

**GILFORD ZONING BOARD OF ADJUSTMENT**  
**MINUTES**  
**SEPTEMBER 23, 2008**  
**CONFERENCE ROOM A**  
**7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, September 23, 2008 at 7:00 p.m. in Conference Room A.

Present were: Chairman- Andrew Howe, Vice-Chairman- Don Chesebrough, Regular Members- Charles Boucher and Robert Dion and Alternate Scott Davis. A. Howe appointed Scott Davis to replace Pat LaBonte.

Absent: Regular member(s) Pat LaBonte.

Also present was John Ayer, Director of Planning and Land Use and Sandra Bailey, Temporary Scribe.

Chairman, Howe led the Pledge of Allegiance and introduced Board members and staff. He explained the ZBA has the right to adjourn the meeting at 10:30 p.m. and continue the meeting and deliberations to another specified date and time.

A. Howe introduced the first case.

1. **Patricia Nix-Ford, Susan Belanger-Bright, Maureen D. Nix.**  
Appeal of an Administrative Decision of the conditional Planning Board Approval of site plan for Ames Farm Inn on July 7, 2008 on Tax Map & Lot #266-107.000. The property is located at 2800 Lake Shore Rd. in the Single Family Residential Zone.  
*File # Z08-17. Tabled from the August 26, 2008 meeting.*

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

Paul Bordeau, representing the application, gave a brief presentation to the Board as outlined in the application. He provided background information on how this appeal came about, based upon actions of the Planning Board. He cited a Staff Report compiled by John Ayer dated October 15, 2007, indicating that the principal use of the property is an inn and the boat launching and boat slips are not grandfathered uses, but rather are uses that have been introduced without Town approval.

The Planning Board approved a conditional Existing/Proposed Improvements Site Plan on July 7, 2008 and Attorney Bordeau stated that the Planning Board overstepped its authority with the approval. The boat launching is an accessory use and cannot become a primary use, according to the Gilford Zoning Ordinance. Attorney Bordeau advised Board members that Attorney Stephan Nix will make a Powerpoint presentation shortly with evidence to support their position.

He also pointed out that September 1962 is a key date in this appeal since it is when the Gilford Zoning Ordinance was adopted. Hard copies of the presentation were distributed to Board members and will be placed in the property file.

Attorney Bordeau turned the meeting over to Attorney Nix, who began his presentation with a review of juror standards and the powers of the Zoning Board. He is requesting that the Zoning Board overturn the decision of the Planning Board to approve the above mentioned site plan. Attorney Nix provided a brief summary of various Town and NH DES violations that have occurred over the past ten (10) years at Ames Farm, and many of these issues have been addressed. He also pointed out that this appeal is a zoning matter and is not directed personally towards the Ames family. The Single Family Residential Zone (SFR) does not allow commercial uses, which would include boat launching and boat storage. Attorney Nix took exception to notes on the July 7, 2008 plan that indicate boat launching, parking and storage as grandfathered uses on the site.

Attorney Nix reiterated the fact that the date the Zoning Ordinance was adopted in 1962 is the benchmark for determining existing lawful uses. He does not feel that Ames Farm has shown proof that the boat launching, parking and storage were in effect in September 1962. Attorney Nix proceeded to explain a 1988 site plan that he prepared for Ames Farm, as well as the staff report prepared by John Ayer on October 15, 2007. He also pointed out that the Ames Farm application for site plan approval did not come to the Planning Board in the typical way, but rather they went directly to the Planning Board as a result of pressure from the Court.

Attorney Nix feels that the Planning Board erred when it did not follow the recommendation set forth in John Ayer's October 15, 2007 Staff Report. Attorney Nix pointed out that the Gilford Zoning Ordinance was amended in March, 1968, allowing marinas in the industrial zone only. Ames Farm was zoned commercial at that time and it was not an allowed use. He stated that Site Plan Review came into effect in March 1970 and any changes at Ames Farm should have gone through that process. It was not until 1988 that a site plan was submitted and even then, it was never approved.

Attorney Nix presented a 1962 aerial photo of Ames Farm with no indications of boats or cars and trailers on the property. He pointed out that at the time of the photo, it was prime fishing season and the ice was out on the lake. Attorney Nix followed with a progression of aerial photos from 1973 and 1986. He also presented letters documenting the lack of boat storage and launching in the 1960's and 1970's. A photo from 1988 is a good representation of the 1988 site plan by Attorney Nix. Attorney Nix presented several other photos, a brochure from Ames Farm and a letter from Don Ames in 1999 stating that his property is not a marina. The aerial photos show a progression of growth on the property where fill has been brought in and characteristics of the land changed due to extensive parking.

Attorney Nix reviewed the reasons that the 1988 Site Plan was submitted. The intention was for three (3) additional cabins, adding a second ramp and relocating the road. He also explained how a 1999 mooring application to NH DES was an altered version of his 1988 Site Plan. Attorney Nix also wants the Board to find that the filled wetlands and mitigation work requires a Special Exception under the Gilford Zoning Ordinance Wetlands District.

Attorney Nix briefly reviewed the three findings that he would like the Board to determine: 1) Find that the Planning Board made an error when it approved the site plan after the Director of Land Use determined that the uses were not allowed; 2) find that the Planning Board made an error when it misinterpreted and misapplied the Zoning Ordinance by approving the public boat launch use and expanded parking as lawful pre-existing principal uses on the site; and 3) find that the filled wetlands and mitigation work requires a Special Exception under the GZO Wetlands District.

At this time, Chairman Howe asked Director Ayer to confirm the information presented relative to the October 15, 2007 Staff Report. Director Ayer stated that his staff reports are advisory to the Planning Board for the purpose of providing them with background information. It is used for guidance to the Planning Board. Chairman Howe asked Director Ayer if he reiterated his staff reports on the dates provided by Attorney Nix. Director Ayer explained that he left the staff report intact for each meeting and added to it as needed.

At this time, Attorney Bordeau summarized the evidence presented. The 1988 photo does not show intense use, because at that time, the boat launching and storage was an accessory use. This use had to be in existence in 1962 to be considered a grandfathered use. Since there is no evidence of use in the 1970's and 1980's, it is reasonable to assume that the use did not exist in 1962. The 1988 Site Plan was intended to be used as a baseline plan in 2007; however, it was never approved. Attorney Bordeau thanked the members of the public in attendance and urged the Zoning Board to overturn the Planning Board approval in accordance with the determination that the hotel/inn is the principal use of the property.

Chairman Howe opened the hearing for public input.

Attorney Rodney Dyer, representing Ames Farm, asked the Board to consider the fairness of the evidence. They were not given an opportunity to view this evidence and would like a brief recess to discuss the allegations. Chairman Howe called for a 10 minute recess at 8:30 p.m.

The hearing reconvened at 8:43 p.m. Attorney Catherine Broderick, also representing Ames Farm, asked Attorney Nix to display the 1988 Site Plan. She stated that she opposes this appeal and would like the Zoning Board to uphold the Planning Board's decision. She read a portion of the Planning Board's decision letter, dated July 16, 2008, indicating which uses they have determined to be grandfathered. She further stated that the intent of the site plan presented in 2007 was to bring the property into compliance. As a result, many activities, such as fishing derbies, have been discontinued.

Attorney Broderick continued with her presentation, stating that the Planning Board is one of tenure, with two (2) members having heard the 1988 site plan application. She asked Steve Smith of Steven J. Smith & Associates, surveyor of record for the recently approved site plan, to provide additional information regarding that plan. Mr. Smith stated that Ames Farm hired a wetlands scientist, who filed an application with the NH Wetlands Bureau. Subsequently, an order has been received for the violations to be mitigated with a deadline. Most of that mitigation has been completed – the wall has been removed and the slope seeded and stabilized.

A meeting is scheduled for October 15, 2008 with the Wetlands Bureau to review the mitigation. Mr. Smith stated that if a Special Exception was required for the wetlands that they should have been informed of that fact before now. He also stated that the photos presented by Attorney Nix do not provide solid evidence.

Attorney Broderick also stated that the photos presented are off season and the exact dates are not known. She also pointed out that Director Ayer's Staff Report is intended to be advisory to the Planning Board. Ames Farm did receive conditional approval for the 1988 Site Plan but the cabins were never constructed. Over a period of the last ten (10) months, the Planning Board has imposed many conditions on the boat launching area and the additional parking shown does not increase the volume of boat launching. The expansion that has occurred at Ames Farm was naturally occurring.

At this time, Attorney Broderick asked Merrill Fay to present his insights into Ames Farm. Mr. Fay stated that Ames Farm was very involved in public launching and he frequently referred boaters to them. He provided his recollections of activities at Ames Farm prior to 1962. Peter Ames also recalled collecting \$1.00 launching fees in the late 1950's. He also rebutted the evidence provided by Attorney Nix regarding Diamond Island's using Ames Farm for launching and the allegation that a brook was eliminated. Mr. Ames stated that this area was not a brook, but a swale. The wetlands mitigation that has taken place was voluntary by Ames Farm. The Ames family has taken responsibility and is not filling wetlands.

The next speaker was Peggy Ames. She is a member of the 5<sup>th</sup> generation of the Ames family and hopes to run the inn into the future. She cited Gilford's Master Plan encouraging commercial development. She would like to build a trusting relationship with the Town of Gilford, State of NH and neighbors. They have met the conditions of the Planning Board's July 7, 2008 approval. In closing, she feels that the Planning Board's decision was appropriate and reasonable.

Attorney Dyer reiterated that the Planning Board's decision was fact driven. He re-stated the uses that the Planning Board determined to be grandfathered. The pattern of use at Ames Farm goes back many decades and a natural evolution has occurred over a period of years. Based on this, he would like the Zoning Board to support the findings of the Planning Board.

David Pierce stated that he has property close by and he has no connection to Ames Farm. He feels that the inn caters to families and the noise is minimal. He feels the neighbors should consider themselves fortunate to have a piece of the past in his midst and cautioned that unreasonable constraints will force the Ames family to sell the property. He finds Ames Farm much more preferable to other possible development.

Beverly Sargente pointed out that Ames Farm is a small business and even though it has grown, she would like it to continue to be in operation. She expressed concern for the many people who are employed by Ames Farm and feels that Ames Farm is an important part of Gilford's history.

Attorney Bordeau stated that he appreciates those who have spoken tonight. He pointed out that

the boat rentals that were mentioned were for guests of the inn, not the public. He also brought up the issue of abandonment, which would be applicable when a use is discontinued for more than a year. He reiterated that the key in this matter is what was happening at Ames Farm right before the Zoning Ordinance was adopted. He also reviewed the difference between a primary use within a zone and an accessory use. The Zoning Ordinance does not allow an accessory use to become the principal use.

Attorney Bordeau also pointed out that the evidence presented by Ames Farm to the Planning Board was based on “understandings”, not hard evidence. Attorney Broderick reminded the Zoning Board members that the burden of proof rests with Attorneys Nix and Bordeau. The Planning Board members found their testimony credible.

With no other input from the public, A. Howe closed the public hearing for file #Z08-17 at 9:42 p.m..

A. Howe introduced the next case.

2. **Edward Mularz**

Variance request pursuant to Article 5, Sections 5.1 and 5.1.3 and Table 2 of the Gilford Zoning Ordinance, to allow a new two-story single family home to be located thirty (30) feet from the front property line instead of the required fifty (50) foot front setback from the property line as required by the Gilford Zoning Ordinance on Tax Map & Lot #253-321.000. The property is located at 12 River Rd. in the Limited Residential Zone. File #Z08-18. *Tabled from the August 26, 2008 meeting.*

Motion made by D. Chesebrough, seconded by C. Boucher, to take the application off the table. Motion carried with all in favor. R. Dion disclosed to Board members that he is a trustee of the Gunstock Acres Property Trust, who is an abutter to this case.

Brief discussion ensued with Attorney Harris and Attorney Wood regarding Cases 3 and 5. Attorney Harris wanted these cases to be tabled and Attorney Wood objected because he wants one of the cases dismissed. Chairman Howe stated that a determination would be made following Case 2.

James Tidd, representing the application, gave a brief presentation to the Board as outlined in the application. Mr. Tidd is seeking relief from the Zoning Ordinance to allow a new single family home to be built with a thirty (30) foot setback instead of the required fifty (50) feet in the Limited Residential Zone (LRR). Mr. Tidd began his presentation by pointing out that the hardship related to his application comes from the physical features of the land. The steep slope of the property prevents reasonable access to the back of the lot and this portion of the property is also wet. Mr. Tidd also outlined how the International Residential Code restricts the placement of the house.

Mr. Tidd continued with his presentation, explaining how he has considered other alternatives for the placement of the house. He also stated that in the interest of screening and stabilizing the

slope, he is trying to minimize the trees that are cut. Mr. Tidd pointed out that the Single Family Residential Zone (SFR) is adjacent to his property and in the SFR zone, the front setback is only thirty-five (35) feet. Mr. Mularz purchased this property in 1968. He applied for a front setback variance in 1989 and was denied. This property has been for sale for eleven (11) years and will be taken by tax deed by the Town of Gilford at the end of the month.

Mr. Tidd feels that his request is in keeping with the spirit of the Ordinance since it is compatible with the SFR zone. His setback will be greater than that of his neighbors. He will be building a mountain vacation style home with a small footprint and no garage. He plans to protect the trees and slopes from erosion. If his variance is granted, the taxes would be kept current and the property would not be deeded to the Town. In closing, Mr. Tidd respects his neighbors, the environment and Town Ordinance.

Chairman Howe questioned Mr. Tidd's comment regarding a variance request being denied in 1989. Mr. Tidd stated that it was for the front and side setback. Discussion ensued on whether this same variance request could be made to the Board again. Director Ayer will look into this matter with Town Counsel.

Chairman Howe asked Mr. Tidd if he considered other options, specifically if more trees are cut. Mr. Tidd expressed concern with screening and the stability of the slope if too many trees are cut. Chairman Howe replied that he cannot approve a variance based on not having a view of a neighbor's house. He asked Mr. Tidd to consider ways that the Board could offer less relief, rather than more relief.

S. Davis acknowledged that the property is very steep. He asked why Mr. Tidd was asking for a thirty (30) foot setback. Further discussion revealed that Mr. Tidd actually would need a variance for a thirty-eight (38) foot setback. S. Davis stated that he does not have a problem with the encroachment since he would like to see the house located away from the very steep portion of the lot.

Chairman Howe opened the hearing for public input at 10:22 p.m.

Ann Quinn spoke on behalf of her brother, who owns the property next to Mr. Mularz's lot. She expressed concern with the trees and a propane tank that is located on the property line. Mr. Tidd clarified for Ms. Quinn that the driveway will not be anywhere near the propane tank. Mr. Tidd also expressed his desire to maintain trees for screening. After this explanation, Ms. Quinn stated that she had no objection.

Tim Sullivan of Bedford Avenue expressed concern with the issue of the Town taking this property by tax deed. He feels Mr. Tidd's proposal was very thorough and the variance should be granted.

With no other input from the public, A. Howe closed the public hearing for file #Z08-18 at 10:29 p.m.

Chairman Howe stated that because of the late hour, the following public hearings would not be heard tonight. Motion made by D. Chesebrough, seconded by R. Dion, to table the noticed

applications known as: File #Z08-19, File #Z08-20, and File #Z08-21, until October 6, 2008 at 7:00 p.m. at Gilford Town Hall. ~The applications known as: File #Z08-17 and File #Z08-18 would be tabled to October 6, 2008 for the purpose of deliberations, since the public hearings were conducted tonight. Motion carried with all in favor.

3. **Rita Sutton**  
Appeal of an Administrative Decision of the issuance of a building permit for Barbara Aichinger on Tax Map & Lot #221-007-001. The property is located at 554 Edgewater Drive in the Single Family Residential Zone. File #Z08-19.
4. **Patricia and Jim Gray/ Joe Amrol**  
Variance request pursuant to Article 5, Sections 5.1 and 5.1.3 and Table 2 of the Gilford Zoning Ordinance to allow an addition to be located within the required fifty(50) foot front setback as required by the Gilford Zoning Ordinance on Tax Map & Lot #213-070.000. The property is located at 93 Old Lake Shore Rd. in the Limited Residential Zone. File #Z08-20.
5. **Edward and Barbara Aichinger**  
Variance request pursuant to Article 9, Section 9.1.1, Contiguous Nonconforming Lots, of the Gilford Zoning Ordinance to allow Tax Map and Lot #221-007.000 located at 554 and 558 Edgewater Drive, to be two (2) separate lots. The property is located in the Single Family Residential Zone. File #Z08-21.

## **ADJOURNMENT**

Motion made by seconded by, to adjourn the September 23, 2008 Zoning Board of Adjustment meeting at 10:30 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Bailey  
Temporary Scribe