

**Gilford Board of Adjustment**  
**Minutes**  
**February 26, 2008**

The Gilford Board of Adjustment met on February 26, 2008 in Conference Room A. The meeting was convened at approximately 7:00 p.m. Those present included Donald Chesebrough, vice chairman; Charlie Boucher and Pat Labonte regular members; and Donald Spear, alternate. Chair Andy Howe, regular member Robert Dion, and Administrative Assistant Stephanie Verdile Philibotte were absent. Also present was John Ayer, Director of Planning and Land Use.

In the absence of Chairman Andy Howe, Vice Chair Don Chesebrough took over the role of chair. Mr. Chesebrough led the Pledge of Allegiance, introduced the Board and staff, and introduced the first item.

**item 1 – William Ferry Revocable Trust** – Variance request pursuant to Article 3, Definitions- “Accessory Building”; of the Gilford Zoning Ordinance, to construct a 36’ x 36’ garage on a lot of record located on Tax Map & Lot #221-031.000 on 46 Broadview Terrace in the Single Family Residential Zone. File #Z08-02.  
*Tabled from the January 29, 2008 meeting.*

Pat Labonte moved to take this item off the table. Seconded by Don Spear. Motion passed.

Attorney Steve Nix was present to represent this item. Mr. Nix identified the lots owned by Mr. Ferry and which lot this application is specific to. He further explained the application in detail. He noted that the building permit was denied because one cannot have an accessory use (garage) on a lot without a principle use. This lot would have no other use and a garage is an accessory use.

Mr. Nix noted a typographical error in the first paragraph on his memorandum to the board. The proposed garage was changed in size from a 36 foot by 36 foot garage to a 28 foot by 30 foot garage per the abutter’s request. The two (2) lots owned by Mr. Ferry have been connected in ownership through the years and the chain of title. The road was given in fee to the Town in the 1970’s. Ferry is proposing a restrictive covenant accessory use only and only to an “abutting lot”. They could overcome this Gilford zoning ordinance requirement by adding dwelling space to the building but they don’t want to.

Mr. Nix pointed out how this fits in to the neighborhood. It matches the main home, lights are down-cast, and it is a reasonable use. The situation is unique in that this has been associated with the lot across the street for years. The benefits from the restriction regarding the accessory use requiring an accompanying principle use is not particularly advantageous here, it does not injure abutters rights. The abutters were contacted, had input and the building size was reduced. This could not become a big storage unit due to all the restrictions.

Don Chesebrough asked what the dashed lines mean. Steve Nix said they are survey radius

lines. Mr. Chesebrough said the restriction sounds as though it would allow each abutting lot to have an accessory building on this lot. Steve Nix said that was not the intention. Discussion ensued. Steve Nix explained the restriction further, and submitted to the board a draft motion for approval with suggested conditions of approval they may wish to consider pointing out that the motion includes a condition regarding the restriction on ownership. Don Chesebrough said he still thinks it is a little loose. He also noted how the memo in the application says it is a one (1) story building but the picture shows two and a half (2½) stories. Steve Nix and Pat Labonte explained that there is only one (1) floor. Don Chesebrough said it is still a two (2) story building. Steve Nix suggested the board could add a condition of approval regarding this.

Don Chesebrough opened it up to public input. There being none he closed this portion of the hearing.

7:30

**Item 2 - Tom Roux, Trustee – Philip A. Roux Trust** – Special Exception request pursuant to Article 15, Section 15.4.2 (a) of the Gilford Zoning Ordinance, to allow two (2) wetland crossings on Tax Map & Lot #208-003.000. The property is located at 200 Swain Rd., in the Limited Residential Zone. File #Z08-04.

Ron Johnson of Harold Johnson Surveying, introduced himself and others representing the application, including attorney Regina Nadeau, Tom Roux, and wetlands scientist Kathleen Surowiec. He explained the location and details of the property and application. He said that combined the two crossings have 1,100 square feet of impact. The purposes are to provide access to the better soils for construction, and to provide a location for the driveway for abutter Jim Cookman's right-of-way/easement.

Regina Nadeau explained what was submitted from a legal perspective. She provided pictures that show where the driveway wetlands crossing go without snow on the ground. She said they have a certification that there are no rare or endangered species or habitats on the site. She discussed the topographic map provided and the construction sequence and proposed erosion control measures. She noted that the wetlands map shows that these crossings are at the narrowest crossing points, noting that much of the frontage along Swain Road is wetlands.

Regina Nadeau noted that under 3,000 square feet of impact is considered minimum impact. The applicant met with the Conservation Commission and they indorsed it with condition that there be no further subdivision of the land. Ms. Nadeau did not recall that at the Conservation Commission meeting and so got in contact with the Conservation Commission and pointed out that they hoped to donate a parcel as conservation land, but the condition may be too restrictive. Charles Boucher confirmed that Chuck Coons of the Conservation Commission had contacted him and confirmed that the Conservation Commission was OK with the applicant's modified language lifting the prohibition on further subdivision.

She said there should not be off-site issues with the neighbors. The flow of water through these culverts is on to other land of the applicant and there should be no impacts to others. Discussion ensued. Ms. Nadeau noted the lengthy frontage of this property, that it is a clear and straight

line of sight, so there are no significant issues for traffic safety with only two driveways in such a long distance. She noted that the run-off here is really only seasonal. She said that the proposed subdivision here is consistent with the zoning and master plan because single family homes are encouraged in this area as it is zoned residential. She addressed environmental issues and noted that best management practices will be used during construction.

Specific to the requirements of Section 15.4.2 of the Gilford zoning ordinance, this proposal will not pollute surface or ground water. They are channeling water only and erosion controls will be in place. She reiterated that there is no unique habitat here and none will be degraded. She said the purpose is to channel surface runoff. She repeated many of the points she made when discussing the general special exception requirements. She said there will be no increased flooding to new lots or others' lots. All runoff goes to the remainder land owned by the applicant.

Pat Labonte said it affects Jewett Brook because it runs through the remainder land into Jewett Brook, right? Regina Nadeau said that the water has always flowed there and no roads are going in and Jewett Brook is 100's of acres away. Pat Labonte asked if she was confirming, then, that this impacts Jewett Brook. Ms. Nadeau said an engineering study may be helpful to explain this.

Don Chesebrough said he cannot tell if adequate utilities are provided because there are no details provided. He said the board cannot look at this without Planning Board review. Ms. Nadeau said her client tried to go to the Planning Board first but they would not hear the application without the wetland crossing special exceptions. She said perhaps the right question is, then, "what are the impacts of the culverts?" Pat Labonte said without the Planning Board looking at this, we cannot really tell what is going in here. Regina Nadeau said that what the board has is all the details the Planning Board would have. There are no other improvements here. The applicant does not have to show where each house will be placed on a subdivision plan, only the buildable lot area, which is shown.

Mr. Chesebrough asked if there was any input from the public. Abutter James Cookman said that the former owner, the late Phil Roux, wanted to see this all horse country, not a subdivision. He said that the Army Corps did drainage work here to drop the water table years ago. It is the old Peters Farm. He said that his other concern is regarding the right-of-way, that it was to go through the bar way he already has through the stone wall. He said where Phil Roux proposed and where the applicant proposes are different. He said there is no need for his right-of-way to go through the wetland. He says in his opinion this is a swamp, not suitable for houses. He said he has heard similar statements from surveyors and others. Mr. Cookman said this needs to be looked into. He said there is more at stake than three (3) houses.

8:00 p.m.

Ms. Nadeau said in response to Mr. Cookman's comments, they have a potential buyer of one of the lots who wants to have her own horses on her lot. She noted that the trustee of the Phil Roux Trust is the applicant Tom Roux, Phil Roux's son, and suggested that it was not likely that anyone knew better what Phil Roux's interests would be. She said that this three (3) lot

subdivision is not an unreasonable proposal. She said the wetlands have been fully delineated by an expert. She said that three (3) conservation Commission members said they had personally walked the land often and agreed with the delineation. She said that there was nothing in writing as to the location of the right-of-way, adding that it is her opinion the right-of-way location issue is between the applicant and Mr. Cookman and has no bearing on the subdivision anyhow. She said the Army Corps of Engineers did do work there and they have placed swales in harmony with the drains installed by the Army Corps. She noted that there are only three (3) buildable lots proposed on approximately 90 acres, not 20 lots, and they are seeking the lowest density possible.

Mr. Cookman expressed concern that a horse may get loose from his abutting horse-riding business and the people who buy the lots and build houses on these lots may not like that or may be in danger. He was concerned for how this may increase his liabilities. Don Chesebrough said that is not a matter for this board at all.

With no further comments from the public, the application was closed.

8:08

**ITEM 3 – McGinley Development** – Special Exception request pursuant to Article 4, Section 4.3.13.a. of the Gilford Zoning Ordinance, to construct a 78- unit Motel/Hotel on Tax Map & Lot #210-010.001. The property is located at 14 Sawmill Rd., in the Professional Commercial Zone. File #Z08-05.

Mark Woglom of Opechee Construction was present to represent the applicant, McGinley Development. Mr. Woglom explained the proposal. He said the hotel use is a low traffic generator and traffic is spread out through the day. He said this type of use requires a low parking ratio. He said the architecture can be residential in character and more in keeping with Gilford. He discussed what national hotel brands he was considering and hoping to bring to this site, noting that one had not yet been settled on. He said that the property will provide facilities only for hotel guests. The national chains all require only one (1) parking space per rentable unit. He said some families will go in one (1) car and rent two (2) rooms. Some business customers will go in one (1) car and rent two (2) rooms, but rarely is it the other way. He says here they have a couple employee spaces in addition to the one (1) space per unit required by all national brands.

Pat Labonte asked why the building is going here on 2.9 acres and not on the back lot with over four (4) acres. Mr. Woglom said because the back lot is less visible and costs more because it is a larger lot. Pat Labonte pointed out that they should have plenty of visibility even on the back lot with this being a three (3) story building. Mark Woglom said much of the 4 acre lot is wetland. Pat Labonte asked why it says it is a 4 acre lot if it is not all usable. Mark Woglom said because that is the actual size of the lot. Pat Labonte said that is deceiving. Mr. Woglom said it is not meant to be deceiving. Pat Labonte said that he guesses we had all learned something tonight, and that he sure had. He said he learned that he cannot believe these plans. He said that this building is going to stick out like a sore thumb. He does not want this to look like One Gilford Place.

Charlie Boucher said that the land is lower here than the road, so the building may not be as visible as Mr. Labonte fears it might be. Pat Labonte said he still thinks it should be on the back lot. He said he thinks it will overshadow the Department of Transportation (DOT) building on the front lot and look like the Taj Mahal.

Don Chesebrough said that there are two issues (special exception and variance, the next item on the agenda) and we should take them one at a time.

Mark Woglom reviewed the proposed hotel use first. He said there would be less traffic generated than other commercial uses. He said utilities include municipal water and sewer, and power to the site. This use should be one to compliment the community. Don Chesebrough said the board needed to know everything about the development but the board has been given no picture. Mr. Woglom said if he were to give the board a picture of the hotel and the next board wanted to change it, he could go back and forth with his application.

Mr. Chesebrough called for public input. There was none and the item was closed.

ITEM 4 – **McGinley Development** – Variance request pursuant to Article 7, Section 7.5.3.16, Parking Requirements for Motel/Hotel/Cottages, of the Gilford Zoning Ordinance, to reduce the number of parking spaces required for a 78-unit motel from 102 to 80 parking spaces on Tax Map & Lot #210-010.001. The property is located at 14 Sawmill Rd., in the Professional Commercial Zone. File #Z08-06.

Mark Woglom continued representing the applicant.

Don Chesebrough asked why this applicant continually designs projects that don't meet the ordinance. He said the applicant comes here often and is always fighting the regulations. Why?

Mark Woglom explained that he is a Gilford resident and cares about how the site looks. He said that if all the parking that is required is put in, it will be an ocean of asphalt. Mr. Chesebrough asked what the lot coverage would be. Mr. Woglom said in the 60+% range. Mr. Chesebrough asked for a specific amount of coverage. He said the applicant needs a variance and should be able to say. Mr. Woglom said under 70%. Don Chesebrough asked where trailers would be put, noting that there are recreational users in this area. Mark Woglom said he disagrees. His company (Opechee Construction) has done hotels in Conway, Vermont, etc. and he said they know what they need and they have already more parking than they need.

Charlie Boucher said this is like a variance granted to Home Depot a few months ago where the company knows how much parking their facilities need and they aren't going to put in less parking than they need. Don Chesebrough said based on information from the American Planning Association, other communities around the country require more parking than Gilford does.

Pat Labonte said that is why he thinks this is too big. Don Chesebrough asked why 78 units is

the magic number. Mark Woglom said this is a typical prototype. This is how these places work. Pat Labonte asked what size parking spaces were proposed, ten foot by twenty foot (10' by 20') spaces? Mr. Woglom said yes, ten foot by twenty foot (10' x 20') spaces.

Mr. Chesebrough asked if there was any public input. There was none and the item was closed.

## BUSINESS

### **William Ferry Revocable Trust**

Don Chesebrough said that to him the only problem is how the ownership is restricted and that it is not restricted enough. Discussion ensued. Don Chesebrough said he thinks the restrictive covenant should limit this to the one lot – that the subject property should always be owned by whoever owns 55 Broadview Terrace and not any other lot abutting across the street. Pat Labonte said there is no need to limit the number of floors in the building. Don Chesebrough disagreed saying these things grow like Topsy.

Charlie Boucher moved to approve a variance for tax lot 221-031.000 from the provisions of the Gilford zoning ordinance Article 3, Definition of Accessory Building, the allow a 28 foot by 30 foot garage to be constructed on the lot without a principle use, with the following conditions:

1. The owner shall record a Declaration of Covenants and Restrictions in the Belknap County Registry of Deeds that restricts the ownership of the lot to be associated only with that of 55 Broadview Terrace (the “main lot”) and that the lot be dedicated only to an accessory use associated with the main lot.
2. That tree cutting shall be limited to the minimum number necessary to construct the garage.
3. That the site shall be landscaped.
4. That lights shall be shielded from abutters.
5. That the garage shall be limited to one (1) story.

Pat Labonte seconded. Vote on the motion was as follows:

Don Spear – Yes  
Pat Labonte – Yes  
Charlie Boucher – Yes  
Don Chesebrough – Abstain

The motion passed.

### **Tom Roux, Trustee – Philip A. Roux Trust**

Don Chesebrough said this should have a condition to meet all state and Planning Board requirements. Don Spear said that this is only a development to do house lots and asked if that isn't all the board needs to be concerned about. Don Chesebrough said the board has no details and noted that there are only two wetlands crossings.

Don Spear said the crossings were approved by the state, too. Charlie Boucher spoke of the issue with abutter James Cookman. Don Spear said that that was a private matter. Don Chesebrough asked if there was a buildable acre per lot. John Ayer said it was certified on the plan that there was a buildable acre per lot. Don Chesebrough said that information had not been presented tonight. John Ayer agreed. Discussion ensued.

Don Chesebrough said this should be conditioned on getting approval for the whole plan. Discussion ensued. Pat Labonte expressed several concerns. Charlie Boucher said that the board is only talking about two wetlands crossings and asked why the board would need the other information other board members said was needed. Don Chesebrough said because the applicant had told the board the crossings are part of a subdivision plan. Discussion ensued. Don Chesebrough said he thought this was too wide open to approve the crossings without more specifics or restrictions.

Charlie Boucher moved to approve the wetlands crossings as shown on the plan entitled Subdivision and Boundary Line Adjustment Plan for Phillip Roux Trust (depicting Crossing A and Crossing B), subject to subdivision approval from the Planning Board.

Don Spear seconded. Vote on the motion was as follows:

Don Spear – Yes  
Pat Labonte – Yes  
Charlie Boucher – Yes  
Don Chesebrough – Yes

The motion passed.

### **McGinley Development – Special Exception for Hotel Use**

Charlie Boucher said he likes the use. He said it is not out of character due to the height of the highway which is 15 to 20 feet higher. Pat Labonte said the DOT building is level with that lot. The proposed hotel building is going to be sticking three (3) stories high. Don Spear said he stays almost only at Choice hotels and he has not seen an ugly one yet. Charlie Boucher said the bank and post office have high traffic in the daytime, but that the hotel would not. He also said trucks would not go there. Don Spear agreed saying that they could not maneuver. Discussion ensued of who might be served best by the proposed hotel use.

Don Spear moved to approve a special exception for a 78-unit hotel at 14 Sawmill Road.

Charlie Boucher seconded.

Don Chesebrough said a number of items are needed here still and that the motion should have conditions. Pat Labonte said the board needs more information. Mr. Labonte said a picture of the hotel would enable the board to know what it is going to look like. He said that he did not want another One Gilford Place sticking out like a sore thumb next to DOT and the highway, and

seen from miles away. He said he would vote against both McGinley Development applications.

Don Chesebrough expressed concern that the board does not know setbacks, easements, or other details of the project. He asked if there were any other questions.

Charlie Boucher asked if the issues raised are Board of Adjustment issues or Planning Board issues. Discussion ensued. Don Chesebrough asked if there was an access easement for the shared driveway. Mark Woglom said that there was not, but that one will be provided. He said the intent of the ordinance is to make sure the details are provided and addressed. He said he had not been to a place where the plan would be reviewed the other way (by the planning board first and board of adjustment second). He said he thinks the proposed hotel use is appropriate for the site. He said he did not think it was appropriate to have to go through two (2) technical plan reviews – one with the board of adjustment and another with the planning board.

Vote on the motion was as follows:

Don Spear – Yes  
Pat Labonte – No  
Charlie Boucher – Yes  
Don Chesebrough – No

Motion failed.

Don Chesebrough said the motion should have something requiring the applicant to meet all requirements of the zoning ordinance and planning board approval. Charlie Boucher asked if the motion included these conditions it would be acceptable. A second motion was made.

Don Spear moved to approve a special exception for a 78-unit hotel at 14 Sawmill Road with the condition that the plan shall meet all requirements of the Gilford Zoning Ordinance and the Planning Board site plan approval.

Charlie Boucher seconded. Vote on the motion was as follows:

Don Spear – Yes  
Pat Labonte – No  
Charlie Boucher – Yes  
Don Chesebrough – Yes

Motion passed.

### **McGinley Development – Parking Variance**

Don Chesebrough asked if there were any discussion on this item. Charlie Boucher said the board has approved a similar variance before – for Home Depot. Pat Labonte asked if the applicant proposed underground stormwater detention. Don Chesebrough said he did not know.

He said as with the previous vote, the applicant would have to meet all ordinance requirements. Pat Labonte expressed concern with how stormwater will be handled on the site. He said water all runs down hill – it all runs here. He said there are no site plan details as with Franklin Bank.

Don Chesebrough said the request was from 102 down to 80, and called for a motion.

Don Spear moved to approve the variance to allow reduced number of required parking spaces from 102 to 80 parking spaces.

Charlie Boucher seconded. Vote on the motion was as follows:

Don Spear – Yes  
Pat Labonte – No  
Charlie Boucher – Yes  
Don Chesebrough – No

Motion failed. No other motion was offered. Don Chesebrough said a no motion is a denial and that this application is denied.

## MINUTES

The board reviewed the minutes of the December 18, 2007 and January 29, 2008 meetings. Pat Labonte moved to approve the minutes of the January 29, 2008 meeting. Charlie Boucher seconded and the motion passed 4-0. Pat Labonte moved to approve the minutes of the December 18, 2007 meeting. Charlie Boucher seconded, and the motion passed 3-0-1 with Don Spear abstaining as he was not on the board at that time.

## ADJOURNMENT

Charlie Boucher moved to adjourn at 9:31 p.m. Don Chesebrough seconded, and the motion passed.

Respectfully submitted,

John B. Ayer, AICP  
Director of Planning and Land Use