

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 24, 2009
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, February 24, 2009 at 7:00 p.m. in Conference Room A.

Present were: Chairman- Andrew Howe; Vice-Chairman- Don Chesebrough; Regular Members- Charles Boucher; Robert Dion; Pat LaBonte and

Absent: Alternate Scott Davis.

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

Chairman Howe led the Pledge of Allegiance.

A. Howe introduced the first case. C. Boucher recused himself from discussion on the Aichinger application.

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. *Tabled from November25, 2008.*

J. Ayer explained at the time when he wrote the staff report for this case, he thought the Board should address the application at this meeting, but having talked to town attorney this afternoon, he said the Board could table the application until the May 26, 2009 meeting.

The Board and J. Ayer discussed when to table the application. J. Ayer explained he would not be available for the April meeting and suggested the application be tabled until the May 26, 2009 meeting

Motion made by D. Chesebrough, seconded by R. Dion, to accept the request of Patrick Wood, attorney representing the application, until the May 26, 2009. With the notice to the applicant this will be the final extension of this application accepted by the Board. Motion carried with all in favor.

A. Howe introduced the next case.

2. **Astoria Properties, LLC**

Special Exception request pursuant to Article 5, Section 5.2.5(b), to allow a Medical Center with no overnight facilities in a structure of not less than 10,000 square feet on Tax Map & Lot #204-003.009. The property is located at 369 Hounsell Ave in the Industrial Zone, Business Park District and Aquifer Protection District.~ File #Z09-01.

Greg Kirsch, President of Astoria Properties, representing the application, gave a brief presentation to the Board. He explained the location of the building and that it is proposed as a mixed use of professional offices, including medical and dental uses as well as other professional uses. He explained that the medical use is allowed by special exception for a building over 10,000 square feet. He said this building would be over 16,000 square feet.

He reviewed the criteria for a special exception as outlined in the application.

R. Dion asked if it would be a comprehensive medical center in addition to other professional space. G. Kirsch said the covenants would be written to address other professional uses in addition to the medical uses. He referred to Section 4.7.3 (m) of the Gilford Zoning Ordinance describing the uses.

A. Howe asked J. Ayer about adequate and appropriate facilities as being part of the special exception criteria but they are being asked to approve this plan without adequate parking.

G. Kirsch said they are aware of that situation and they are willing to include the required parking spaces on the plan with the understanding they are hoping to get the variance. He said they are willing to accept a condition of approval for the special exception relating to the parking variance request.

A. Howe asked if department heads had reviewed this plan and J. Ayer said they have not because this applicant has not applied to the Planning Board.

A. Howe opened up the hearing for public input.

Dr. Andrew Garfinkle, abutter, said he is in favor of the use but is concerned about the parking requirements and the request to have the parking reduced. He discussed the parking requirements for the proposed use and compared them to his medical use, Laconia Eye Associates (across the street), and said they have 77 parking spaces for one medical practice. He is concerned that 87 parking spots will not be enough for the proposed 8 professional uses. He said the Business Park does not allow tenants without 100% occupation because they do not want buildings constructed and this proposal does not have all the tenants committed.

G. Kirsch discussed the vacancy rules in the Lakes Region Business Park and believes that will not be an issue with this building. He noted they have already received approval from the Lakes Business Park.

A. Howe closed the public hearing.

A. Howe introduced the next application

3. **Astoria Properties, LLC**

Variance request pursuant to Article 7, Section 7.5.3.15, Parking Requirements for Medical Facility, of the Gilford Zoning Ordinance, to reduce the number of parking spaces required for a multi-unit office building with medical and business office uses from 107 to 87 parking spaces on Tax Map & Lot #204-003.009. The property is located at 369 Hounsell Ave in the Industrial Zone, Business Park District and Aquifer Protection District.~ File #Z09-02.

Greg Kirsch, President of Astoria Properties, representing the application, gave a brief presentation to the Board. He reviewed the variance criteria as outlined in the application.

He said they are willing to accept a condition of approval that would require them to install the required parking spaces if the need arises on the site in the future.

A. Howe asked J. Ayer if the Gilford Zoning Ordinance requires more parking than required and J. Ayer said yes. He said they have had discussions with the Planning Board about addressing the parking but it has not been brought forward for ordinance amendments. He said the current parking requirements are excessive and it should be an issue for future amendments.

Discussion ensued about the shared parking requirements of the zoning ordinance if parking becomes an issue.

The Board discussed having a condition of approval include the applicant's suggestion to require them to install the required number of spaces if there are complaints. G. Kirsch said he would ensure that condition would be included in the condominium declarations and covenants. J. Ayer suggested that condition be included on the site plan. A. Howe suggested it be included in the condominium documents. G. Kirsch asked about the enforcement provision for shared parking in the zoning ordinance and how that determination is made to require shared parking. He spoke about the determination for the shared parking requirements be made by the Code Enforcement Officer or the Director of Planning and Land Use and that be the deciding factor to require the applicant to replace the required parking spaces.

A. Howe opened up the hearing for public input. With no input, A. Howe closed the public hearing.

The Board entered into the deliberative session.

Board Deliberations

Astoria Properties, LLC, Special Exception

The Board discussed the application and the plan.

Motion made by R. Dion, seconded by C. Boucher, to approve the application as having met all the criteria for a special exception in Section 11.2 a-f and Article 5, Section 5.2.5(b).

Discussion on the motion. R. Dion thinks the proposed use is appropriate for the site.

A. Howe called for a vote on the motion.

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 request for File #Z09-01 **has been approved**

Astoria Properties, LLC, Variance

The Board discussed the application. C. Boucher said the applicant submitted evidence on favor of reducing the required number of parking spaces.

Discussion ensued about possible locations on the site if the additional parking spaces are required in the future.

Motion made by D. Chesebrough, seconded by R. Dion, to 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.*
- II. *Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.*

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

With the additional condition of approval:

1. If the number of parking spaces is determined to be inadequate based on a review by the Code Enforcement Officer or the Director of Planning and Land Use in a manner similar to Section 7.2.1 and 7.2.2, Shared Parking Uses of the Gilford Zoning Ordinance, the applicant or its successor will install parking spaces to meet the required number, up to 107 spaces.

Discussion on the motion.

D. Chesebrough spoke about the applicant's belief the approved number of spaces is adequate based on their research and is willing to add the spaces if the calculations prove to be inadequate.

A. Howe called for a vote on the motion.

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 variance request for File #Z09-02 **has been approved.**

MINUTES

Motion made by C. Boucher, seconded by P. LaBonte, to approve the minutes of October 21, 2008. Motion carried with all in favor.

Motion made by D. Chesebrough, seconded by R. Dion, to approve the minutes of December 10, 2008 as corrected. Motion carried with all in favor.

OTHER BUSINESS

R. Dion asked if there was ever an answer from the Town Attorney regarding the re-installment of the Meadowbrook sign. J. Ayer said Town Counsel said the time period has passed to correct the sign. D. Chesebrough said the question was not answered in time and the Board could have appealed the approval.

A. Howe is looking for an update on the Ames Farm Site Plan application. J. Ayer said they have submitted a new site plan and the revocation of the original site plan process has been finalized and recorded at the Belknap County Registry of Deeds.

ADJOURNMENT

Motion made by C. Boucher, seconded by P. LaBonte, to adjourn the February 24, 2009 Zoning Board of Adjustment meeting at 8:45 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Administrative Assistant