utility installation will use no water or sewer services. Adequate electric and telephone services are currently available on Cherry valley Road and will be brought back to the site.

*(f)The proposal is consistent with the spirit of the zoning ordinance and the Master Plan because:* The purpose of the Zoning Ordinance, among other things, is to promote the public health, safety and convenience and wireless communications support and benefit those goals. Wireless connectivity is good for public safety. Wireless communications are good for the public’s convenience. And wireless communications are good for businesses and home-based businesses. The Applicant is proposing to develop wireless infrastructure that will benefit the residents, business and visitors to the Town at no cost to the Town. For all the foregoing reasons the board is urged to approve the Application’s proposed installation which will benefit the Town of Gilford.

C. Gehring said that they feel that they meet the criteria.

A. Antonopoulos wanted to know if there was a map that would show all the of the cell towers in the area. C. Gehring replied that he didn’t submit one, but he went over the existing cell towers that are in the area for everyone.

A. Antonopoulos asked about RF waves. C. Gehring said that we aren’t supposed to discuss health but we do know that there are more RF waves coming out of the phone then an actual tower. In a 1996 finding it says that boards can’t consider the health aspect. He explained the difference in RF waves.

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

Public

Bryan Fortier owns property at Cherry Valley Road in Alton, NH. He just wanted to express that he’s in favor of this project.

S. Davis asked if there were any other members of the public that wished to speak, hearing none he closed the public hearing.

**Motion**

**1.1 Robert Small & Mark Rines**

Motion made by K. Hayes, seconded by B. Knightly to approve the Variance request for the applicant’s to convert two units to year round Residential use. That the Variance criteria has been met under

Article 12. Variances, Section 12.1 Specific Requirements (a)-(e).

A roll call was taken:

A. Antonopoulos - yes

K. Hayes - yes

B. Knightly - yes

L. Routhier - yes

S. Davis - abstained.

Motion passed.

**1.3 Brendan & Karen Regan**

Motion made by L. Routhier, seconded by K. Hayes to approve the Variance request for 40 Varney Point Road Right to allow the deck encroachment of six (6) feet into the front setback and to allow for a landing platform and steps for egress to encroach four (4) feet into the rear setback. The criteria has been met under Article 12. Variances, Section 12.1 Specific Requirements (a)-(e).

A roll call was taken:

A. Antonopoulos - yes

K. Hayes - yes

B. Knightly - yes

L. Routhier - yes

S. Davis - abstained.

Motion passed.

The following application was heard last:

**1.2 Cellco Partnership d/b/a Verizon Wireless**

B. Knightly recused himself from this application.

S. Davis read a letter from an abutter.

K. Hayes asked about the location of where some of the photos were taken. They went over the maps showing the locations.

A. Antonopoulos said that she had concerns with another tower in the area. Discussion ensued.

L. Routhier said that it’s in a lower area that needs coverage. And there won’t be any lights blinking like the one located on Stark Street.

Motion made by K. Hayes, seconded by L. Routhier to approve the Special Exception to allow installation of an FCC-licensed personal wireless services facility (aka “cell tower). The criteria has been met under Article 11. Special Exceptions, Section 11.2 General Rules for a Special Exception (a)-(f).

K. Hayes said that it may impact some views, but that’s not for discussion here tonight, so he’s good with it.

S. Davis said that it really doesn’t seem offensive like some other towers are in the area.

L. Routhier said that it’s not impacting any wetlands but we aren’t entitled to deny these requests anyway.

A roll call was taken:

A. Antonopoulos - yes

K. Hayes - yes

L. Routhier - yes

S. Davis - yes

Motion carried with B. Knightly recusing himself.

**MINUTES -** The minutes of February 11, 2021 will be voted on at the next meeting.

**ADJOURNMENT**

Motion made by K. Hayes, seconded by B. Knightly to adjourn the Zoning Board of Adjustment meeting of February 23, 2021 at 8:37 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary