GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

AUGUST 24, 2021

 **CONFERENCE ROOM A**

**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, August 24, 2021, at 7:00 p.m. in Conference Room A of the Gilford Town Hall, and via GoToMeeting.

Chairman Bill Knightly led the Pledge of Allegiance.

Members present were Chairman Bill Knightly, Vice-Chairman Larry Routhier, Regular Members Andy Howe and Adrianna Antonopoulos, and Alternate Member Kevin Hayes.

Member absent was Scott Davis.

Also present were Sandra Hart, Technical Assistant, and Daniel Tousignant, Building Inspector/Code Enforcement Officer.

B. Knightly appointed K. Hayes to be a voting member for the meeting.

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

Motion made by K. Hayes, seconded by A. Howe, to not take up any new cases after 9:30 p.m. Motion carried with all in favor.

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

**1. Applications**

**1.1** **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. *Tabled from the July 27, 2021 meeting.*

Present for the application were Attorney Philip Hastings with Cleveland, Waters and Bass, P.A.; Jon Rokeh, PE, with Rokeh Consulting; William Fidler, applicant and property owner; Peter Stewart, AIA, with Stewart Associates Architects; and Carl Johnson, LLS, of Advanced Land Surveying Consultants.

Presentation

P. Hastings stated that they have modified plans to address several concerns. They’ve reduced the impervious coverage. They’ve reduced the obstructed view from the street. On the new set of plans they’ve made some changes, which made them more readable with clear setbacks, utility locations, added a monument along the boundary, and they’ve addressed life safety concerns and they’ve submitted the application to the NH DES for Shoreland approval. P. Hastings said they’ve done a review of the Town’s records within that area and this proposal is consistent with most of the lots in that neighborhood.

J. Rokeh stated that after the last meeting, the pins were located and they have revised the plan to clarify where they are. They’ve made the building location more defined and superimposed the proposed structure over the existing. He said they are adding rain gardens at both corners. The house becoming narrower opened up the view. He said to answer the question as to the driveway and parking, they can have a car in the garage and park up to five (5) cars on the property without affecting the road.

Carl Johnson stated that he was the surveyor. He stated that when he was first contacted by the owner he was given a survey done by DMC. He explained the different surveys done by different surveyors.

He said he found did find an existing pin, which was a foot away from the corner. When Varney Point Road was created in 1923 the stakes were wooden, so over the course of the years land owners and others have gone in there and reset the pins. In addition to that, in 1993, there was a survey done by Ron Mitchell and they located two points, which were the same ones found by DMC in 2008. The monuments that are out there are very well defined and the point shown on the plan he drew is actually closer to Mr. Fidler’s.

D. Tousignant asked what is the square footage of the deck. P. Hastings referred to plan sheet 1.1. K. Hayes said part of the deck is 20 feet wide and 20 feet long. W. Fidler said that it’s smaller on one portion of the house, and they shifted the house over and opened the view to the Fays by 2½ to 5 feet. He said the right side will face the huge piece of granite, and the Nickersons will not be impacted at all. He said now that they will be pushing the house all the way up to the 25 foot setback line will help in expanding the driveway.

Public

Merrill Fay of 11 and 5 Varney Point Road Left said that a comment made about the parking was that there will be enough on-site parking for five (5) cars. He said that he will be holding them to that. He said he’s also concerned about drainage in that area. The figures are all different and he said he doesn’t know where they are picking up the extra square feet. He said he realizes the ZBA will determine this, but he said we are still waiting for the NHDES approval.

Attorney Robert Kendell, of McLane Middleton, said he represents the Fays. He stated that they submitted letters from May and June and they reviewed a revised plan with the modifications to the building. He said they don’t want to rehash previous comments, and said he doesn’t see new parking spaces and asked if there is a better way to view it. He said it’s much further from the road. R. Kendell said there is a potential to diminish property values by building this home. He said the variance criteria set here is essential and the size of this home is creating a hardship. He said that they ask the board to deny the application at this time.

A. Howe asked if it is R. Kendell’s assertion that the current properties will be devalued, one, for the real estate, and two, for the congestion of the property and the parking situation.

P. Hastings said with regard to the issue of parking, the ordinance requires two (2) off-street parking spaces for every single-family residence, which they have. He said they’ve talked to the life safety officials and they haven’t had any issues with this proposal. He said they are addressing the drainage issues and the impacts with this proposal; they are mitigating the existing problems and not making the current situation worse. They would have loved to have been able to bring in the state approval, but were not able to do that, but the board can approve this conditional on receiving state approval. P. Hastings said they are reducing the lot coverage to below the maximum allowed. He said in terms of the view shed, a lot has been said about it but there is no variance required for the view and they’ve tried to compromise on that point. He said if Mr. Fay is afraid of losing his view, then he could have secured a view easement in the past.

W. Fidler explained the footprint and the square footage of the house and garage. He said the drainage mitigation is a concern to him as well and the state will be reviewing that. He said he told the Fays that when he adds plants, he would add lower plantings to a height that will enhance the view over what they have now and for any pedestrians walking by. They will remove the skinny birch trees and add smaller shorter plantings.

P. Stewart stated that the square footage includes deck, garage, basement, first floor, and second floor. If they deduct the garage, basement, and garage, it’s a 3,500 sq. ft. house. The existing garage slab is at elevation 523’ and the new garage will be about the same. He said they step down from the garage and that’s why they have the extra height.

M. Fay asked how the board could make a decision on this when the NH DES hasn’t given the approval. He said he would like to see their input on this.

Motion

Motion made by K. Hayes, seconded by L. Routhier, to table the application to the September 28, 2021 meeting so they can see the NH DES state approval. A. Howe asked why the board needs to wait for that. K Hayes stated that he would rather wait for the NH DES approval and see what they have to say in order to make a decision.

B. Knightly applauded the efforts that W. Fidler’s team has made on this application.

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

K. Hayes - yes

A. Antonopoulos - yes

A. Howe - yes

B. Knightly - yes

L. Routhier - yes

Motion carried.

 **1.2** **Stones Throw Realty, LLC**

 **Application #2021000355** - A Variance is being requested from Article 5. Dimensional Regulations, Article 7. Off-Street Parking, Article 17. Architectural Design Standards, 5.2 Special District Standards, 5.2.1 Island and Shore Frontage District (a) Section 5.3 Building Standards, 5.3.1 Building Heights to construct a new building. The property is located at 40 Weirs Road, on Tax Map & Lot #223-539.000 in the Resort Commercial (RC) Zone. *Tabled from the July 27, 2021 meeting.*

Presentation

Christopher Drescher and John Cronin of Cronin, Bisson & Zalinsky, P.C.; Craig Bailey of Bryan Bailey & Associates, Inc.; Robert William Hannon of RWH Architect; and owner Ron Allen were present.

C. Drescher stated that a review from June was that they were asking for relief from height and parking.

At the last meeting they discussed the height and the aesthetics of the building. He said their state shoreline permit had been approved as of yesterday. He said that they originally asked for a 55 foot building height and they have reduced that to a building height of 42 feet, so the building will be only 3.1 feet higher than the nearby Shep Brown’s building as measured from grade.

L. Routhier stated that the 25 foot building height requirement applies within 200 feet of the lake, but that Shep Brown’s building is not within that lake setback.

C. Drescher stated that they are not affecting anybody’s view. He said with regard to the FAA concerns, they have an application in but they don’t have that back yet. He said the board could conditionally approve it on that being approved. He said if we are removing the roof deck, reducing the number of patrons, that will also lessen the amount of parking needed. He said they are currently working on an agreement with Sports and Marine Parafunalia for the shared parking. He said they submitted evidence back in June regarding walk-in patrons, and they anticipate that many of the patrons would be walking. He said they will have 98 parking shared spaces and that the discrepancy in what is required versus what will be provided is what they need relief from regarding the parking requirement. C. Drescher said they are taking a portion of the parking area and converting that into a rain garden and they are hiring a plant specialist to move the bushes out from closer to river as close as they can go for aesthetics. He said they are taking safety seriously with this project, noting that there will be a takeout window added on the ground floor away from the egress and ingress parking lot. They will have additional stairwells and an elevator.

L. Routhier asked about parking and walking to the site and suggested asking NH DOT for a crosswalk out front.

R. Hannon handed out and explained the floor plans for everyone. He stated that the challenges of the building is that the back side faces the parking area. The take out window will have a walk up with a slide window. He then went over the exterior elevations, design and architecture, upper level canopy, and outdoor areas. He said they have a sign on the building, but it is kind of hidden in the elevation view because they reduced the building height.

A. Howe said that the ceilings look tall. R. Hannon stated that the ceiling is 13 feet and it will be steel framing and it was just reduced from 14 feet this morning. A. Antonopoulos also discussed and commented on the design and architecture of the building.

C. Drescher said they have a local realtor here if the board has questions or concerns with the property values, etc.

D. Tousignant stated that it looks like a sunscreen roof and wanted to know what material would be used. R. Hannon said it will be a sky light fabric and would be removed in the winter.

K. Hayes asked if there is any thought about making the decks for three seasons. R. Hannon said that they haven’t decided on that and it will depend on the money situation of the project.

K. Hayes asked what the ground floor elevation is and of Route 11B. C. Bailey stated that it’s 508 feet right at the interface of the driveway. K. Hayes asked if they could drop the building 3 feet. C. Bailey stated that it all comes down to the high water level. He said they would like to drop that, but the state has told them that they don’t like to have working commercial kitchens underground. K. Hayes suggested that maybe they could get to 508 feet or close.

C. Bailey stated that they finally received Shoreland approval, but they don’t have the approval with them. The Shoreland people applied the reference line of the lake, which places the entire property within the buffer, so that entire property cannot be graded. He said this property is so non-conforming and so restricted. He said if they drop it down then they have the stormwater table issue.

Kaley Cronin said that as a licensed realtor based in Gilford, this approval only stands to increase the property value, this would be great addition to the area, and having a walkable option would be a benefit to everyone in the community.

J. Cronin stated that most of the board members were at the site visit and are aware of the site. At the time the expectation was that they could get closer to the river. From a technical review, he said he thinks the application to the state could have been challenged. In the meantime, they met with the neighbor with regard to the shared parking. During this process, their architect fell ill and passed away.

He said that it has always been a restaurant there and it looks like a great site for it. They’ve discussed the proposal with the airport and they didn’t have issues, but the FAA will still have to approve it. This is a great project and it is a lot of risk.

D. Tousignant asked about water coming off the roof and said he didn’t see any drains. R. Hannon replied that the drains would be internal.

K. Hayes asked if there will be a dumbwaiter and R. Allen said there will.

B. Knightly asked if there was anyone else that wished to speak. Hearing none, he closed the public hearing.

Motion

A. Howe said it is a dramatic improvement over what they saw originally. He said it’s great in a commercial zone that they are sharing parking, but he’s concerned that if Sports & Marine Parafunalia becomes something else someday the parking could end up being conflicting. It’s a reasonable use obviously – it’s been a restaurant off and on. He said the hardship has been imposed by the State of NH. He agreed with the public comment in that this is a super project and hopes that it can succeed for more than two years.

L. Routhier stated that there have been other restaurants, but he thought that they didn’t succeed because they weren’t run properly. The town did add these height restrictions for a reason, so a

25 ft. height limit is not unreasonable here, although he can understand a 35 foot building height here also. He said the town decided that the shore front was being overbuilt with commercial buildings and wanted to keep the buildings smaller, but he could bend to the 35 foot height, but didn’t think that he could go higher.

A. Howe stated that he went out there and looked at the Shep Brown’s building and was surprised that it was over the height requirement because it didn’t seem that high. D. Tousignant said it’s almost 39’ in height. A. Howe stated that the other point is that this area is another extensive commercial area and he didn’t think that it’ll impede anyone’s view here in this location. He didn’t see any negative impact to anyone and that it’s actually great for this area.

L. Routhier stated that the first concern is that the Town of Gilford doesn’t want anything above the 35 foot height in this area and the other concern is that we have not received the wording from the FAA. K. Hayes stated that there is a third and that is because we don’t have the State Shoreland approval yet as well.

Motion made by K. Hayes, seconded by L. Routhier, to table this to the September 28, 2021 meeting so the board can see the NH DES approval and hopefully have the FAA approval. Motion carried with all in favor.

 **1.3** **NAQ Guilford, LLC**

 **Application #2021000522**

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

Presentation

Bryan Bailey of Bryan Bailey & Associates, Inc., stated that they are seeking a special exception to convert the existing cabins and house into condominium ownership. It has come to his attention that there is a “sticky wicket” and he needs to figure out exactly what is happening. So, he said he will need to do some investigating and find out exactly what’s been approved for cabins and if they will need an equitable waiver as well.

A. Howe pointed out that under Section 11.2, General Rules for Special Exceptions, the board is required to address this is for completion.

Motion

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

**1.4 Norman H. Harris, III & Martha L. Harris, Trustees of the Norman H. & Martha L. Harris**

 **2019 Family Trust**

**Application #2021000523**

Applicant is seeking a variance from Article 4, Section 4.7.6(p).14.a. of the Gilford Zoning Ordinance to allow an Accessory Apartment in an existing detached accessory building that is located 3.8 feet from the side property line where a minimum setback of 25 feet is required on property located at 330 Liberty Hill Road on Tax Map & Lot #229-017.000 in the Limited Residential (LR) Zone.

Presentation

Stephan T. Nix, Esq., stated that he was representing the applicants Norman and Martha Harris. He stated that the currently there is a main structure and there are two other standalone garages. He thought that they were developed in the early 1800’s. The main house burned down in 1970 and was rebuilt in 1972 and some additions were made in 2000. This carriage house was part of the estate, built in the 1920’s, and has a concrete floor and a two-stall garage. It was originally constructed for the purpose of a dwelling and that use has been discontinued. He said they are asking for a conversion of a carriage house to be a detached standalone dwelling unit. S. Nix said they would like to construct a porch on the westerly side, and a mudroom with a foundation under it. The side door will be discontinued and the back windows removed. The proposal would include a new well and a septic just to support this unit. There haven’t been any test pits done for this, but they have been done up near the house. There is adequate water, electricity, and parking. He said they are asking for a variance for the sideline setback because the building is 3.8 feet from it currently and they are asking for relief from the requirement for an Accessory Apartment in a detached accessory building to have a minimum 25 foot setback.

A. Howe asked that because they are changing the use of the building they need relief for the setback? S. Nix said yes since Accessory Apartments in detached accessory building are not allowed with less than a 25 foot setback, and it is a pre-existing non-conforming structure that will be added onto.

S. Nix went over the Variance criteria:

*1. Granting the Variance will not be contrary to the public interest because:* The pre-existing structure has been in the current location for about 100 years. The accessory apartment will be on the west side and completely shielded from nearby abutters. The driveway access will remain the same.

*2. The spirit of the ordinance is observed because:* This will not create over-building on the lot as the structure is pre-existing and has been in the same location for 100 years.

*3. Substantial Justice is done because*: The facts of this case do not support that the gain to the general public by denying the variance outweighs the loss to the individual. The variance request is from dimensional setbacks from the side property line.

*4. The values of surrounding properties will not be diminished because:* The proposed Accessory Apartment will be located in an existing building with access and parking shielded from the nearest 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:*

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 specific unique character of the subject property and proposed use support the legal requirements for granting a variance. There is little, if any, gain to the public by denying the variance. The loss to the private property owner is great if the building must be moved or a new structure constructed.

Public

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

Motion

Motion made by K. Hayes, seconded by L. Routhier, to grant the variance as requested and that it meets the specific requirements under Gilford Zoning Ordinance Section 12.1.

A. Howe said that he really didn’t see the need for this variance. Discussion ensued and the board decided that it was best to vote on the variance request.

S. Hart took a roll call:

K. Hayes - yes

A. Antonopoulos - yes

A. Howe - yes

B. Knightly - yes

L. Routhier – yes

Motion carried with all in favor.

**1.5 Deborah and Douglas Folsom**

**Application #2021000524**

Applicants are seeking variances for three (3) structures including the following:

A. A variance from Section 5.2.1(a) to allow construction of a 10’ x 8.5’ wood deck to be located zero (0) feet from Lake Winnipesaukee where a minimum setback of 50 feet is required;

B. A variance from Section 5.1.3, Section 5.2.1(a), and Table 2 to allow construction of a 10’ x 15’ pergola to be located approximately 26 feet from the front property line where a minimum setback of 35 feet is required, and approximately 25 feet from Lake Winnipesaukee where a minimum setback of 50 feet is required; and

C. A variance from Section 5.1.3, Section 5.1.4, Section 5.2.1(a), and Table 2 to allow construction of a 6’ x 8’ shed to be located approximately 15 feet from the front property line where a minimum setback of 35 feet is required, approximately 1 foot from the side property line where a minimum setback of 10 feet is required, and approximately 30 feet from Lake Winnipesaukee where a minimum setback of 50 feet is required.

Property is located at 208 Scenic Drive on Tax Map & Lot #252-012.000 in the Single Family Residential (SFR) Zone and the Island and Shore Frontage District.

Presentation

Applicants Douglas and Deborah Folsom were present. Douglas Folsom said he put in three separate applications, but they could be discussed together. He said they acquired this property and the property across the street in April 2020 and by the time they closed on it, the ice had taken out the deck and the dock. He said after they closed on the properties they repaired the dock and dealt with the erosion. He said that for about 10 years there hadn’t been anything done with the house on the lot across the street or this property either. D. Folsom stated that they had Varney Engineering draw up the plans. They’ve removed a few trees. They also received approval to put the structures on there from NHDES Shoreland. He said that they started the work and then found out that they did not have permits from the town. He said they ended up taking the shed down that they started building. D. Folsom said they are requesting from the town what they deem to be reasonable, such as a pergola with no walls, a shed up against the setback, and to replace the deck that was there.

K. Hayes asked if these were two separate lots. Mr. Folsom said they are and the road divides them. K. Hayes asked if the shed is going to be built now. D. Folsom said it would not be, but they will be adding a pergola in that area instead.

Deborah Folsom stated that the original deck was there and they are adding it back, further away.

L. Routhier asked if the new dock would be retractable. Mr. Folsom said it will be retractable. He said they are trying to keep it within reason and fitting it in with the neighborhood.

Public

B. Knightly asked if there were any members of the public who wished to speak. Hearing none, he closed the public hearing.

Motion

Motion made by K. Hayes, seconded by L. Routhier, to grant the variance from Section 5.1.3, Front Setback Area, subparagraph (a), Section 5.1.4, Side Setback Area; and Section 5.2.1, Island and Shore Frontage District, subparagraph (a). The board finds that all the conditions have been met under Section 12.1.

S. Hart took a roll call:

K. Hayes - yes

A. Antonopoulos - yes

A. Howe - yes

B. Knightly - yes

L. Routhier - yes

Motion carried.

B. Knightly stated that there is a request from Brett Allard, Attorney from Bernstein Shur to table the following three applications to the next meeting on September 28, 2021. (This was taken up at the beginning of the public meeting before the first application.)

**1.6 MG Holdings, LLC**

 **Application #2021000525**

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

**1.7 MG Holdings, LLC**

 **Application #2021000526**

Applicant is seeking a variance from Article 6, Section 6.22.3 to allow excavation and/or filling of slopes greater than 25% to allow construction of a house on property located at 77 White Birch Drive on Tax Map & Lot #253-365.000 in the Single Family Residential (SFR) Zone.

**1.8 MG Holdings, LLC**

 **Application #2021000527**

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

Motion made by L. Routhier, seconded by K. Hayes, to table all three applications (#2021000525, #202100526, and #2021000527) to the September 28, 2021 meeting. Motion carried with all in favor.

**MINUTES**

June 22, 2021

Motion made by K. Hayes, seconded by A. Howe, to approve the minutes of June 22, 2021. Motion carried with all in favor.

July 27, 2021

Motion made by A. Howe, seconded by L. Routhier, to approve the minutes of July 27, 2021. Motion carried with A. Antonopoulos and K Hayes abstaining.

A. Howe stated that he had some concerns and would like to have town counsel come to the next meeting. L. Routhier stated that they would like to discuss something that was approved and that it looks like it may have been expanded upon and that a specific motion had been made with regard to

121 Dockham Shore Road. B. Knightly stated that he would agree to see if Laura Spector-Morgan would be able to come in for discussion before our next meeting.

**ADJOURNMENT**

Motion made by K. Hayes, seconded by A. Howe, to adjourn the Zoning Board of Adjustment meeting of July 27, 2021 at 9:28 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary