GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

APRIL 27, 2021

 **CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, April 27, 2021, at 7:00 p.m.

in Conference Room, A and by GoToMeeting and telephone conference call

under the emergency order provisions related to the COVID-19 pandemic.

**\***Due to COVID-19, the public, the applicant, and Board members were able to join via GoToMeeting.

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 Member Kevin Hayes. Member absent was Adrianna Antonopoulos.

Also present were Sandra Hart, Technical Assistant; Daniel Tousignant, Code Enforcement Officer; John Ayer, Planning Director; and Joseph H. Driscoll IV, Esq., Mitchell Municipal Group, P.A.

S. Davis asked K. Hayes to sit in as a voting member.

**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 March 23, 2020 meeting.**

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

S. Davis said that he understood that a few modifications were made to the original proposal.

Presentation

Chad Brandon of Fieldstone Land Consultants was present and on GoToMeeting was Attorney Chris Swiniarski on behalf of the applicant.

C. Swiniarski said that he is following up from the last meeting two months ago. The board had asked for a reduction on the size of the proposed structure. He said they felt that they have eliminated a need for all the variances. We only have 4 now, but we really only need one for the front and one for rear setback.

We’ve reduced the square footage of the house, so now the lot coverage is met. We’ve configured the garage and we are in compliance with that as well. There was discussion as to how close it was going to be to the road. We are still 12’ feet from the property line and about 30’ from the pavement. We reduced the size as per the request of the board. Without these variances, there’s no way to build on this lot, and they’ve been paying taxes on it as if it were a buildable lot. There will be less of an impact with these changes, that there was before.

A. Howe asked if the applicant would go through the 5 points of the variance and with the changes.

C. Swiniarski went over the variance criteria:

*1. The variance will not be contrary to the public interest.* The proposed single family home is harmonious with the character of the locality and provides better health, safety and welfare by improving water runoff. This is a vacant lot in a residential district with proposal that is consistent with the existing neighborhood of single family homes.

*2. The spirit of the ordinance is observed.* The ordinance has requirements to keep land uses grouped together, which is the basic zoning objective. The same use already exists. We aren’t building a home that’s different then all the others, it’s a home that fits within the neighborhood. The application at hand provides the low-intensity and reasonable 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 this specific property. Further the project achieves all of the foregoing objectives of the ordinance without creating any environmental, traffic or safety impact on the community.

*3. Substantial justice is done.* The guiding rule on determining substantial justice is weighing the loss to the individual versus the gain to the general public. In the case at hand, denial of the variance results in rendering the property unbuildable. Given the fact that the property is similar to other developed lots in Gilford and even on Belknap Point Road. Conversely, it is incredibly difficult to substantiate any public benefit of denying the variances. The fact that so many other similar homes exist on similar lots in Gilford makes it implausible to assert that an additional home of similar nature would cause any pubic detriment whatsoever. This lot has been taxed as a buildable lot. We are fixing a water run off situation. The people there like it how it is, but they don’t own the land.

*4. The values of surrounding properties are not diminished.* The proposed project is only likely to enhance those values, not diminish them and because this will be a new home it’ll be one of the better homes in the area.

*5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

Nothing can be built on this lot, but it is being taxed as a buildable lot. To render this land completely unbuildable is completely an unnecessary hardship. There is no hardship by allowing this house in this neighborhood because many homes in this area do not meet the setbacks. Applying these regulations to this property renders it unbuildable as the front and rear setbacks collide. This is precisely the type of unnecessary hardship that warrants the variance sought in this application.

A. Howe asked what the proposed height would be. The building is one story from Belknap Point Road it is about 24’in height, replied C. Brandon.

A. Howe said that he went out to look at the site and from the looks of it the boundary is like 5 or 6 feet away from the pavement. C. Brandon said the fence is about 8 feet off of the edge of the pavement and the property is 15’ off the edge of the road.

A. Howe asked about the drainage pipe and that it looked like it’s about where the proposed porch is going, and on the other side there is a catch basin. C. Brandon said there is drainage that discharges onto the property and yes it is the proposed porch location.

C. Brandon said that they are proposing to capture this drainage and route it off of the property. He went over the design for everyone.

We are proposing to place the home in an area that will need added fill, the home will have a walk out basement that will absorb that steep slope section. They tried to create some balance, so we shifted the house further away from the road, and by doing so it will be 30’ from the lake. They believe that is a buildable lot which predates the regulations. They’ve spent a lot of time on this and believe that this is a good use for the site.

A. Howe complimented them on downsizing the house and keeping it one story. There will still be objections from the neighborhood, but he did agree that building a house here is a reasonable use of the property.

S. Davis asked for a break down. C. Brandon said that they would be building a deck, porches, garage and the house. What will happen to all the water asked S. Davis? C. Brandon said that a cross section design that will meet NH Alteration of Terrain and storm water standards was submitted. There is significant depth through the water table so we need separate zone treatments.

K. Hayes asked about lot coverage. J. Ayer replied said that its 24%.

A. Howe asked about the permit from the state. C. Brandon replied that they have the permit for the original proposal and so we’ve made the revisions and we’ve been discussing the changes with NHDES. A. Howe said that it should be made a condition if we approve it.

S. Davis asked, so you discussed the changes from 50’ to 30’ from the shoreland with the NHDES and they were ok with it. C. Brandon said that the state had no issue with it. They look at this as an existing non-conforming lot. We need to ensure that there is no negative impact to the lake.

C. Brandon said that we believe that there are building rights here and we are trying to have minimal impacts.

S. Davis requested a stamped plan if possible. C. Brandon said that they could get that to the board.

K. Hayes asked if C. Brandon could highlight elevations 510, 530, 550 on the full size plan, because they were hard to read on the smaller plan. K. Hayes asked what is the basement slab elevation and the first floor elevation. C. Brandon said that the first floor would be at 532 and the basement slab elevation would be 522, and the 23’ height is from the front elevation.

L. Routhier said that on the original plan is says that the minimum was 50’ and the application is 35’ and tonight the plan says 30’. Yes, C. Brandon said that the new plan is for 30’. So you’re pushing the house closer to the lake asked L. Routhier. Yes, we’ve made the house smaller and pushed it back.

L. Routhier asked if that was identified to NHDES as well. C. Brandon that it was on the building permit application. They would need to modify the building permit application so it will be consistent with what is reviewed tonight, and update the NHDES.

S. Davis asked why they didn’t get the state approval first. C. Brandon said that they felt that it would be best to come here and hopefully get an approval from this board and then go back to the state with the changes.

S. Davis said that we have our own shoreland protection requirements and we would like to know if the state will approved this new proposal. Joe Driscoll said that you can always make it conditionally on that.

S. Davis said that if we don’t see it, do we have to accept it?

J. Driscoll said that you’re only reviewing this for variance approvals.

K. Hayes said that they will need to have an approval from the state submitted with the building permit application.

S. Davis said that D. Tousignant, Building Inspector won’t have the authority to overrule that.

A. Howe explained that if they ask for relief from a setback then we state that in our approval.

S. Davis said that our town requires a 50’ setback for shoreland protection, and they are proposing 30’ and I would like to know personally what they are doing to get that approval and to make sure that the lake will be protected.

J. Driscoll said that if they don’t get approval by the state, they won’t be able to get a building permit.

S. Davis opened it up to the public.

Public

Ethan Wood Attorney, Normandin, Cheney & O’Neil, PLLC, representing abutters Heidi & James Thomas. I acknowledge that the applicants did put forth a much better plan, but we do request a condition be added on the full compliance with the NHDES and the ZBA and that a full review all of the plans for the construction of the proposed building and the engineering plans with regard to water runoff, etc. So, that it will not jeopardize the road, the lake and any of the neighboring properties.

Andrew Olney of 88 Belknap Pt Road. One argument was that this lot was taxed as a buildable lot and that is an inaccurate statement. He said that he submitted a packet of information for the board to view and that he listed the taxes and he went over it for everyone. They mentioned that their lot was being taxed as a buildable lot and if this was a buildable lot it would have been taxed over a million dollars. He went over all of the lots and described the information. So, the fact that this is a hardship is incorrect.

He said that if these variances are granted, all of the other similar lots in the area will also want to build.

Terry Pratt of 78 Belknap Point Road. I think you all remember my feelings about the proposal. His question would be if they would still have the party house across the street and will they now dumpsters on both sides of the road. When he was renovating his house, he wasn’t allowed to do anything within 35’ from the road. Are they going to be allowed to that, as they are proposing? I was unable to that, so if they are then that makes me the one with a hardship. It is not a residence that they use currently living in, it’s a rental and a party house that they have there now.

If they want to build there, that’s fine, but they should observe all of the rules and regulations.

Robert Heinrich said that he’s lived in a comparable parcel for 25 years, with a similar size lot on the water across the street, and there is no hardship. He wished that the applicant spent as much money on improving the house that he owns across the street.

When he built his boathouse, he had to be 8’ below grade and he had to build it so that people could see through and above it.

Christina Hurst of 89 Belknap Point Road said that she’s lived here for many years, and many people have left the area because they could not build what they wanted on these lots. Her direct neighbors weren’t allowed to build and this was years ago. The pervious owners of this property were not allowed to build, many others have not been allowed, and they followed the rules. And all of a sudden and it’s creating a financial tax issue to someone. Her arguments are for all the people that have followed the rules. Have the times changes so that you’re allowed to build on these lots now where you couldn’t have before.

A. Howe said that he’s been on this board for many years. The first thing you need to understand is that this is a quasi-judicial board. We used to deny applications and say no you can’t do that, but then the Supreme Court said that if was a reasonable use that we couldn’t deny it. A. Howe said that this is law that has evolved in the Supreme Court level. We struggle with it and we have to have attorneys come in and discuss it with us. The state has more authority then the town.

S. Davis said that it’s not the state of NH, but it’s the court system and they are interpreting the laws that the state puts into place. It’s frustrating for us as it is for everybody else. How much is enough and how much is too much. The original proposal was for house over 5000 square feet, we asked them to come back with less, and they did that. C. Brandon said that it’s a proposal for a 3 bedroom home that will be applied to municipal sewer.

J. Ayer explained that we have all the same zoning regulations, the real difference is the interpretation as to the variance standards and essentially the courts have the boards be a little bit more lenient.

S. Davis asked if there was any other input from the public. Hearing none, he closed the public hearing.

S. Davis took a 5-minute recess.

S. Davis introduced the next application.

**This was taken first**

 **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. ***The public hearing for this item was closed at the March 23, 2021 meeting, however, it will be reopened at this meeting to allow further input from the applicant and the public.***

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

Motion made by B. Knightly, seconded by K. Hayes to table the application to the May 25, 2021 meeting. Motion carried with all in favor.

 **1.3** **Public Hearing - Neil Cameron**

 **Application # 2021000187** – Applicant is requesting a Variance from Article 5, Section 5.1.3 to allow a 12’ x 16’ shed to remain in its existing location. The shed encroaches 8’2” into the 35’ front setback. The Property is located at 33 River Road, Tax Map & Lot #253- 318.000 in the Single Family Residential (SFR) Zone.

Presentation

Neil Cameron stated that he’s lived at 33 River Road for the last 20 years. He said that there was an existing shed there from when we purchased the property and it started to fall apart. He decided that it needed to be replaced and that he would make it a little bigger. We didn’t realize that it was in the front setback. So when we did find out, we looked into moving it, but there’s a beautiful maple tree and we don’t want to remove it, and if we go in the other direction that’s where our leach field is.

L. Routhier said that the application to build was denied. Yes, it was replied N. Cameron. The building inspector came out and told us that we needed a permit because we were replacing the existing one. We did look at other options as to the location, but basically where it was is the only place that in can be.

Joyce Cameron said that there really isn’t a different place to put the shed on the property with all the trees they have in the back and the septic.

B. Knightly asked if they were replacing it in the same location. N. Cameron replied said yes, but that this one is bigger.

A. Howe was looking at any other possible location for the shed. J. Cameron explained where the leach field and the septic tank were located and that the rest of the property is full of trees. We can’t cross over the leach field to get to the shed. We thought about cutting down trees, but they are good size pine trees that we can’t afford to take down. We did have an arborist come out and take some damaged trees down, and that was about $5000.00.

A. Howe asked D. Tousignant, Building Inspector if he thought it was an eyesore. D. Tousignant replied that it is not an eyesore, but it was one of those things that he noticed. It was new, it was in the front setback, and they did go about it the right way.

K. Hayes said that the person that would be affected by it wrote in that she was fine with it.

A. Howe was just trying to defend the ordinance.

L. Routhier said that its not obstructing anyone’s view and the snowplow wouldn’t be an issue or to anyone walking the street. All the neighbors have been notified and there doesn’t seem to be any issues.

A. Howe said that the in past history it was to try and negotiate, and with the big chunk of land it just seems like it could meet the setback.

N. Cameron said that he understood, but on the other side he has a water line and all the connections and he didn’t want anybody driving over that.

K. Hayes asked the Cameron’s if it would be a hardship if we tabled to next month, so we could look at the site. The owners said that it would be no problem

Motion made by B. Knightly, seconded by K. Hayes to table the application to the May 25, 2021 meeting, so that they could do a site visit. Motion carried with all in favor.

DELIBERATION

**Jason & Elizabeth Soukup**

B. Knightly said that he’s a big supporter of the Shoreland Act and he’s been out to look at the site and this proposal is perplexing and when he looks at this lot it just looks like an unbuildable lot. He’s surprised that the State Shoreland people have become very eager with approving this and over the years they have insisted that they want a 50’ setback and now all of a sudden it’s ok.

S. Davis said he agreed with B. Knightly and this is surprising that the state is waiving the 50’ to 30’ and he remembers that the 50’ setback was the gospel, there was no compromise and that was the rule. So maybe it’s people down in Concord that don’t live anywhere around here making changes to the law.

B. Knightly remembered someone coming to this board us from Varney Point Road, we turned them down, and they came back to us with a proposal for a smaller house, which we approved. The house was beautifully built to fit the lot.

L. Routhier said that he walked from Glendale to Ellacoya and back to look at the properties in the area and if we approve this Variance it will change the neighborhood and the character. Many of the houses in this area have lots across the street on the water and that’s how they were created, he’s perplexed by this proposal.

A. Howe took a drive out there, he got out and looked around, and he has an understanding of what the area looks like. But this applicant was considerate and they have reduced the original proposal quite a bit. If you go out there, you can see the area and there’s a house with a garage right on the edge of the road. How did that happen? B. Knightly said that some of these homes been there before zoning.

A. Howe said that’s his point is that there are all these things in that area and they have come back with a more reasonable size proposal.

K. Hayes said that the big thing to him is the public loses the view, but on the other hand, the applicant does meet the lot coverage now.

B. Knightly said that they have a thing for that and it’s called an appeal, because it wasn’t and it isn’t a buildable lot.

S. Davis said that he’s an Engineer and they did a great job with the plan and the design with what they have to work with. He’s just having heart burn with the hardship and he just doesn’t feel that there is a hardship here. I’m sure that there were flags, bells and whistles from the beginning and that they knew what they were buying and getting into, so he’s struggling with all of that.

K. Hayes asked if this was 1 or 2 lots. J. Ayer said that it was one lot at one time, and that he also had a hard time with it, but town counsel reviewed it and they felt that the argument was solid.

B. Knightly said that these lots had always been sold together, because that was their access to the water. He thought that the deeds read tract 1 and tract 2 for that reason.

J. Driscoll said that if the board chooses to vote, would it be possible to address each variance separately. This would be for clarity purposes for the record, if you could handle them individually.

Discussion ensued.

Motion made by K. Hayes, seconded by B. Knightly to request information for other variance applications in that area, to see the Shoreland Permit and to walk the area. There was concern with regard to this being 30’ to the shore and what is the reason to have a 50’ setback and where do we lose that 50’.

Discussion ensued.

S. Davis asked if there was any further discussion on the motion hearing none he asked for a vote.

Motion carried with S. Davis abstaining.

**Other business**

Steep slopes Section 6.22 of the Zoning Ordinance was handed out to everyone, just so everyone could read through it.

**MINUTES -** March 23, 2021

Motion made by K Hayes seconded by L. Routhier to approve the minutes of March 23, 2021. Motion carried with all in favor.

**ADJOURNMENT**

Motion made by A. Howe, seconded by B. Knightly to adjourn the Zoning Board of Adjustment meeting of April 27, 2021 at 9:13 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary