

**GILFORD ZONING BOARD OF ADJUSTMENT  
MINUTES  
OCTOBER 21, 2008  
CONFERENCE ROOM A  
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, October 21, 2008 at 7:00 p.m. in Conference Room A. This meeting was tabled from September 23, 2008 and October 6, 2008.

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

Absent: Regular member(s).

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

Chairman Howe led the Pledge of Allegiance. He explained the public hearings have been completed on File #Z08-20 and File #Z08-21 and the Board will deliberate on those applications.

A. Howe read into the record a request to withdraw without prejudice, File #Z08-20, **Patricia and Jim Gray/ Joe Amrol**. The application was withdrawn.

A. Howe appointed Alternate member Scott Davis to replace absent member Charles Boucher.

Motion made by D. Chesebrough, seconded by P. LaBonte, to take File #Z08-21 off the table. Motion carried with all in favor.

**Board Deliberations**

**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.  
*Tabled from the October 6, 2008 meeting.*

The Board discussed the application.

A. Howe referred to the Findings of Fact request, received on October 20, 2008, regarding the ZBA's decision to deny the Administrative Appeal from Rita Sutton File #Z08-17, from Linda Connell, attorney representing Rita Sutton. He asked J. Ayer if they received a legal opinion on the Findings of Fact and J. Ayer said no.

P. Wood, attorney representing B. Aichinger, asked that the Findings of Fact submitted by

Sutton's attorney not be considered since they had not received a copy. A. Howe agreed. The Board will not address the Findings of Fact request submitted by Linda Connell, attorney for Rita Sutton.

A. Howe asked J. Ayer to run through the history on the case.

J. Ayer gave a brief history of the application. He explained Barbara Aichinger came to Town Hall thought she had 2 lots described in her deed and J. Ayer agreed as shown on the town's tax maps. He said legal counsel for Governor's Island Club found out about the interpretation and questioned the existence of 2 lots. He said Town Counsel agreed with the Governor's Island Club that in fact there were issues with the original determination and that J. Ayer's decision was in error. Then B. Aichinger entered into an agreement with Town of Gilford stating that they were 2 lots and that agreement was appealed to Superior Court, who ruled there is only one lot. J. Ayer explained the B. Aichinger applied for a building permit to replace the house on the second lot and was approved. He said the Superior Court ruled the building permit issued for the second lot was valid. He said B. Aichinger applied for a building permit to replace an existing house with a new house, which was approved. After an inspection, he noticed there was another dwelling that appeared to be on the other side that was delineated as the property boundary between the two lots. He said the inspector determined that there was another dwelling. That dwelling since has been replaced and that is the building permit that the Superior Court ruled was valid.

S. Davis asked at the time of the court ruling that said it was one lot, how much of the building (the second house) had been constructed. J. Ayer said he is unsure since he did not go out and inspect the site.

R. Dion asked if the house was started during the court process. J. Ayer said yes, the building permit was issued after the appeal of the Board of Selectmen's agreement with B. Aichinger and the house was started after the appeal was filed. R. Dion said so there was a cloud hanging over the whole thing even when they broke ground for the new house. J. Ayer said the applicant was aware of the appeal.

A. Howe asked if it is usual and customary for the town to issue a building permit based on evidence of two residences regardless of the size of residences. He specifically asked how an efficiency apartment in a garage could be granted a building permit for a million dollar home. J. Ayer said there is precedence for that process.

P. LaBonte spoke about a lot of construction that took place this summer before the Shoreland Protection Act took effect and it is his opinion that that is the situation here. He asked if there was ever a permit issued of the garage to be converted in a dwelling unit. J. Ayer said he did not know.

A. Howe asked when the merger took place. J. Ayer said he did not exactly know when the merger took place. A. Howe is concerned that if this merger took place many years ago the appeal period has expired. J. Ayer said the Nighswander rule was in effect in the late 1960's or early 1970's. He said it was referred to as a single lot in the Governor's Island Club court case in 1983. D. Chesebrough said documentation shows the lot in question was described as one lot

as being under common ownership since 1947.

A. Howe said he is having a hard time with determining the hardship clause with this application, as he does not see how it the variance criteria can be met. He said it seems like she has expanded use since she has purchased it. He said she has two large homes on this lot and does not see a hardship. He said B. Aichinger's hardship is that she can't sell one house and in essence the ZBA is being asked to approve a subdivision.

D. Chesebrough said he agrees with A. Howe about not being able to review the application for a variance. He does not believe the application meets the requirements for the variance test. He said there are also other avenues the applicant could take to achieve what she is requesting. He said by issuing a variance in this case they would be setting a severe precedence. He said that lot has been under the requirements of ordinance and it would weaken the town's Master Plan and other ordinances to create two non-conforming lots and that would not be beneficial to the Town of Gilford.

P. LaBonte said the Board should wait until Town Counsel offers an opinion.

A. Howe asked J. Ayer if Town Counsel has offered an opinion and J. Ayer said there has not been an opinion from Town Counsel. He said Town Counsel might not have gotten his copy of the Findings of Fact request.

Motion made by D. Chesebrough, seconded by S. Davis, to deny the variance request for File #Z08-21 to allow Tax Map and Lot #221-007.000 located at 554 and 558 Edgewater Drive, to be two (2) separate lots, as described in the application and as not having met all the criteria for an Variance as follows:

*I. The variance will not be contrary to the public interest.* The Town of Gilford, after consideration of what had been done in the past where a lot of small lots were created, came up with a method to eliminate small lots and required them to be merged. This would be contrary to public interest because it would put the lots back into smaller sizes and change the concept of Gilford should be.

*II. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.* The problem is financial and that is not a hardship to be considered.

The application does not meet the following criteria for an area variance:

*An area variance **is not** needed to enable the applicant's proposed use of the property given the special conditions of the property.*

*The benefit sought by the applicant **can** 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.* This is against the spirit of the ordinance.

*IV. Substantial justice is done.* Substantial justice would not be done because it would

change the idea of why the Town of Gilford has ordinances.

- V. *The value of surrounding properties will not be diminished.* He said it is questionable whether this applies to this case however; anything, which changes lot size, would affect the surrounding properties. He said the intent was to make the lots larger on Governor's Island than they were originally laid out. Any action to reverse that would diminish the values.

Discussion on the motion.

S. Davis consistency with the spirit of the ordinance is the major concern and the court ruled and established the fact there is only one lot and he does not see a hardship for the variance. He said the use of the property has not been impacted, as there are two homes there. He said the hardship, if there is one, is selling them not with the use of the property and he does see not being able to sell them a hardship.

A. Howe said the standards of unnecessary hardship for a financial aspect relate to an area variance, not a use variance. The Board discussed the application is for an area variance.

S. Davis referred to Section 9.1.1. (a) and said a principal use was established and he is not convinced the garage was a principal use. He said the fact that there is a building there with sleeping quarters does not mean it was a principal use and doubts that someone declared that as a legal residence. He does not agree that it is an established principle use on that northerly lot.

R. Dion said he agrees with S. Davis that the garage was never a residence and was not used as a primary residence and changes into a principal use.

P. LaBonte referred to information that said the lots were treated as one lot even and that information was dated 1983.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members.

S. Davis- Yes

R. Dion-Yes

P. LaBonte-Yes

D. Chesebrough- Yes

A. Howe-Abstained.

Motion carried with all in favor, the variance request for File #Z08-21 has been **denied.**

## **MINUTES**

Motion made by R. Dion, seconded by P. LaBonte, to approve the minutes from July 1, 2008 as corrected. Motion carried with S. Davis abstaining.

Motion made by S. Davis, seconded by D. Chesebrough, to approve the minutes from August 26, 2008 as presented. Motion carried with all in favor.

Motion made by S. Davis, seconded by R. Dion, to approve the minutes from September 23, 2008 as presented. Motion carried with all in favor.

Motion made by D. Chesebrough, seconded by R. Dion, to approve the minutes from October 6, 2008 as presented. Motion carried with all in favor.

**Meadowbrook Sign-** The Board discussed that there is no right-of-way with this sign and questioned how the sign was approved. The Board wants to have a legal opinion if the Town of Gilford has any recourse to have it removed, as it does not comply with the ordinance. A. Howe asked J. Ayer to get a legal opinion because the ZBA is incensed that the sign on Route 11 was replaced. J. Ayer said he would copy A. Howe on the email he sends to Town Counsel.

A. Howe is concerned about the interpretations of the ordinance that have been used in the Department of Planning and Land Use.

#### **ADJOURNMENT**

Motion made by R. Dion, seconded by P. LaBonte, to adjourn the October 21, 2008 Zoning Board of Adjustment meeting at 8:20 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte  
Administrative Assistant