

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

The Gilford Zoning Board of Adjustment met on Tuesday, March 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 Alternate Scott Davis.

Absent.

Also present were: David Andrade, Code Enforcement Officer/Building Inspector and Stephanie Verdile Philibotte, Administrative Assistant.

Chairman Howe led the Pledge of Allegiance. D. Chesebrough explained he is rescuing himself from participating on the application. A. Howe appointed Alternate S. Davis to replace D. Chesebrough.

A. Howe introduced the first case.

John and Alice Beyrent

Variance request pursuant to Article 5, Dimensional Regulations, 5.1 Land Standards, 5.1.3 Front Setback Area and 5.1.4 Side Setback Area, of the Gilford Zoning Ordinance, to allow the following: an addition to be located twenty-two (22) feet from the front property line instead of the required thirty-five (35) feet from the front property line; an addition to be located twenty (20) feet from the side property line instead of the required twenty-five (25) feet from the side property line; and a garage addition to be located four (4) feet from the side property line instead of the required twenty-five (25) feet from the side property line, on Tax Map & Lot #227-045.000. The property is located at 36 Farmer Drive in the Single Family Residential Zone. File #Z09-03.

John and Alice Beyrent, representing the application, gave a brief presentation to the Board. He outlined some of the proposed additions and renovations to the house are to increase living space and to increase value of the house. He explained part of the hardship is that his lot is only 100' x 100' and that is very limiting for them to improve the conditions of their house. He said the way the house was built causes rain and snow runoff and build up around their foundation and entrances ways.

Discussion ensued about the location of the shed. A. Howe asked if they could put the additions in the back of the house and J. Beyrent said they couldn't because of the location of the leach field in the back yard.

A. Howe requested the applicant explain the hardship and how it relates to the interior of the house. J. Beyrent said the dining room is very small and you cannot add any chairs to the table without being in the other room.

S. Davis asked about the setback, which is proposed to be four (4) feet to the neighbor's property line and said that is not an adequate distance to be able to maintain his garage and property without encroaching on the neighbor's property. He also asked about pervious pavers for the driveway and how would that reduce the severe runoff. J. Beyrent said they hoped that pervious pavers would reduce runoff onto their property because it is supposed to infiltrate before it runs off. He said DPW has put in catch basins and worked on some drainage issues.

Discussion ensued about the drainage issues and how it affects the applicant's property and the neighbor's property. S. Davis said he would hate to see them build a garage and new driveway that would still be affected by the drainage issues in the neighborhood.

J. & A. Beyrent explained the pervious pavers would prevent the water from running into the garage and slow the water down and allow it to be absorbed before flooding the area. They said they would design the front of garage to divert the water away from the house.

A. Howe opened up the hearing of public input.

Mrs. Lois Smith, abutter, said she had no problem with the proposed variance request.

S. Davis spoke about the applicants and the abutter getting agreeing on a drainage easement because J. Beyrent cannot legally discharge water from their property onto the abutters' property.

A. Howe opened up the hearing for public input. With no further input after hearing from abutter L. Smith, A. Howe closed the public hearing.

A. Howe explained the variance criteria and asked J. Beyrent why the ZBA should allow them to encroach on the setbacks even further and what is the hardship they have now after they have lived there for 24 years. J. Beyrent said they have planned all along, since they have lived there, to make improvements and now they have the money to do it. A. Howe said they are still able to use the property the same way as they have over the past 24 years. A. Beyrent said they have a lot of ice buildup in the front of the house and that is why they are looking to redo the front entranceway.

A. Howe asked if D. Andrade had been to the site to verify the setbacks and D. Andrade said he has not been to the site because the location of the pins are not confirmed and recommends that a surveyor determine where the pins are located. A. Beyrent said that would be a hardship to them financially because the surveyor would have to survey their property and the two abutting properties and that is not built into their budget for the project.

Discussion ensued about changing the location of the proposed garage and the size to reduce the amount of the setback encroachment. J. & A. Beyrent explained the garage is proposed to be

flush with the house.

A. Howe closed the public hearing.

The Board entered into the deliberative session.

Board Deliberations

The Board discussed the application and the plan and agreed it is for an area variance.

The Board discussed exactly where the front corner pins are located and said a surveyor may be required in order to determine the exact distance from the front pin. A. Howe would like to see the discussion focus on the right and front setback additions and whether the Board should be granting them. A. Howe said a garage might be a reasonable use of the property.

R. Dion asked if they should grant a variance without knowing the distances from the property line. A. Howe said the Board and the Town have gotten burned before without having a surveyed plan.

A. Howe said the applicants already have reasonable use of the house in its existing condition.

C. Boucher said he agrees with the front addition for the porch for safety reasons. S. Davis said he thinks a functional setback distance to the side property line is important and four (4) feet is not enough.

A. Howe asked if the Board wanted to require a surveyor before they can determine the amount of the distance for the setback.

Motion made by R. Dion, seconded by C. Boucher, to table the application in order for the applicant to return with a surveyed or engineered plot plan.

Discussion on the motion.

J. Beyrent asked since the Town of Gilford removed the pin could they pay to replace the pin.

Amended motion made by S. Davis, seconded by C. Boucher, to require the applicants to present a surveyed plan in order to determine if the left side property line can maintain a minimum eight (8) foot setback for a 24' x 24' garage.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members.

S. Davis-Yes

R. Dion-Yes

P. LaBonte-Yes

C. Boucher-Yes

A. Howe- Yes Motion carried with all in favor.

The application is tabled to require the applicants to present a surveyed plan in order to determine if the left side property line can maintain a minimum eight (8) foot setback for a 24' x 24' garage.

Second Amended motion.

Second amended motion made by S. Davis, seconded by P. LaBonte, to table the application until May 26, 2009 to require the applicants to present a surveyed plan in order to determine if the left side property line can maintain a minimum of an eight (8) foot setback for a 24' x 24' garage. The tabling of this application is for the garage portion of the application only.

A. Howe called for a vote.

S. Verdile Philibotte polled the members.

S. Davis-Yes

R. Dion-Yes

P. LaBonte-Yes

C. Boucher-Yes

A. Howe- Yes. Motion carried with all in favor. The garage portion of the application will be tabled until the May 26, 2009 meeting.

Second portion of deliberations for the two proposed additions.

The Board deliberated on the two (2) 4' x 4' additions along the front and right side of the property.

S. Davis said he is not convinced either of the proposed additions is a hardship in terms of the use of the house. A. Howe reviewed the criteria, "an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property".

Discussion ensued about the front steps are not in the same location as the proposed addition to the living room and in fact, the addition for the porch and stairs will be to the right of the original stairs. P. LaBonte said the proposed front addition it is not encroaching anymore to the setback and it is increasing the value of their house. The proposal is to add a proposed porch into the setback where no porch exists now.

Motion made by R. Dion, seconded by P. LaBonte, to grant the variance for the front addition, as it will enhance the front of the house and the look of the neighborhood.

1. 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.*

Discussion on the motion.

A. Howe called for a vote on the motion.

S. Davis-No

R. Dion-Yes

P. LaBonte-Yes

C. Boucher-Yes

A. Howe-Abstained. Motion carried. The application for an addition to the house to be located in the front setback is approved.

Motion for the side setback

Motion made by C. Boucher, seconded by S. Davis, to deny the application because there seems to be a reasonable alternative to move the addition to the rear of the house.

Discussion on the motion.

A. Howe allowed the applicant to speak during the Board's deliberations. J. Beyrent said if they were to move the side addition to the back of the house, to where the deck located, they would have to reconfigure the counters and cabinets in the kitchen, move the deck and add a door so they could exit.

Discussion on the motion.

S. Davis asked if it is feasible to have the applicant voluntarily withdraw that portion of the application and provide the Board with a more detailed drawing of the kitchen. A. Howe explained this part of the application is going to be denied as submitted. He offered the applicants to withdraw the right, side setback portion of the application and reapply with additional information for the interior layout of the kitchen.

D. Andrade suggested the applicants request the application be tabled instead of re-applying.

C. Boucher withdrew his motion and S. Davis withdrew his second, the original motion failed.

Motion made by C. Boucher, seconded by S. Davis, to table the right side setback addition until May 26, 2009.

A. Howe called for a vote on the motion.

S-Yes

R-Yes

P-Yes

C-Yes

A- Yes. Motion carried with all in favor. The application for the side setback is tabled until May 26, 2009.

MINUTES

Motion made by D. Chesebrough, seconded by P. LaBonte, to approve the minutes of February 24, 2009. Motion carried with all in favor.

OTHER BUSINESS

A. Howe wants to discuss variance and site plans. He is not in favor of reviewing plans that do not have accurate, reliable information. He wants to find a way to deal with the hand written plans that come in because the Board cannot verify the information and that is not a good practice for the Board and the Town of Gilford to accept plans that are not accurate.

S. Davis discussed his concerns about the drainage with the application they reviewed tonight. He said applicants should not be designing drainage systems to discharge onto abutting property owners because it is against the law. He said the proposed four (4) foot setback distance is not enough for the drainage to be dispersed on the applicant's property without discharging on the abutter's property. He said the Board couldn't grant variances that include increasing the drainage flow onto an abutter's property. A. Howe asked if the Board wants to set a standard for all applicants. S. Davis said he thinks the applicants should be told they might be subject to a surveyed plan.

S. Verdile-Philibotte suggested contacting the Town Attorney to ask the legality of the ZBA requiring a surveyed plan.

D. Andrade explained the process for building and the applicants are informed that if the foundation ends up out of compliance it will have to be removed. He thinks the Board should require surveyed plan. S. Davis thinks if the applicant has determined the location of the pins they should not be subject to getting a surveyed plan.

The Board discussed alternatives to having applicants obtain a surveyed plan.

S. Davis brought up the fact that several meetings ago, Varney Point Road Left variance, the Board requested having the Town Attorney come and talk to them about how to rule on variances. He is looking for an update. A. Howe wants the Town Attorney to attend the next meeting and have the Board attend at 6 P.M.

ADJOURNMENT

Motion made by C. Boucher, seconded by R. Dion, to adjourn the March 24, 2009 Zoning Board of Adjustment meeting at 9:55 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Administrative Assistant