

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
MAY 27, 2008
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, May 27, 2008 at 7:00 p.m. in Conference Room A.

Present were: Chairman, Andrew Howe; Vice-Chairman, Don Chesebrough; Secretary, Robert Dion and Regular members: Charlie Boucher and P. LaBonte.

Also present were: John Ayer, Director of Planning and Land Use and Stephanie Verdile Philibotte, Administrative Assistant.

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

A. Howe introduced the first case.

1. **Gilford Young Road, LLC, Tammy Dunn, Moyers & Hughes Investment Properties**

Variance request pursuant to Section 5.1.2 (a) and (c), and Table II, Dimensional Regulations, of the Gilford zoning ordinance, to create a lot with less than required road frontage on a Class V or better highway.~ Applicants propose a boundary line adjustment among Tax Map & Lot #'s 231-001.000, 207-002.001, and 207-002.000 which will result in Lot #207-002.001 having less than 150 feet of frontage along the Class V portion of Young Road.~ The property is located at 150 Young Road in the Limited Residential Zone.~ File #Z08-09.

Phil Brouillard, attorney and Bryan Bailey, surveyor, were in attendance to represent the application.

B. Bailey explained at the last meeting the Board advised the applicants to seek legal counsel regarding the application. He explained the property owners involved and the location of the site. He said there is a boundary line adjustment proposal between the three properties in order to clarify the existing deeded easement for the benefit of the Wood property that encumbers the Dunn and Gilford Young Road, LLC property. Due to the boundary line adjustment, the minimum amount of road frontage will be reduced. He said the ordinance does not clarify that a Class VI road does not have to have 150' of frontage; it states the frontage has to be designed adequately for construction standards. He said Mr. Wood has a right-of-way with vague descriptions and the application has been amended to include Mr. Wood and Mr. Moyer's properties because all three properties are involved with the variance application. He explained the terrain and the location of the right-of-way and its relation to existing wetlands. He said the existing buildings limit the location of the right-of-way and possible future roadway for a subdivision. He reviewed photographs that were submitted with the amended application. He said they are not creating any new lots and they are not proposing any unnecessary construction

to the Class VI road.

Phil Brouillard attorney, referred to one of the original deeds from 1869 that is vaguely written describing the right-of-way on the Wood property. He said they are seeking a variance in order to clarify this right-of-way and proceed with the boundary line adjustment proposal. He explained the application requests the reduction of road frontage by sixty-eight (68) feet on the Class V portion of Young Rd. He said the Class VI section of the road is sufficient for access. He reviewed the variance criteria as outlined in the application.

A. Howe asked if the Moyer's and Hughes properties would become non-compliant if the variance is granted. P. Brouillard said no. A. Howe asked if the Gilford Young Rd. LLC, would be non-compliant if the variance is granted and P. Brouillard said no. They discussed the Dunn property would be the only property that would benefit from the variance however, that lot would not be in compliance with the zoning ordinance. A. Howe said they would be creating a non-conforming lot on the Dunn property. A. Howe said he does not understand why the application now includes all the other owners.

B. Bailey explained the variance is for clarity regarding the right-of-way and the other owners are in support of the variance relating to the Dunn property. He said this variance proposal, including a future boundary line adjustment, will clear up the right-of-way issue and allow all three properties to become unencumbered and allow the owners to pursue independent development options. He said the hardship is enjoyed by all three properties because of the unclear right-of-way that affects all three properties. B. Bailey said the financial hardship is on the Dunn's, because in order to comply with the ordinance the Dunn's would have to upgrade the Class VI road to a Class V road.

A. Howe and P. Brouillard discussed the future subdivision potential for the Gilford Young, LLC property. P. Brouillard acknowledged the potential of future development of the Gilford Young, LLC lot. B. Bailey said they are not proposing a future development at this time they are proposing a Boundary Line Adjustment with the variance application and any discussion about future development of the Gilford Young, LLC is premature.

P. Brouillard said the right-of way, in its existing state, burdens the Dunn property because it is not clearly defined and in order to unburden the Dunn property, they need the area variance to complete the boundary line adjustment. He said the hardship to the Dunn property is having a vague right-of-way over their property.

A. Howe asked P. Brouillard if there is any other legal means to describe the right-of-way. P. Brouillard said yes there could be a legal way to define the right-of-way. He said all the property owners could agree to the right-of-way area without a variance application. He would prefer it to be shown on a plan and would be nice to have the area owned in fee simple instead of creating a right-of-way over the other owner's land.

D. Chesebrough asked if they would be agree to a condition of approval that before the right-of way of is used for access, the frontage along Young Rd. would be brought up to the Town's Minimum Road Standards. P. Brouillard said yes they would.

Discussion ensued about the potential to approve the application with the condition that Young Rd. be brought up to the Town of Gilford's Minimum Road Standards.

A. Howe asked J. Ayer if the Dunn property is currently in compliance. J. Ayer said there are a few outstanding items. He spoke about how the proposed boundary line adjustment would cause the conforming location of the driveway to become non-conforming. He said there are some compliance issues with construction vehicles being stored on the site. He explained the Home Occupation application for the Dunn property was denied. He questioned the access point the vehicles use off the Class VI section of Young Rd. and if there was a driveway permit stating those issues would have to be resolved as part of the approval.

Cal Dunn, said he thought employees could bring work vehicles home. He said the Home Occupation has been relocated to Laconia.

A. Howe opened up the hearing for public input. He read a letter into the record from, Betsy Simon, resident of Young Rd. that is in opposition to the proposal.

P Brouillard said Ms. Simon is not an abutter and has not proved her legal standing as an abutter.

With no other comments from the public, A. Howe closed the public hearing.

A. Howe introduced the next case.

2. **Peter B. Ellis**
Special Exception request pursuant to Article 4, Section 6.5 & 7.6 (e), "Home Occupation" to allow retail sale of wine from a store within a residential garage/barn on Tax Map & Lot #202-029.000. The property is located at 27 David Lewis Road in the Single Family Residential Zone. File # Z08-10.

Peter Ellis, representing the application, gave a brief presentation to the Board. He explained the current winery on site they operate and would like to expand it in order to sell their own wine. He explained they have all their proper state and federal permits and the State of NH has approved wineries to be considered agriculture. He said the hours would be limited to Saturday and Sunday afternoons. He is prepared to expand the parking area to accommodate at least eight spaces.

D. Chesebrough spoke about sign limitations with a Home Occupation and P. Ellis said they will have one sign and they are aware of the ordinance requirements for signage relating to a Home Occupation.

P. Ellis said they will probably only be open from May to Labor Day.

Discussion ensued about possibility of being open around the holiday season. P. Ellis was uncertain if they would be open during the holiday season.

A. Howe opened up the hearing for public input.

Dick Metz, Gilford resident spoke in favor of the application.

With no other comments from the public input, A. Howe closed the public hearing.

A. Howe introduced the next case.

3. **Richard and Christine Metz**

Appeal from an Administrative Decision requiring applicant to remove a sign(s), pursuant to Article 3, Definitions, "Sign" and Article 8, Section 8.2.1.5 located on Tax Map & Lot #203-206.000 located at 7 Country Club Road in the Single Family Residential Zone. File #Z08-11.

Michael Murphy, attorney representing the application, gave a brief presentation to the Board. He explained the letter of violation issued by the Gilford Code Enforcement Officer describing the property is in violation of the sign ordinance. He spoke about the current definition of a sign as described in the ordinance. He said his client classifies the items as "art and collectibles" not as signs. He referred to the definition from Webster's for a "sign" and said the materials do not meet that definition. He said the materials are decorative pieces and therefore are not a sign.

Richard Metz, described his property and said collecting and restoring historic items as a hobby of his and he would like to continue his hobby. He said it is not his intention to violate the ordinance and would like to continue displaying his collectibles. He said he has spoke to a few abutters whom are in favor of the display of the items.

Michael Murphy said they would like the Board to overturn the Code Enforcement Officer's interpretation and rule that the items are not signs.

D. Chesebrough asked R. Metz how big the signs are and he said the Texaco sign is 12' long by 20" wide. D. Chesebrough asked R. Metz how he classifies the objects and R. Metz said he calls them signs. D. Chesebrough said thank you.

A. Howe opened up the hearing for public input.

Dan Feely, abutter, spoke in favor of the application

Roger Landry, abutter said he also received a violation letter about the signs on his property and asked the Board to overturn the Code Enforcement Officer's interpretation.

John Doyle, abutter, spoke in favor of the application.

With no other comments from the public, A. Howe closed the public hearing.

A. Howe introduced the next case.

4. **McGinley Development, Inc./Michael McGinley**
Variance request pursuant to Article 5, Dimensional Regulations, Section 5.1.3, Front Setback Area, and Table 2, Dimensional Regulations, to allow a ten (10) foot encroachment into the required fifty (50) foot front setback located on Tax Map & Lot #210-010.002 located at 22 Sawmill Road in the Professional Commercial Zone. File #Z08-12.

Patrick Wood, attorney representing the application, gave a brief presentation to the Board. He explained the location of the site. He showed the Board the eight shared parking spaces that were approved in conjunction with the site plan approval for the hotel. He explained the proposal is to change the approved location of the Post Office and move it ten (10') feet closer to Sawmill Rd. He said if the variance is granted they are prepared to reapply to the Planning Board in order to reconfigure parking spaces and move the handicap parking spaces closer to the building.

P. Wood reviewed the variance criteria as outlined in the application.

A. Howe questioned how the Planning Board would approve the site plan with the handicap parking across a roadway. He suggested turning the building around to locate the handicap parking next to the building. P. Wood said the biggest problem with turning the building as A. Howe suggested, is the location of the postman truck and if they turn the building that spot may interfere with the customer traffic.

J. Ayer said it makes more sense to have handicap parking spaces closer to the building.

Discussion ensued about options to reduce the impact or the need for the variance.

A. Howe read a letter into the record from Ron Magoon, Vice-President of Franklin Savings Bank. As an abutter R. Magoon spoke in favor of the application.

A. Howe opened up the hearing for public input.

Phil Brouillard, taxpayer of Gilford and friend of Michael McGinley, spoke in favor of the application.

With no other comments from the public, A. Howe closed the public hearing.

A. Howe announced the public hearings are complete and the Board is entering the deliberative session.

Board Deliberations

Gilford Young Road, LLC/Tammy Dunn

The Board discussed the application and the plan.

R. Dion asked about the financial considerations in relation to the application and the Board

discussed extreme financial burden as applied to a variance application.

The Board discussed whether there is a need for the variance. A. Howe does not agree with granting the variance as other reasonable methods can be achieved instead of granting a variance.

Motion made by D. Chesebrough, seconded by C. Boucher to approve the application has having met all the criteria for an Area Variance as follows:

- I. *The variance will not be contrary to the public interest because the Gilford Young Rd., LLC currently has limited access that cannot be developed into an adequate road for construction.*
- II. *Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship because the temporary affect on the Dun property is an unfortunate result of establishing proper access to the Gilford Young Rd. LLC.*

The application meets the following criteria for an area variance:

*An area variance **is** needed to enable the applicant's proposed use of the property given the special conditions of the property.*

*The benefit sought by the applicant **cannot be** achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.*

- III. *The variance is consistent with the spirit of the ordinance.*
- IV. *Substantial justice is done.*
- V. *The value of surrounding properties will not be diminished because future development will enhance the values of the neighborhood.*

In addition to having met the area variance criteria, the applicant is subject to the following condition:

- 1) The Dunn lot being provided a minimum of 150' of frontage on Class V road or roads meeting the Town of Gilford's Minimum Road Standards prior to the use of the Gilford Young Rd, LLC property access.

Discussion on the motion.

A. Howe again spoke against granting the variance as the right-of-way issue can be resolved with a legal agreement therefore; the applicant can achieve other methods that are reasonably feasible other than an area variance.

S. Verdile Philibotte polled the members

R. Dion- No

P. LaBonte-No

C. Boucher-Yes
D. Chesebrough-Yes
A. Howe-No

Motion to approve the application failed by a 3-2 vote. The variance was **not granted**.

Peter B. Ellis

The Board discussed the application and the site plan.

A. Howe asked J. Ayer if there would be a chance the applicant would expand the business and J. Ayer said the applicant has no plans to expand and if they want to expand, they would need Planning Board approval.

Motion made by C. Boucher, seconded by R. Dion, to approve the application as having met all the special exception criteria in section 11.2 a-f and Article 4, Sections 6.5 & 7.6 (e), "Home Occupation" 4.6.14 & 4.7.6 (m) as follows:

- (a) A denial was issued by a Town official on matters under their jurisdiction on May 9, 2008*
- (b) The site is appropriate for the proposed use or structure because it is in a rural location and is a positive addition to the Town.*
- (c) The proposal is not detrimental or injurious to the neighborhood because it will enhance the values in the neighborhood.*
- (d) There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic because the applicant plans to provide eight parking spaces on site.*
- (e) Adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure, as follows: the Fire Department has approved the safety features and the tasting room has adequate space and facilities to accommodate the public.*
- (f) The proposal is consistent with the spirit of the zoning ordinance and the Master Plan because: it is promoting small business in the Town.*

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. The special exception **was granted**.

Richard and Christine Metz

The Board discussed the application.

D. Chesebrough said the Code Enforcement Officer did not make a mistake and the items are classified as a sign. He is not in favor of over turning the Code Enforcement Officer's opinion.

A. Howe referred to the Webster's Dictionary definition of a sign that states the items are not

advertising any businesses on the site. C. Boucher agrees with A. Howe. P. LaBonte does not see a problem and says it is in good taste and it looks nice.

Motion made by P. LaBonte, seconded by C. Boucher, to reverse the Code Enforcement Officer's interpretation and determined the items are not signs.

Discussion on the motion.

D. Chesebrough said that for the record the Board has the authority under Section 10.2.1 to decide if an error was made by the Code Enforcement Officer in interpreting the zoning ordinance.

S. Verdile Philibotte polled the members.

R. Dion- abstain

P. LaBonte-Yes

C. Boucher-Yes

D. Chesebrough-abstain

A. Howe-Yes.

The appeal passes and D. Andrade decision **has been overturned.**

McGinley Development, Inc./Michael McGinley

The Board discussed the application

D. Chesebrough said the application is before the Board due to a planning failure. P. LaBonte does not agree with the application being before the ZBA he does not believe there is a hardship with this application.

D. Chesebrough reviewed the how the applicant does not meet the hardship variance as follows:

I. The variance will not be contrary to the public interest. The applicant should be able to comply with the plans.

II. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. The conditions of the property were created by the developer.

- An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The conditions of the property were created by the developer.*

The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

Other options can be sought on site.

III. The variance is consistent with the spirit of the ordinance. The variance is not consistent with the ordinance.

IV. Substantial justice is done. Substantial justice will not be done.

v. *The value of surrounding properties will not be diminished.* Values of surrounding properties will not diminish because nothing will change.

Discussion ensued on the motion.

C. Boucher disagrees and said it will be better for the building and the applicant. R. Dion agrees.

A. Howe does not agree with the applicant appearing before the ZBA but does agree moving the handicap spaces is for the public benefit.

A. Howe asked J. Ayer if he has worked with the applicant to try to prevent a variance application. J. Ayer said yes there have been many options discussed. They discussed reducing the green space and J. Ayer said they are required to have a certain amount of impervious surface and removing the green space would violate that requirement.

Motion made by R. Dion, seconded by C. Boucher, to grant the area variance as having met all the criteria for an area variance as follows:

- 1) He said a lot of time and effort has been invested and he believes it will benefit the Town of Gilford.
- 2) Safety for the handicap._

S. Verdile Philibotte polled the members.

R. Dion- Yes

P. LaBonte-No

C. Boucher-Yes

D. Chesebrough-No

A. Howe- Yes

Motion carried by a 3-2 vote. The area variance **was approved.**

APPROVAL OF APRIL 29, 2008 MINUTES

Motion made by D. Chesebrough, seconded by C. Boucher, to approve the minutes from April 29,, 2008 as amended. Motion carried with all in favor._

Discussion ensued about the sign ordinance and J. Ayer said he would research the issue and get back to the Board.

Other Business None at this time.

ADJOURNMENT

Motion made by D. Chesebrough, seconded by C. Boucher, to adjourn the May 27, 2008 Zoning Board of Adjustment meeting at 10:45 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Administrative Assistant