

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
MARCH 27, 2007
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met in a regular session on Tuesday, March 27, 2007 at 7:00 p.m. in Conference Room A.

Present were: Chairman Andrew Howe, Vice-Chairman Don Chesebrough, Charles Boucher, Richard Foley, Pat LaBonte and Robert Dion.

Also present was John Ayer Planning Director, Alix Godbout, Court Reporter, in attendance based on the request Sheehan, Phinney, Bass & Green, attorney's representing Cumberland Farms, Inc. and Stephanie Verdile Philibotte, Administrative Assistant.

Chairman Howe led the Pledge of Allegiance and introduced board members and staff.

A. Howe read a letter from attorney Regina Nadeau, representing the Weldon-Francke applications requesting the three applications her client submitted be withdrawn.

A. Howe spoke about the length of the agenda and the Board's discretion to adjourn and reschedule the meeting if business is not completed by 10:30 p.m.

A. Howe introduced the first case.

1. **Bo Realty, LLC-David Devoy**

Application submitted for an Administrative Appeal of a decision made by the Gilford Planning Board on January 2, 2007. The appeal is regarding the Planning Board's decision to accept the Cumberland Farms, Inc. application to build a convenience store and fuel dispensing station as complete and their interpretation of regulations regarding prohibited uses in the Aquifer Protection District. The property is located on Tax Map & Lot #201-015.000 at 1434 Lakeshore Road in the Commercial Zone and the Aquifer Protection Overlay District. File #Z07-02.

Tabled from the February 27, 2007 meeting.

Motion made by P. LaBonte, seconded by R. Dion to take the application off the table. Motion carried with all in favor.

C. Boucher informed the Board he is Chairman of the Gilford Drinking Water Protection Committee and explained that committee's involvement with the creation of the original Aquifer Protection Ordinance and the recent amendments.

The Board acknowledged the information and decided there is no conflict having C. Boucher participate in decisions regarding the Bo Realty, LLC-Dave DeVoy application. Doug Hill,

attorney for Cumberland Farms, Inc, stated for the record he does not object to C. Boucher acting on the application.

A. Howe discussed if the Board should accept the memo submitted by Cumberland Farms, Inc. dated March 22, 2007 in response to the Memo of Law submitted by Bo Realty, LLC-Dave DeVoy. He explained the Board would not accept the memo as part of the record.

Motion made by C. Boucher, seconded by P. LaBonte, to strike the filing of the Cumberland Farms, Inc. memo dated March 22, 2007 and note it will not be part of the record. Motion carried with all in favor.

A. Howe spoke about the method the Board used in determining the issue of standing for Bo Realty, LLC. He said the Board compared information submitted by Bo Realty, LLC to the Supreme Court decision regarding the Town of Exeter versus Nautilus of Exeter, Inc. He explained the Supreme Court identified the following four criteria used to determine standing.

- 1) The proximity of the plaintiff's property to the site for which approval is sought.
- 2) The type of change proposed.
- 3) The immediacy of the injury claimed.
- 4) The plaintiff's participation in the administrative hearings.

The Board discussed the Bo Realty, LLC-Dave DeVoy application and the four criteria used to determine standing and concluded the following. Due to Bo Realty, LLC-Dave DeVoy being located approximately ¼ mile from the proposed Cumberland Farms, Inc. site qualifies for the criteria "proximity of the plaintiff's property to the site for which approval is sought". "The type of change proposed" is relevant to protection of the Aquifer. Cumberland Farms, Inc. and Bo Realty, LLC are located within the Aquifer Protection District and there is a concern for pollution of the aquifer, which qualifies for "immediacy of the injury claimed". The Board determined Bo Realty, LLC has participated in the administrative hearings regarding the Cumberland Farms, Inc application.

C. Boucher said based on the discussion by the Board it appears as though Bo Realty, LLC-Dave DeVoy qualifies for standing to file the Administrative Appeal.

Motion made by C. Boucher, seconded by D. Chesebrough to grant Bo Realty, LLC-Dave DeVoy standing based upon the following:

- 1) Bo Realty, LLC-Dave DeVoy is located approximately ¼ mile from the proposed Cumberland Farms, Inc. site.
- 2) The "type of change proposed" is relevant to protection of the Aquifer.
- 3) "Immediacy of the injury claimed" applies because Cumberland Farms, Inc. and Bo Realty, LLC are located within the Aquifer Protection District there is a concern for pollution of the aquifer.
- 4) Bo Realty, LLC has participated in the administrative hearings regarding the Cumberland Farms, Inc application.

S. Verdile Philibotte called for the vote.

R. Dion-Yes
P. LaBonte-Yes
C. Boucher-Yes
D. Chesebrough-Yes

A. Howe abstained. Motion carried with a 4-0 vote.

The Board discussed the Planning Board's interpretation of subsurface and their acceptance of the Cumberland Farms, Inc. application.

D. Chesebrough spoke about the definition of subsurface being the issue. He said apparently the Planning Board used the NHDES and EPA laws regarding underground tanks and that was appropriate since is not a definition of subsurface the zoning ordinance. He said therefore the definition should be taken in context of the subject and not from another source and there are definitions in various laws that refer to underground storage tanks that state what clearly is subsurface and what is not.

A. Howe spoke about underground storage and referred to RSA 146.C relating to definitions for environmental rules on systems for more than 110 gallons. He said they define underground storage as meaning the tank and the systems are accessible, not covered by dirt, and in an enclosed vault that is accessible. He spoke about RSA 146. C and the definition he discussed is what the Board found refers to accessibility as the main issue and therefore the Planning Board made the correct determination on the accessibility of the system.

Motion made by C. Boucher, seconded by D. Chesebrough to deny the request for the Administrative Appeal based on the Planning Board made a reasonable interpretation regarding subsurface and uphold the Planning Board's decision as it was based on fundamentally sound information.

R. Dion-Yes
P. LaBonte-Yes
C. Boucher-Yes
D. Chesebrough- Yes

A Howe abstained. Motion carried with a 4-0 vote

A. Howe introduced the next application.

2. **Joseph Turner**

Special exception request for a condominium conversion pursuant to Section 6.13 of the Gilford Zoning Ordinance, to convert three (3) existing single-family dwelling units, to condominium units Tax Map and Lot #219-006.000, located at 20 Mark Island in the Island Residential Zone. File #ZO7-01.

Tabled from the January 23, 2007 meeting.

Motion made by R. Dion, seconded by D. Chesebrough, to take the application off the table.

Motion carried with all in favor.

Steve Nix, attorney representing the application, gave a brief presentation to the Board. He explained the condominium conversion proposal. He explained the applicants have applied to the NHDES for a new septic system to service the three existing dwellings and they will remove the cesspools currently used for septic disposal. He explained the new leach field would be serviced by a pump system from each unit. He provided video footage for the Board of the site including the docks and layout of the camps.

P. LaBonte asked if the cottages would have rights to the existing dock. S. Nix explained two of the cabins have the right to apply for additional dock permits because enough lake frontage exists and if additional docks are approved, their rights to the existing dock will be forfeited.

S. Nix explained the new septic system would be on common land and the homeowner's association will include a capital improvement fund for maintenance of the condominiums and the septic system. He reviewed the how the applicant meets criteria for a special exception request relating to condominium conversion. He said they are going to the Planning Board in April and within that approval process the condominium documents will be submitted to the Town Attorney for review.

A. Howe asked if further subdivision could take place and the potential to expand the cottages. S. Nix said the remaining land could not be further subdivided. He explained the provision of "no new lots created" exists in the current deeds and the remaining land is classified as common area for the cottages to use. He said boundary line adjustment may be approved in the future but it would have to be approved by the Town of Gilford and could not create any new lots. S. Nix said expansion to the cottages would be allowed if it meets current zoning and the condominium documents will allow for expansion, including moving cottages farther away from the lake.

D. Chesebrough discussed surface water cannot be used as drinking water and asked about adequate water supply for the condominium and said the association is not meeting the requirements of zoning for supplying adequate water and septic.

S. Nix spoke about the water supply for the units and septic system being owned by the individual owners and they can decide how to treat the drinking water and it is not the responsibility of the condominium association it is the individual owner's responsibility.

J. Ayer spoke about the Board deciding what the use is for the water supply, either condominiums or single family residences and as single family residences, they meet current standards because they are legal non-conforming. He said it appears that what has been in place for the water supply is legal according to the NHDES and the Building Inspector.

The Board discussed options for the individual unit owners for adequate water supply.

S. Nix said each individual unit is responsible for their own water supply and it is stated in the

condominium documents.

A. Howe opened the hearing for public input.

Kathleen Czubaruk, abutter from 22 Mark Island- asked where the common septic system area would be located. S. Nix showed explained where it would be located.

Howe closed the public hearing.

A. Howe introduced the next case.

3. **Robert Bertrand**

Special exception request pursuant to Article 4, Section 4.6.5 of the Gilford Zoning Ordinance to allow a trucking business home occupation on Tax Map & Lot #227-042 located at 24 Farmer Drive in the Single Family Residential Zone. File #Z07-03.

Josephine Bertrand, representing the application, gave a brief presentation to the Board. She distributed pictures of the truck located on the property. She explained her husband is an owner-operator truck driver. She said they applied for a driveway permit and were approved to locate the truck (flatbed) on their property. She said her husband tries to be considerate with the hours of operation as best he can.

A. Howe asked if there would be an office in the house. J. Bertrand said no he would not have an office. She said it is not a permanent situation since they plan on moving out of the country in a year.

C. Boucher asked when the driveway was installed and she said in November of 2006.

Howe opened the hearing for public input.

Doug Hill, speaking for abutter Steve Hill, spoke about the requirements for a special exception regarding a home occupations and this application does not meet those criteria, especially “vehicles not stored in plain view of abutting properties” and asked how the applicants can meet that application. He said his clients are concerned when the current owners move the special exception would stay with the property and they have concerns about future owners of the property. He spoke about the potential of a decrease in value to surrounding properties if the use is allowed without conditions.

A. Howe asked if a condition of the special exception would be dissolved once the current applicants sell. D. Hill said it is helpful but does not address the applicant not being able to meet special exception criteria.

J. Bertrand said the driveway could revert to grass when they leave because it is gravel. She said they could not screen the entire area because they would not be able to move the truck.

A. Howe spoke about the change in zoning ordinance that removed the requirement the applicant apply to the Planning Board before the ZBA. He said the applicant would be required to have a site plan to apply to the Planning Board. J. Bertrand said they have submitted an application for the April Planning Board meeting.

A. Howe asked where they parked the truck before they got the permit. J. Bertrand said they parked the truck in the street.

R. Dion spoke about the zoning requirements of vehicles being out of plain sight as part of the regulations 4.7.6 e

J. Ayer said if weren't for the issue of parking the truck on the property the application would not be considered an home occupation it would be considered a home office. He spoke about 4.7.6 (n) referring to the home office requirements. He said a home occupation could have a more intense impact on the neighborhood as may be the case with this application.

A. Howe said he is not conducting the business at home the business is done when he is traveling.

D. Hill said a special exception for a home occupation has been applied for and he requested the Board find along those criteria.

Bob Presby, abutter from 27 Farmer Dr.-concerns about weekends the truck being there and he has concerns when the Bertrand's leave and have the site remain for commercial use.

J. Bertrand said her husband is not conducting business while the truck is at the home. J. Ayer asked if business documentation is kept in the house. J. Bertrand said all that is kept in the house is the driver log.

C. Boucher asked about parking the truck off site from the home. J. Bertrand said since the truck is diesel it has to be plugged in during the winter and they cannot find a place that supplies electricity.

J. Ayer explained when the Department of Public Works approves a driveway permit they do not review the zoning use for the permit. Their only requirement is to see if the applicant can meet the driveway standards.

A. Howe closed the public hearing.

A. Howe introduced the next case.

4. **Cynthia Kiedaisch and Yankee Energy Services**

Application submitted for an Administrative Appeal based on a decision made by the Gilford Historic District and Heritage Commission dated February 13, 2007 regarding the Historic District and Heritage Commission Guidelines dated 1992, Section 5, Roofing. The property is located on Tax Map & Lot #276-068.000 at

146 Potter Hill Rd. in the Natural Resource Residential zone and the Historic Overlay District. File #Z07-04.

Bob Wilkinson, representing the application, gave a brief presentation to the Board. He explained the decision to the HDHC February 13, 2007 meeting. He spoke about the HDHC guidelines for roofing and he said there is no particular product clearly excluded from use. He said the ZBA reversed the previous decision of the HDHC for the owner's other property and is asking the same tonight.

A. Howe spoke about the history of metal roofs and their longevity. B. Wilkinson agreed and said metal roofs are fitting for the Historic District.

A. Howe opened the hearing for public input.

Elaine Gagnon, Chair of HDHC, spoke about the history of metal roofs for the time period and she said the metal roofing they are proposing is not conducive to the Historic District based on color and style.

The Board discussed the proposed roofing and colors and if green could be considered a natural color.

J. Ayer discussed types of natural colors and the wording described in the guidelines regarding "should" versus "shall" and that "should" is common phrasing used in design guidelines. He spoke about the HDHC guidelines for natural colors as being respectful to what the HDHC is trying to preserve for the district.

P. LaBonte spoke about the pictures submitted by the applicant and the fact that the snow should slide off the roof as metal roof allow. He also discussed copper roofs turning green with age and he does not have problems with the metal roof.

E. Gagnon spoke about other towns that have Historic Districts that are lacking metal roofs and believes that standard is appropriate for aesthetics within a historic district. She said they are trying to balance property owner's rights versus the charge of their responsibility to the Historic District.

B. Wilkinson said what they are proposing is a natural color and the guidelines are not specific enough to clearly prohibit metal roofs and does not think the metal roof will diminish surrounding properties value.

A. Howe closed the public hearing.

A. Howe introduced the next case.

5. **Katherine Tjarks**

Variance request pursuant to Article 5, Section 5.1, Table 2, and sections 5.1.3. (d) and 5.1.4 (a) of the Gilford Zoning Ordinance, to allow the construction of

two additions proposed to be located in the required front and side setbacks on Tax Map & Lot #242-151.000. Located at 19 Smith Cove Road. File Z07-05.

Peter Holden, representing the application, gave a brief presentation to the Board. He said she purchased both units and essentially the Condominium Association. She would like to renovate the garage and connect the garage to the existing unit A. He said she is keeping both dwelling units under single ownership. He explained there is no way to improve the property without requesting a variance due to the setback restraints. He explained how the application meets the criteria for an area variance request.

A. Howe asked if the condominium has been dissolved and if there are new bedrooms planned. P. Holden said no the condominium use has not been dissolved and no new bedrooms are planned.

C. Boucher spoke about adequate parking being an issue when they approved the plan and this plan looks like they are reducing parking. D. Chesebrough agreed and said they are removing a parking space with the addition to the garage.

P. Holden said there is parking available across the street on property with the condominium association.

K. Tjarks spoke about the addition being used for kitchen and storage because the existing kitchen is 8' x 11'. She said parking spaces are not important because her family flies in to visit her.

J. Ayer said parking is a requirement according to the zoning ordinance and she would need a variance to reduce the parking.

P. Holden spoke about coming back with the dissolved condominium and request a variance for the addition and the parking.

A. Howe asked what the hardship is with the property.

P. Holden said there is a very limited area to build due to the setback requirements and that is the hardship.

A. Howe said hardship has to be related to how the property cannot be reasonably used. He said the property has two existing houses and does not see a hardship with this application.

K. Tjarks said the purpose is to connect the garage to the house for a bigger kitchen and storage.

The Board discussed the garage K. Tjarks is proposing the addition on does not belong to Unit A and the condominium documents have to be changed.

C. Boucher spoke about moving the garage is an option instead of requesting a variance.

K. Tjarks said if she moves the garage she may have other people parking on her property in the summer.

P. Holden requested they table the application until the April meeting.

A. Howe opened the hearing for public input; being none he closed the public hearing.

Board Deliberations

Motion made by C. Boucher, seconded by R. Dion, to accept the withdrawal of the **Susanne Weldon-Francke** special exception applications: File # Z06-16, File #Z06-17 and File #Z06-18. Motion carried with all in favor.

2. Joseph Turner

The Board discussed the applicant addressing adequate water supply, the possibility of bonding the septic system and maintaining the existing number of bedrooms.

Motion made by C. Boucher, seconded by P. LaBonte, to approve the application with the following conditions:

Each unit shall maintain their existing bedrooms (3) and no increase in the number of bedrooms shall be allowed in any unit.

The installation of the septic system to be bonded with a letter of credit.

Water purification/treatment system to be installed in each unit.

Subsequent approval of condominium documents by the Planning Board.

S. Verdile Philibotte polled the members.

R. Dion-yes

P. LaBonte-Yes

C. Boucher- Yes

D. Chesebrough-Yes

A. Howe abstained. Motion carried with all in favor.

3. Robert Bertrand

The Board discussed the application does not meet the criteria of Section 4.7.6 (e) of the zoning ordinance for a home occupation, specifically discussing how the application cannot meet the criteria regarding “no vehicles may be stored in plain view of abutting properties”

Motion made by D. Chesebrough, seconded by R. Dion, to **deny the application** based on the finding of the applicant cannot meet the criteria as outlined in Section the of 4.7.6 (e) of the Gilford Zoning Ordinance.

S. Verdile Philibotte polled the members.

R. Dion-Yes
P. LaBonte-Yes
C. Boucher-Yes
D. Chesebrough-Yes

A. Howe abstained. Motion carried with all in favor.

4. **Cynthia Kiedaisch and Yankee Energy Services**

A. Howe discussed the fact the metal roofs can preserve historic buildings and he has installed metal roofs on his historic barns. He spoke about metal roofs helping preserve historic buildings and spoke about “other materials” in the guidelines could mean metal for roofing.

Motion made by D. Chesebrough, seconded by C. Boucher, to grant the appeal and overturn the HDHC decision to deny a metal roof based on the HDHC guidelines Item 5 roofing materials. The guidelines state “other materials” of natural colors are permitted.

R. Dion-Yes
P. LaBonte-Yes
C. Boucher- Yes
D. Chesebrough-Yes

A. Howe abstained. Motion carried with all in favor.

5. **Katherine Tjarks**

Motion made by D. Chesebrough seconded by C. Boucher, to table to April 24, 2007 the application. Motion carried with all in favor.

APPROVAL OF FEBRUARY 27, 2007 MINUTES

Motion made by P. LaBonte, seconded by D. Chesebrough, to approve the minutes from February 27, 2007. Motion carried.

3. **ADJOURNMENT**

Motion made by D. Chesebrough, seconded by C. Boucher, to adjourn the March 27, 2007 Zoning Board of Adjustment meeting at 9:55 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Administrative Assistant

