GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 25, 2021

**CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, May 25, 2021, at 7:00 p.m. in Conference Room A of the Gilford Town Hall, and via GoToMeeting and telephone under the emergency order provisions related to the COVID-19 pandemic.

Chairman Scott Davis opened the meeting and 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 Regular Member Adrianna Antonopoulos.

Also present were Sandra Hart, Technical Assistant; Daniel Tousignant, Building Inspector/Code Enforcement Officer; John Ayer, Director of Planning and Land Use; and Laura Spector-Morgan, Esq., and Joseph H. Driscoll IV, Esq., of Mitchell Municipal Group, P.A.

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

Motion made by B. Knightly, seconded by L. Routhier, to not accept any new business after 10:00 pm.

Motion carried with all in favor.

**1. APPLICATIONS**

S. Davis introduced the first application, saying that the public hearing portion was closed, so they would only be deliberating on it.

 **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. **Tabled from the April 27, 2021 meeting.**

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

Variance from Section 5.2.1, Lake Setback

Motion

Motion made by K. Hayes, seconded by B. Knightly, to deny the request for a variance to allow a 30.3 foot setback from the lake, where 50 feet are required. K. Hayes found that granting the variance would not do substantial justice, would be contrary to the public interest, and would not observe the spirit of the ordinance. Specifically, the cumulative impact of granting such variances to the many vacant lots along the lake, including island lots, would be detrimental to the water quality and to the aesthetic value of the lake. Moreover, that the loss to the individual was outweighed by the gain to the public in protecting the lake quality.

K. Hayes said that there is a required 50 foot minimum setback from the lake, which is supposed to be met but it can’t be met for any construction existing but should be maintained for new construction. He said if we allow this variance, we will get a number of other variance requests all around the lake and island properties. This is not in the best interest for the lake and for the town of Gilford.

L. Routhier agreed, saying the town of Gilford has established a zoning ordinance for a reason.

K. Hayes said that he would rather see this lot being taxed less. He didn’t see that this lot was taxed as a buildable lot based on the lots around it, but he would rather see the taxes lowered but the rules or observed. He said the lot still has value.

A. Howe said he wasn’t sure that he followed the reasoning for that. He said he didn’t think that the taxes have anything to do with it. If the lot is not buildable then we are done; we don’t need to discuss it anymore. K. Hayes said if the motion doesn’t pass then we have to go on to the next variance.

Attorney Laura Spector-Morgan introduced herself and said she asked the board if they would vote on each of the four variances separately.

A. Howe said he can sympathize with the argument regarding the lake, but he was questioning the argument whether the lot is a buildable lot or not.

B. Knightly said that his problem with this proposal is the lake setback and he has a real problem with any building within the 50-foot setback which setback was approved by the legislature and each city and town voted to approve the 50-foot setback along the lakes. He has concern with the lake and that’s why he will vote as he will vote.

S. Davis said that DES granted a variance from the 50-foot shoreland setback requirement on the basis that this was a non-conforming lot, but the Town can have a more stringent requirement.

A. Howe said that the argument could be made that there is substantial justice protecting the public versus the request for a variance.

S. Hart took a roll call vote on the motion:

K. Hayes - yes

A. Howe - yes

B. Knightly - yes

S. Davis - yes

L. Routhier - yes

Motion to deny the lake setback variance request carried.

Variance from Section 5.1.3, Front Setback

A. Howe said that it’s extreme and he understands that there are other properties in the neighborhood that are this extreme or almost as extreme. He said he feels better about the 12-foot front setback that has been proposed with the revised plan noting that it is better than the 5-foot setback originally proposed. He said the applicant has made some significant concessions in regards to the board’s concerns and we don’t always get that. He said he thinks 12 feet is better than the 5 feet.

A. Howe said the board has heard concerns from the other property owners that their surrounding properties would be devalued if this house were to be built and he said that argument doesn’t stick with him. He said there are other houses that are closer to the lake and that don’t meet the setback. He said it’s a crowded neighborhood and everybody wants a piece of the lake.

A. Howe discussed unnecessary hardship and said if we aren’t careful and we keep denying, we are going to turn the lot into a non-buildable lot. He didn’t think that was what they wanted to do here. The substantial justice will be given to the landowner and there won’t be any loss to the neighborhood or to the public in terms of the garage being set back 12 feet.

K. Hayes said that he doesn’t disagree with the 12 foot setback, but the spirit of the ordinance is not observed. We require something else and that’s where his thought goes to the landowner, but he will live with the 12 foot setback.

L. Routhier said that in regard to the other homes in the area, it’s not going to detract or damage those other homes but those other homes were built before zoning rules and regulations for the Town of Gilford. The Town of Gilford has established the Zoning Ordinance to stop those things from happening and we are just leaving it open to further building around the lake to damage the quality of the water, to damage along the roads, and to damage the quality of the land in Gilford. There are many other properties along that area that the owners had been told were not buildable.

B. Knightly said that the hardship is really that they already have a piece of property on the other side of the road from the lake with access to the lake by using this particular lot. B. Knightly said the board has already said that the setbacks would be in violation and he doesn’t see a hardship there for them wanting to build a home across the street. L. Spector-Morgan said that the hardship is with the property and not the people.

A. Howe said that this lot is considered a different piece of property and that this should be treated as a stand-alone lot.

K. Hayes asked B. Knightly if it would change his thinking if they didn’t own the property across the street.

B. Knightly said that we have these setbacks approved by the town with Planning Board recommendations and most of the existing developed properties were built on prior to Zoning and, no, it would not change his thinking at all.

S. Davis said that the road setback of 12 feet is so minimal. He said there are a few safety issues and he’s not in love with that. B. Knightly said that it’s not even a car length and the road is very narrow. S. Davis said that it’s better than what they had, but he would like to see more. K. Hayes said that it might be 7 feet from the edge of pavement.

Motion

Motion made by A. Howe, seconded by B. Knightly, to approve the front setback variance to allow a setback of no less than 12 feet from the front property line for the reasons that were just discussed.

S. Hart took a roll call vote on the motion:

K. Hayes - yes

A. Howe - yes

B. Knightly - no

L. Routhier - no

S. Davis - no

Motion to approve the front setback variance request failed. L. Spector-Morgan explained that they would need to site the specific criteria that weren’t met, so someone who voted “no” would need to make the motion.

Motion made by L. Routhier, seconded by B. Knightly, to deny the front setback variance request citing the extensive discussion with regard to the impact to the neighborhood. He said the existing homes where constructed before zoning rules and regulations. L. Routhier said the town has come up with these regulations because of these concerns with road maintenance, safe passability, people walking, and various safety reasons to try and maintain a better setback. The town has a minimum front setback of 35 feet, and the 12 feet is too short of a distance in this particular neighborhood.

S. Hart took a roll call:

K. Hayes - no

A. Howe - no

B. Knightly - yes

S. Davis - yes

L. Routhier - yes

Motion to deny the front setback variance request carried with three in favor.

Variance from Section 6.22.3, Disturbance of Steep Slopes

Motion

Motion made by K. Hayes, seconded by B. Knightly, to grant the variance to allow excavating and/or filling slopes greater than 25% and to install retaining walls and landscape features.

K. Hayes said that if we don’t approve the variance, it creates a hardship on the lot. If we hold the 50 foot setback, it narrows the buildable area significantly, if we don’t give them a hardship variance against this steep slopes ordinance, they can do nothing.

K. Hayes said granting the variance would not be contrary to the public interest. In this case, the public interest is served and so this would still give the owner some value of the lot and protects the public’s interest at the same time.

K. Hayes said the spirit of the ordinance is observed because of the reconfiguration of the lot and the fact that we’ve denied the lake setback variance request, so this gives the owner some relief.

K. Hayes said substantial justice is done for the landowner. He believes that the value of the surrounding properties will not be diminished because of this variance and there is evidence of other variances that do the same thing.

K. Hayes said literal enforcement would result in an unnecessary hardship to the owner.

S. Hart took a roll call:

K. Hayes - yes

A. Howe - yes

B. Knightly - no

S. Davis - yes

L. Routhier - no

Motion to approve the variance request from Section 6.22.3 to allow excavating and/or filling of slopes over 25% carried.

Variance from Section 5.1.1(d), Buildable Area

Motion

Motion made by A. Howe, seconded by K. Hayes, to grant the request for a variance from the required minimum 15,000 square foot buildable area.

Discussion as to the buildable area. A. Howe said the total square footage of the lot is about 15,000 square feet and that can’t include slopes over 15% or areas within the setbacks, so we know it’s going to be significantly less than 15,000 square feet.

Granting the variance would not be contrary to the public interest because the lot in question is in a neighborhood with other lots of similar size and along the lake. The spirit of the ordinance is observed because it is in a single-family residential zone therefore building a house in a single-family residential zone is not contrary to the zoning ordinance.

Substantial justice is done because weighing the loss to the individual is not equal to the gain to the public. Because it is a single-family zone with many residences in the area and the loss to the individual would be very significant.

Values to the surrounding properties will not be diminished because this is a residential use in a residential neighborhood.

Nothing that has been proposed is so out of keeping with the character of the neighborhood that it will be grossly injurious to anyone.

Literal enforcement would result in unnecessary hardship because they couldn’t build anything but a postage stamp on this property. Therefore, it would be extreme unnecessary hardship.

A. Howe said based on these findings he proposes the board grant the variance.

S. Hart took a roll call vote on the motion:

K. Hayes - yes

A. Howe - yes

B. Knightly - no

S. Davis - yes

L. Routhier - yes

Motion to approve the variance request from Section 5.1.1(d), to allow less than 15,000 square feet buildable area carried.

 **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. **Tabled from the April 27, 2021 meeting.**

S. Davis recused himself from this application and B. Knightly took over as chair.

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

Presentation

Craig Bailey of Bryan Bailey & Associates and Calvin Dunn, III, were present to represent Susan Turcotte.

B. Knightly explained that there were only four acting members of the board present for this hearing and that it takes the vote of three members to approve or deny an application.

C. Bailey said that they would like to proceed with the hearing. He said that they made the case here months ago. C. Bailey said the point is to get one additional home on a single 50 foot strip of land, therefore there would be four homes being served by one easement/right-of-way. The hardship is that the town has expressed no interest or support in the extension of the Class V portion of Young Road. The hardship in not being able to extend the Class V road leaves the applicant with only one alternative and that is to try to put in one driveway serving four homes in the 50-foot wide easement.

K. Hayes asked if he could please explain the last statement about the driveway servicing four homes.

C. Bailey said that the Town of Gilford allows the back lots to be served by a shared driveway as long as said driveway is located in a 50 foot wide right-of-way. So the four properties that we are proposing to be served by this shared driveway are the Roper lot, the Caldwell lot, and the driveway shared by two new proposed lots on the Turcotte property.

K. Hayes asked if the driveway for the exiting residence is staying where it is. C. Bailey said it is. He said the existing driveway accesses the Class V portion in a part of the frontage which is different from the frontage that they are utilizing for this shared driveway. He said it’s the same lot and they are not double dipping the frontage of that existing driveway or the proposed shared driveway. The proposed driveway has its own access.

K. Hayes said that there are two existing driveways in the town right-of-way plus there is a third access point, said K. Hayes.

C. Bailey said that since the last time they met with the board the applicant has been busy cleaning up the lot in response to the neighborhood’s requests and the applicant has met with town staff. He said they have reports from the staff that progress is being made and it’s not perfect and there is certainly room for improvement. C. Bailey said that if they receive the variance there will be many opportunities to make the final push to what the neighborhood is looking for.

L. Routhier said that C. Bailey stated the hardship was on the Town of Gilford in extending Young Road. C. Bailey said that the hardship is the inability to extend Young Road. He said that if they don’t have enough frontage, they need to make more Class V road. In the years prior, the applicant met with the selectmen and they said that they didn’t want to extend the road, not even in a cooperative approach.

K. Hayes asked why the Town should fund any portion of this. C. Bailey said that no one said anything about the Town funding anything. The selectmen would need to approve and accept the new stretch of road and they aren’t willing to do that. He said there was never any funding requested.

K. Hayes asked if there was any discussion about continuing the two existing driveways and running a fifth driveway off the existing driveway. C. Bailey said that there hasn’t been any discussion on that.

L. Routhier asked if there was any written proof of that denial from the Town. C. Bailey said there was not because we never actually applied for it. L. Routhier said that you could apply for it and put in a driveway at the end of the extended portion of Young Road. C. Bailey said that it’s very expensive and that they would need to build the road first.

B. Knightly said there are other ways they could propose to extend the road such as get a petition on the ballot and maybe propose a plan that way. C. Bailey said that they haven’t done that yet. B. Knightly said he has an issue with the hardship and doesn’t see the hardship there.

Public Input

B. Knightly asked if there were any members of the public wishing to speak.

Wendy Roper representing herself and her husband Brian, said that they are abutters to the property. She said that she wrote a letter and asked for everyone’s patience with her. She said that she would read her letter rapidly. L. Spector-Morgan stated that the entire letter would be part of the record. W. Roper continued to read the letter and went over the deed easement and other information.

A. Howe asked if there was any additional information, noting that the board would love to see it. He asked about the easements and she went over it for everyone.

Wendy Oellers-Fulmer of 140 Young Road thanked the ZBA for the opportunity to speak. She read a letter that was not submitted to the board or staff. She said she doesn’t know if the potential zoning violations at that site are due to the owner being unaware or if they are due to his willful disregard for the law. She asked the Town to continue to monitor this property for compliance. She said they support the current ordinance, but they don’t support two more lots. She asked about extending the Class V road.

Ron Fulmer of 140 Young Road asked the board if there has been any consideration for two accesses off the road. He explained that the first two lots have existing access on one area, and to the right side could be the access for the proposed two new lots.

C. Bailey said that in order to do that the existing garage would have to be torn down and significant grading would have to be done. He said that because the Class V portion ends, they thought that headlights would head straight into the house which is the reason that option was not considered.

K. Hayes asked about the grade of the Class VI road portion. C. Bailey didn’t have the answer to that.

C. Dunn said that he lived at this house for 15 years. He said there were rights-of-way deeded. He said he and Bob Wood and the previous owner were trying to do a subdivision which they got approval for. C. Dunn said if he had known then what he knows now he would have done things differently. He said that now all he wants to do is build just one additional house. He said people try to get from Young Road to Durrell Mountain Road and cars are often turning around in his driveway.

C. Dunn said that as far as violations go they have been working on removing a lot of the stuff. They have towed a bunch of cars and removed many tires. He said the only issue they have left is that they had a three unit building and we will be coming in to the Town to get a building permit to convert to a two unit building. He added that this a seven acre parcel and he’s looking to add one high end house. It’s the final stage of the subdivision and we just need to build it and to be done with it so someone else can deal with it.

B. Knightly asked if there were any further comments from the public. Hearing none he closed the public hearing portion.

Motion

Motion made by K. Hayes, seconded by L. Routhier, to deny the application. K. Hayes said by not granting the variance the public interest is protected. K. Hayes said this requirement was put in the Zoning Ordinance to limit the number of multiple driveways off a single driveway and by denying this, we uphold the ordinance. He said that in this case there are other methods to provide driveway access which he thought would be more practical, but that might not be as cost effective, but cost is not a hardship. This would be to service an extra two lots and to service the back of this property. By denying this, substantial justice is still done. He said there’s no significant change in the value of properties in this denial. Literal enforcement of this provision does not result in an unnecessary hardship.

A. Howe asked if K. Hayes could elaborate on substantial justice. K. Hayes said that he didn’t understand why the subdivision isn’t done differently to extend Young Road even a small amount to allow a driveway or build these as a town road with driveways off it. He said he remembers walking this property about 10 or 12 years ago and the intent then was that a road would service the back land. He said that would be a better, more practical solution to a long-term problem. A. Howe asked K. Hayes if he was saying the applicant could still put in a driveway that would be able to service the two proposed lots. K. Hayes said it could service the two proposed lots that were configured at that time. A. Howe said that serves as justice to the town and to the public. A. Howe asked about the hardship.

L. Routhier said that his reason for seconding the motion was based on the hardship and he wanted to discuss it. He said he doesn’t see the Town as having or being a hardship in this case and he felt that it was a weak example for hardship to name the Town of Gilford as the hardship.

B. Knightly said that there are other alternatives available to the petitioner. He said that they could get a petition and put it on the ballot for an extension to Young Road and let the voters decide, so he didn’t see the hardship.

B. Knightly asked if there were further comments or discussion. Hearing none he asked for a vote.

S. Hart took a roll call:

K. Hayes - yes

A. Howe - yes

B. Knightly - yes

L. Routhier – yes

Motion carried to deny the request for a variance from Section 5.1.2(d)(4) to allow a driveway to provide access to four (4) lots.

S. Davis came back on as Chair.

 **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. **Tabled from the April 27, 2021 meeting.**

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

S. Davis said that the application was tabled so that members could go out to the site. A. Howe said that he was not able to get out there.

Motion

Motion made by L. Routhier, seconded by K. Hayes, to approve application 2021000187. He said he feels that it meets all the necessary requirements for a variance and it was not a hazard to the roadway and there is no hazard with regard to snow removal. He said it does not infringe on any neighboring properties.

S. Davis said that it was his understanding that the question was whether it was reasonable, given the lay of the land, to move the building further back on the lot. A. Howe asked what everyone’s opinion was.

L. Routhier said that he felt just as the applicant did when he went out there with regard to the property and it would be a drastic undertaking just to put the shed in another area. Where the shed was located, even though there was a slight setback encroachment, it wasn’t drastic and it is the best place for the shed.

A. Howe said that he finds a little inconsistency here compared to other applications. He said he understands that a shed in the front setback is different from a house being built down by the lake with various variances. He said that as defenders of the ordinance he thinks that the board should consider and the applicant could have made more of an effort to relocate the shed including maybe cutting some trees. Again, he said that he didn’t get a chance to go see it. A. Howe said that it appears that the mood of the board is to grant relief, but maybe the board doesn’t need to grant too much relief if we could find an alternative.

L. Routhier said that in making the motion he was looking at it as a shed and not a house that would attract extra traffic or parking, or bring additional cars along the road. A. Howe said that it may not be there forever either, it’s not on a foundation and it will be easy to move. B. Knightly said that he’s looking at it as a replacement to an existing shed and yes, it is bigger, because the applicant thought that it was OK in that location. B. Knightly said the bottom line for him is that it doesn’t have the same effect as a house. A. Howe said that the bottom line for him is that there are five criteria that need to be met this application needs to meet them all.

A. Howe said that substantial justice is done and he would say there is no harm to the public interest in having the shed there. He said it is probably not going to devalue other properties. He said hardship may be hard to meet because there could be another place he could put the shed. A. Howe said they may be able to move it elsewhere on the lot, however costly that may be.

B. Knightly read into the record the variance request for the shed as submitted by the applicant.

K. Hayes asked if the old shed was in the setback as well. D. Tousignant said it was and that they replaced what was there with a bigger shed. The shed they purchased wasn’t wider but longer and they pushed it as far back as it could go. The applicant explained his property and passed out pictures for everyone.

S. Davis asked if there were any further questions. Hearing none he asked for a vote.

S. Hart took a roll call.

K. Hayes - yes

A. Howe - yes

B. Knightly - yes

S. Davis - yes

L. Routhier - yes

Motion carried to approve the front setback variance for the shed with all in favor.

 **1.4** **Public Hearing - Northeast Self Storage Inc**.

**Application #2021000274** - Applicant is seeking a modification or clarification to the approval for the boat storage Special Exception that was granted on January 26, 2017 under Application #2016000044 pursuant to Article 4, Section 4.4.7, for Boat Storage. The property is located at 184 Old Lakeshore Road on Tax Map & Lot #225-014.000 in the Resort Commercial (RC) Zone and the Airport District.

A. Howe recused himself from this application.

S. Davis advised the applicant that there are only four voting members present and three votes are required for a motion to pass. Jon Rokeh of Rokeh Engineering, and Dick Letendre, applicant, were present for this application. They said that they wanted to proceed.

Presentation

J. Rokeh explained that they were before the board for a special exception. He said that on May 3, 2021 they received conditional site plan approval from the Planning Board. One of the conditions was that they go back to the Zoning Board for clarification as to the buffer condition that was set when the ZBA approved the special exception for the use, and to see if the buffer that has been proposed on the site plan meets the ZBA’s approval. He said the applicant has planted many additional trees, more than what was originally submitted. He said once these grow up they will fill up all the gaps.

J. Rokeh said they have a letter from Paula Champagne of 170 Old Lake Shore Road, a direct abutter, saying that she is fine with the buffer that is there. He said they worked with the neighbor on the other side as well. He submitted photos of the buffer plantings for review. J. Rokeh said that they left many trees in between this property and the other abutter. He said this board wanted to make sure that the abutters were protected, and as can be seen from the photos, there is substantially more of a buffer.

S. Davis asked about the abutters across the road. J. Rokeh responded that the neighbors across the street are in a different zone. He said the Planning Board requested many more trees for the buffer than what was approved by the ZBA.

K. Hayes asked about the picture of Gunstock Hill Road and when the other trees would be planted. J. Rokeh said they had added trees and that they’ve ordered additional trees and are waiting for them to come in. J. Rokeh said they will be bound by the Planning Board’s conditional approval, and a bond will be required before they can get a Certificate of Occupancy for any buildings. He said all the trees will need to be planted.

K. Hayes asked if they intend on starting the project this year. D. Letendre said they do. K. Hayes asked if they would be finishing the building this year. D. Letendre said they would.

S. Davis asked if there will be a substantial enough buffer that the building and use will be substantially blocked. J. Rokeh said that you will still be able to see gaps and noted that there was no requirement to block the view entirely. He said that the Planning Board asked the applicant to get something in writing from the other abutter as well with regard to the buffer.

J. Ayer said that he had discussed the matter with town counsel who said they wouldn’t need an appeal of the ZBA’s original decision, but they would need to modify the January 17 special exception approval. K. Hayes said the board could just vote on it.

Public Input

Andrew Howe is an abutter and lives at 300 Gunstock Hill Road. He said that something to consider in the ZBA packet is that four years ago there was an approval with conditions made. He said that there are no buffer trees around the abutters which was required. He said it was a condition of the Zoning Board’s approval and those conditions have not been met. So technically this board has no jurisdiction to make any decision because the original application was not completed. K. Hayes asked why the Planning Board didn’t act on this. A. Howe said that he didn’t know how there could be any confusion and it has been four years and we are trying to whittle our way back. It’s not complete. The original application is not complete. The Planning Board should have never approved the recent site plan.

J. Ayer explained the Planning Board approval noting that when the Planning Board reviewed the as-built plan for the original site plan the buffer was not installed to their satisfaction. The Planning Board required the applicant to address the adequacy of the buffer with this most recent site plan application. Their approval of the site plan includes approval of the more substantial buffer. A. Howe said can’t the applicant just plant the trees; it’s just a lot of fuss over some trees. He said the Zoning Board of Adjustment said that there should be a buffer and it’s been four years. S. Davis said that we don’t monitor the building permit.

Motion

Motion made by K. Hayes, seconded by B. Knightly, to send the matter back to the Planning Board, stating that this not an issue for the Zoning Board of Adjustment. K. Hayes said the Planning Board shifted the responsibility regarding the buffer.

J. Ayer said that his understanding is that the Planning Board was just making sure that they did what the ZBA wanted them to do.

B. Knightly said that according to A. Howe the buffer is still not in. S. Davis said that we don’t monitor the building permit.

J. Rokeh said that the Planning Board addressed the ZBA’s third condition of approval “That a buffer area be approved by the Planning Board”, because the Planning Board approved the site plan with that buffer. He said they approved the application and he didn’t think it needed to come back to the ZBA to double check it. J. Ayer confirmed the Planning Board did do that and said that this was sent back to the ZBA to make sure that the board is OK with the buffer.

S. Davis said that there is a motion on the floor to send it back to the Planning Board and that the matter is not in the ZBA’s jurisdiction. J. Rokeh said that technically the Planning Board has already approved a buffer as required by the ZBA.

K. Hayes - yes

B. Knightly - yes

S. Davis - yes

L. Routhier - yes

Motion to send the matter back to the Planning Board carried.

**1.5** **Public Hearing - William J. Fidler 2020 Family Tr.**

**Application #2021000276** - Applicant is seeking a Variance from Article 5, Section 5.2 Special District Standards, 5.1.3 Front Setback Area and Table 2 Dimensional Regulations for the construction of a 5,888 square foot Single Family home with walk-out basement, deck and garage. The property is located at 8 Varney Point Road, Left on Tax Map & Lot #223-420.000 in the Single Family Residential (SFR) Zone and the Island and Shore Frontage District.

Presentation

William Fidler, applicant, and Peter Stewart of Peter Stewart Architects, were present to discuss the application.

W. Fidler said they are seeking to replace the existing dwelling and garage. He said the current house and garage do not meet the zoning requirements. He said they have devised a plan to meet the side setbacks of 25 feet, but the house will not meet the front or rear setbacks. He said they are putting the new home where the old home was and they reduce lot coverage from 35% to 25% impervious area.

P. Stewart said that the proposed house will be 5,800 square feet with an attached garage, porch, basement, and two stories. In addition, because of the steepness of the lot, the highest ridge of the house will be nine (9) feet above street level. W. Fidler said that the property is a weird shape. P. Stewart said that the existing house is 13 feet from the property line and the step is about 8 feet.

K. Hayes asked about the other setbacks. P. Stewart replied that both side setbacks of 25 feet are met, and said the front setback to the front steps is 8 feet. The new building will be pushed back 17 feet. The setback to the lake is currently 18 feet and they will push it back to 28 feet so they are gaining 10 feet from the water. He said the deck will remain in the same area.

A. Howe asked about the height. P. Stewart said that it will be less than the present garage, about 9 feet above street level.

W. Fidler said that the line will actually improve. He said they will increase their pervious area and they will be upgrading to code requirements and efficiency, which they don’t have right now.

D. Tousignant asked if there was a shorefront permit yet. W. Fidler said they don’t have DES approval yet, but they are working on it.

A. Howe asked how many more square feet will be in the setback versus what is currently there. D. Tousignant said it’s a considerable amount. P. Stewart stated that if you calculate the proposed area within the setback and compare it to the existing, it is slightly more finished space, not including the deck.

J. Ayer said that currently the garage is out by the road and the house down by the lake. He said that with this proposal it will be under one roof. P. Stewart replied that the proposed roof will have four different pieces and will have two dormers. A discussion of the square footage of the house ensued.

W. Fidler said that the house is currently on cinderblocks and with this build out there will only be one or two trees removed and more vegetation will be added to the property.

Public Input

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

Robert Kendall, III, Esq., of McLane Middleton, was present representing Merrill and Beth Fay who own two properties across the street. R. Kendall handed out a packet to everyone. He said that the current dwelling is only 8 feet from the road, but it’s actually the garage and it is separate and not attached. The current structure is three stories tall and has a roof estimated to be about 8 feet tall. This will be a 70% increase. He said there should not be more than 25% lot coverage and they should have sought a variance for that.

R. Kendall said the building dimension has a number of issues. The required setback from the lake for both the town and the state is 50 feet. The applicant needs to prove the five criteria supporting this request and we don’t believe that they have done that here. R. Kendall went over the points for everyone saying that this would be an unnecessary hardship caused because they are proposing such a large building, taking an existing home and trying to build a home that is much bigger and they haven’t identified any features of the land.

R. Kendall said they are concerned as to the building height and there is no variance sought for the lot coverage. At the least, the application is incomplete for not seeking those two applications. Also, there is no permit approved by the NH DES and we haven’t seen any evidence as to why this proposal would be granted. He said both of these setbacks would go against the spirit of the ordinance. He said if this were to be the norm then everyone could just come in and build and it essentially would raise the question why have an ordinance. The Zoning Ordinance is legal and the Town of Gilford and the NH DES want to protect the public.

M. Fay, abutter, said that a point of order is that they were notified of this hearing on Thursday and they have had three days to get an attorney and gather all the information for this, but he thought that they should have been noticed much earlier. He said that to him it is a poorly made survey. He said that it doesn’t even show the sewer, the well, or where the underground electric is located. In addition, he didn’t think this should be heard by the ZBA without a DES approval.

M. Fay said that on the northerly side of the lot some information is missing which he believed makes the house another 15 feet closer to the lake so they encroach another 15 feet and that is not even shown on the plan. He disagreed completely with the setback and said it is 13 less than what they are proposing or saying. He said he couldn’t understand why a neighbor wouldn’t just come and talk to him and his wife. M. Fay said that there is huge tree at the shoreline that will be removed and the shoreline will be a disaster. He said there have been many changes made to Varney Point Road. There have been many accidents and so much more traffic than there used to be. You have to come out and measure it. It’s a dangerous area and he’s worried about people backing up and not having enough room. He said that he would be shocked if the state approves the application. M. Fay said the speed limit should be reduced to 20 miles per hour and the town should add speed bumps on the road.

B. Fay said that they live at 5 Varney Point, which they bought 20 years ago, and they brought it back with the feel of the lake. She also said they bought the cottage immediately across the street which was built in 1938 which is small at 700 sq. ft. She said she has been trying to save something on the lake. She said she is not against anyone building on the lake, but would like to see something lovely. She just doesn’t want this to be like a big hotel. She noted that it’s not just Mr. Fidler, but it’s become a sad state of affairs of what’s become of this lake.

M. Fay asked how many people are going to live here. He said if Mr. Fidler is living down the road, he’s probably not going to care how many live there. He asked about the parking and if there is going to be blasting on site. He said if the board approves this he would be upset. He said he would appreciate if you would table this for the additional information.

S. Davis asked the applicant to come back up and go through the criteria.

W. Fidler said that he is from New Hampshire, he lives in Windham, NH, and he owns another house on Varney Point Road. He said that tonight’s meeting issue is for the setback variance, not regarding DES approval. He said that they aren’t moving trees but the plan shows what is currently there. He said they know where the well is and added that Carl Johnson has been doing survey work for 40 years.

W. Fidler read the variance criteria for the record.

*Not Contrary to the Public Interest*

All properties over time will eventually be upgraded and improved. In this case, the current dwelling will be converted to a year-round home constructed to current building codes. Zoning relief is often needed in cases where the existing lot of record was created prior to the zoning ordinance and the current standards make reasonable use of the property impossible. The public interest is served when properties are thoughtfully redeveloped in keeping with the general character of the neighborhood, respecting the abutting properties and character of the neighborhood, and maintaining or improving the impacts to natural resources.

*Sprit of the ordinance is observed*

The zoning ordinance specifically allows for dimensional relief if the current minimum setbacks create a non-buildable area. The spirit is observed when thought is given to the overall development conditions within the neighborhood. This proposal is similar in nature to many of the other properties on Varney Point.

*Substantial Justice*

This will allow for the upgrade of an existing non-conforming structure on an existing non-conforming lot.

*Values of surrounding properties will not be diminished*

The use of the property will remain residential. The side setbacks are being upheld. A modern structure built to current construction codes does not generally devalue surrounding properties.

*Literal Enforcement*

The current setbacks leave a buildable area of 444.2 square foot, which prohibits any reasonable development of the property. The lot was created by virtue of a subdivision plan prepared in 1923.

S. Davis said that he would like to see the setbacks shown on the plan. P. Stewart said that they are on the plan and reviewed them for the board.

L. Routhier asked the square footage of the proposed house. P. Stewart said that if you take off the deck and garage, it would be 1,700 square feet per floor. The footprint is at the minimum level. The first floor will be larger because it includes the garage.

Motion

Motion made by A. Howe to adjourn the meeting due to the time being 10:00 pm. A. Howe then said maybe the board should take a minute to finalize the current application. There was no second for the motion.

A. Howe suggested that maybe the board should make an effort to see the site. He said he would like to see the detail with the setbacks on the plan more readable. He said the suggestions regarding showing the well, electrical, and sewer locations would also be helpful.

K. Hayes said he would like to see the drainage and were the roof water will go.

J. Ayer said that showing more dimensions would be great and square footage.

S. Davis said he would like to see the NH DES approval just to see if there will be any stipulations with it.

K. Hayes asked if they could make it a 10 foot scale.

Motion

Motion made by K. Hayes, seconded by B. Knightly, to table the application to June 22, 2021. Motion carried with all in favor.

**2. OTHER BUSINESS**

There was no other business.

**3. MINUTES**

April 27, 2021

Minutes were postponed to the next meeting.

**4. ADJOURNMENT**

Motion made by B. Knightly, seconded by L. Routhier, to adjourn the Zoning Board of Adjustment meeting of May 25, 2021 at 10:05 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary