

**GILFORD ZONING BOARD OF ADJUSTMENT  
MINUTES  
DECEMBER 10, 2008  
CONFERENCE ROOM A  
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Wednesday, December 10, 2008 at 7:00 p.m. in Conference Room A.

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

Absent: Regular member(s). Pat LaBonte.

Also present was Stephanie Verdile Philibotte, Administrative Assistant.

Chairman Howe led the Pledge of Allegiance. He explained this meeting is a continuation of the November 25, 2008 meeting as there was no quorum for the meeting.

A. Howe appointed Alternate member Scott Davis to replace absent member P. LaBonte.

A. Howe introduced the first case.

1. **Barbara Aichinger, Trustee of Barbara P. Aichinger Revocable Trust**  
Appeal of an Administrative Decision by the Director of Planning and Land Use, regarding the status of merged lots, pursuant to Section 9.1.1 of the Gilford Zoning Ordinance, which are shown as Tax Map & Lot #221-007.000 and Tax Map & Lot #221-007.001. The property is located at 554 and 558 Edgewater Drive in the Single Family Residential Zone. File #Z08-23.

A. Howe read letter from Attorney Patrick Wood, representing Barbara Aichinger, requesting the application be tabled until the February 24, 2009 meeting.

D. Chesebrough spoke about the appeal even being valid and if they have to make a ruling on the validity of the application, it may not make sense to table it until February 24, 2009.

A. Howe asked P. Wood why should the Board table the application. P. Wood explained the situation between the Sutton application and the Supreme Court schedule.

Motion made by R. Dion, seconded by D. Chesebrough, to table the application until February 24, 2009. Motion carried with all in favor.

**Other Business**

**Request for rehearing for Rita Sutton, File #Z08-19.**

Linda Connell, representing the Sutton application, requested the application be tabled until the February 24, 2009 meeting, due to the fact that this application follows the Aichinger application and they too are waiting for the Supreme Court schedule.

P. Wood objected to the Sutton request to table the application as he said there are two (2) different applications. He said the statute prohibits them from working on the Aichinger house and he is asking the Board to act within the time frame by RSA to have the Board act within the 30 day time period for rehearing requests.

Linda Connell, said to deny the motion to re-hearing would be burdensome to the Sutton's and they would have to file a Superior Court motion.

D. Chesebrough spoke about the Sutton application being denied because it was not submitted in a timely manner. D. Chesebrough said there is nothing new submitted to warrant a rehearing.

The Board discussed the application. D. Chesebrough asked Linda Connell if there is any new information offering as to why the ZBA should re-hear the case. She said the Board only focused on the 30-day period and did not fully focus on the entire application therefore; the Board did not consider all the facts. She said the ZBA's decision was jurisdictional and she wants the ZBA to consider the issuance of the building permit without relying on the Superior Court's decision. She said the Gilford Zoning Ordinance does not allow two houses on one lot and wants the ZBA to consider that information.

A. Howe said the Board decided the applicant did not file the request in a timely manner, which is why they denied hearing the application. L. Connell said the ZBA is wrong and is asking them to reconsider the application because they never considered the entire application, the ZBA only considered the 30-day time frame as the reason for their denial.

C. Boucher asked why they didn't come before the ZBA before. L. Connell said because they were appealing the Board of Selectmen's agreement with the Aichinger's. She said in June of 2007, the Board of Selectmen entered into the agreement with the Aichinger's saying there are two lots based on the mistake made by John Ayer. She said they appealed that decision in July of 2007 to the Superior Court and said the Aichinger's went ahead and built the house while there was an appeal filed. The Superior Court ruled there is one lot and the building permit is valid. She explained they are relying on the 30 day period from the Superior Court's decision, which is why they appeal was filed when it was.

D. Chesebrough said there is nothing new presented to them for them to grant the rehearing request. S. Davis said the Sutton's could have very easily appealed the decision about the original building from the beginning and they did not.

Motion made by D. Chesebrough, seconded by R. Dion, to deny the request for a rehearing. He said based on the fact that no new information on the subject of the Board's decision to deny has been presented. He said the Sutton's let the 30 day appeal period of the issuance of the original building permit expire, therefore there is no new information being presented to grant a

rehearing.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members.

S. Davis- Yes

R. Dion-Yes

C. Boucher-Yes

D. Chesebrough- Yes

A. Howe- abstained

Motion carried with all in favor, the rehearing request for File #Z08-19 **has been denied**

**Request for rehearing for Patricia Nix Ford, et. al. File #Z08-17. Made by the Ames Farm Trustees.**

The Board discussed the application. A. Howe spoke about the decision the ZBA made to overturn the Planning Board's decision that allowed an accessory use become a primary use.

D. Chesebrough said he does not think the ZBA made any legal errors in their original decision. The issue was if the Planning Board overstepped their bounds by approving a site plan without the proper approvals needed to do so therefore, he does not see any new information submitted to grant the rehearing request.

Motion made by D. Chesebrough, seconded by S. Davis, to the deny request for a rehearing. Based on the grounds that there is no new information provided that would validate the allegation that the ZBA acted improperly.

Discussion on the motion

D. Chesebrough spoke about the information that was received from J. Ayer at the public hearing and D. Chesebrough said it had no bearing on their decision; the Ameses did increase the use without a proper variance.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members.

S. Davis-Yes

R. Dion-Yes

C. Boucher-No

D. Chesebrough- Yes

A. Howe- abstained because there is a majority vote to deny.

Motion carried with all in favor, the rehearing request for File #Z08-17 **has been denied.**

**Request for rehearing for Barbara Aichinger, File #Z08-21.**

C. Boucher recused himself from discussion on the application.

Staff informed A. Howe there have been letters from the abutters to file #Z08-21 submitted after the packets went out and provided them to him. A. Howe read the letters and distributed them to the Board.

D. Chesebrough said the abutter's letters are not new information and should not be considered as a reason to grant a re-hearing and they are not valid unless the Board actually grants a rehearing. He said they should have been introduced at the public hearing. He said the applicant originally did not meet the requirements for a variance and he sees no new information submitted that would have the Board grant the rehearing request. He said that the applicant continued construction throughout the entire time in the hopes the ZBA would grant a variance and that is not a reason for the ZBA to grant a variance.

A. Howe said there are situations put in place that were made by the applicant that caused this situation and it was not created by the town or the zoning ordinance. It was hardships created by the applicant.

Motion made by D. Chesebrough, seconded by R. Dion, to the deny request for a rehearing on the ground there is no new information which would warrant the ZBA to rehear the case and he is not convinced the Board made a legal error.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members.

S. Davis-Yes

R. Dion-Yes

D. Chesebrough- Yes

A. Howe- abstained

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

**MINUTES**

Motion made by S. Davis, seconded by D. Chesebrough, to approve the minutes of October 28, 2008. Motion carried with all in favor.

**2009 Schedule**

Motion made by S. Davis, seconded by C. Boucher, to approve the 2009 ZBA Meeting Schedule.  
Motion carried with all in favor.

**ADJOURNMENT**

Motion made by D. Chesebrough, seconded by C. Boucher, to adjourn the December 10, 2008  
Zoning Board of Adjustment meeting at 8:20 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte  
Administrative Assistant