

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
APRIL 28, 2009
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, April 28, 2009 at 7:00 p.m. in Conference Room A.

Present were: Chairman- Andrew Howe; Vice-Chairman-; Regular Members: Scott Davis, Charles Boucher; Robert Dion; Ellen Mulligan and Alternate Connie Grant.

Absent: Alternate, Mark Corry.

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

Chairman Howe led the Pledge of Allegiance and introduced and welcomed the new Regular Member, Ellen Mulligan and Alternate, Connie Grant.

A. Howe introduced the first case. He announced he is seasonal employee of Gunstock and offered to recuse himself from participating on the application. No one objected. A. Howe will participate on the application

Crown Castle USA, Inc.

Pursuant to RSA 12:K 7, Regional Notification of Personal Wireless Service Facilities, and pursuant to a Special Exception request from Article 4, Permitted Uses, 4.3 Commercial Uses, 4.3.18 Radio & TV Towers and Article 4, Permitted Uses, 4.7.3 (r) Commercial Uses, to allow the removal of two (2) existing telecommunications towers, to construct a 182' foot tower, and to add twenty-four (24) antennas and an equipment shelter, on Tax Map & Lot #254-139.000. The property is located on Mount Rowe at 719 Cherry Valley Road/Mount Rowe in the Resort Commercial Zone. File #Z09-04.

Linda Connell, attorney representing the application and James Donahue, engineer for the application, gave a brief presentation to the Board. She explained the proposal is to replace the existing tower and in order to do that; they need to install a temporary tower for 6 months in order to complete the transition without loss in service. She spoke about the need for a special exception for this proposal. She said it is needed in order to expand the existing equipment facility and add another tower to eventually replace the existing tower. She said there has been a structural analysis completed that verified the existing tower would not be able to handle the additional antennas they would like to install now and in the future. She said the existing antennae would be transferred to the new tower.

She reviewed the requirements for a special exception as outlined in Article 11, Section 11.2 of

the Gilford Zoning Ordinance.

A. Howe asked if there would be two (2) towers standing at one time and L. Connell said yes until the new tower is operational.

S. Davis asked about the maximum antennae height would be over 182'. J. Donahue said the most the tower would be over 182' would be about four (4) feet.

S. Davis requested that the Gilford Fire Department be given the opportunity to access the tower before the tower is activated in order to have a training session for fire and safety rescue practice. J. Donahue said they would be willing to organize that and contact the Fire Department.

He would like a condition of approval include an approval and acknowledgement from the Laconia Airport Authority on the tower assuring that there will be adequate warning lighting and not interfere with the airways for the Laconia Airport.

A. Howe opened up the hearing of public input.

Angelo Furigio, resident of Cherry Valley Rd. asked about the four (4) foot increase in tower height and what the final height will be, including the lighting on the top of the tower. He is concerned about his view. J. Donahue said it would be lit the same as it is now and the height difference would probably be negligible.

A. Howe closed the public hearing.

A. Howe introduced the next case.

Edward and Louise Bastille

Variance request pursuant to Article 5, Dimensional Regulations, Section 5.1.1(b) Lot Size and Buildable Area, of the Gilford Zoning Ordinance, to allow the creation of a lot with less than one (1) acre of buildable land area, on Tax Map & Lot #253-015.000 located at 580 Cherry Valley Road, Unit B and Unit C in the Single Family Residential Zone. File # Z09-05.

Stephan Nix, attorney representing the application, gave a brief presentation to the Board. He explained the location of the property and the proposal to transfer two (2) acres from the parent lot to the lot with the Gunstock Inn on it.

He reviewed the criteria for an area variance as outlined in the application.

A. Howe asked D. Andrade about the two-family residence that exists and it looks like there are two residences on one lot. D. Andrade said it is now a bunkhouse and this application would allow the bunkhouse to be converted into a dwelling unit for the manager of the Gunstock Inn. He spoke about the house with the two-family lot has less than a half-acre of the buildable area and the lot with the Gunstock Inn has less than that. He is concerned about expansion of the Gunstock Inn in the future. S. Nix said they could expand the Inn but they are looking to

expand the offerings, i.e. weddings, etc. He confirmed there is an easement between the two lots and that it would be revised to include the new lot sizes.

For clarity, S. Nix explained the existing lot of record (with the two-family residence) is non-conforming and they are proposing to make it more non-conforming by transferring two (2) acres from that lot to the lot with Gunstock Inn on it.

C. Grant asked about the septic systems and S. Nix said there are three (3) septic systems on site and the bunkhouse has its own system. D, Andrade said there is a NHDES requirement that says if there were a change in use for the existing bunkhouse to be converted into a dwelling unit, they would have to install a new system for that new dwelling unit. S. Nix said there are two (2) functioning septic systems for the existing house and the Inn. He said his clients are aware that if they are to upgrade the bunkhouse they will have to upgrade the bunkhouse.

S. Nix said there is someone living in the bunkhouse but they eat at the Inn and that is one of the reasons they are in front of the ZBA in order to clear up the bunkhouse situation and have it be a legal dwelling unit.

A. Howe opened up the hearing of public input; being none, he closed the public hearing.

A. Howe introduced the next case.

Michael Palmiter

Variance request pursuant to Article 5, Dimensional Regulations, 5.1 Land Standards, 5.1.3 Front Setback Area and 5.1.5 Rear Setback Area, of the Gilford Zoning Ordinance, to allow the construction of a 640 SF, two-story, one-car garage on Tax Map & Lot #254-022.00 located at 61 Area Road in the Limited Residential Zone. File #Z09-06.

Ed Philpot, attorney representing the application, gave a brief presentation to the Board. He explained it is for a one-story garage and explained the location of the property and existing conditions. He said the garage would be located in the footprint of the existing temporary garage.

He reviewed the variance criteria as outlined in the application.

A. Howe said that the plans submitted for an area variance in relation to setback variance, that the plans include the setbacks. He said the Board would like that as a condition of approval, revised plans are submitted. E. Philpot agreed.

Discussion ensued on the location of the existing shed being located on the abutter's property. D. Andrade said it should be relocated.

A. Howe opened up the hearing of public input; being none, he closed the public hearing.

A. Howe requested the shed be relocated onto M. Palmiter's property and M. Palmiter agreed.

E. Mulligan asked about creating an easement to allow the shed to remain on the abutter's lot. E. Philpot said that would be something the property owner's could discuss.

E. Philpot said the shed would be moved and they will submit revised plans that will show the setbacks.

Discussion ensued about the breezeway shown on the plan and M. Palmiter said they are not building a breezeway. E. Philpot said they would remove the breezeway from the revised plans.

The Board entered into the deliberative session.

Board Deliberations

Crown Castle USA, Inc

R. Dion does not see an issue with the proposed tower. A. Howe said it could change the look of the tower.

Motion made by S. Davis, seconded by C. Boucher, to approve the application has having met all the criteria for a special exception as outlined in Section 11.2 a-f and Article 4, Permitted Uses, 4.3 Commercial Uses, 4.3.18 Radio & TV Towers and Article 4, Permitted Uses, 4.7.3 (r) Commercial Uses and as follows:

- 1 *The site is appropriate for the proposed use or structure.*
- 2 *The proposal is not detrimental or injurious to the neighborhood.*
- 3 *There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic.*
- 4 *Adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use or structure.*
- 5 *The proposal is consistent with the spirit of the zoning ordinance and the Master Plan.*

Conditions of approval to include:

- 1 An opportunity for the Airport Manager to review the plans regarding the installation of the hazard lighting.
- 1 The Gilford Fire Department is allowed to perform a training mission before the tower is activated.
- 1 The maximum height not to exceed four (4) feet from the existing 182'.

Discussion on the motion.

Linda Connell said they are happy to get the input and review from the Laconia Airport Manager but she said they have to get approval from the FAA and she is concerned about Laconia Airport

interfering.

S. Davis wants clarification to have the Laconia Airport given the opportunity to provide input in the design and installation of the lighting due to the recent upgrade of the regional lighting. He wants to make sure the new lighting complies with the recent upgrade.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members.

S. Davis-Yes

R. Dion-Yes

E. Mulligan-Yes

C. Boucher-Yes

A. Howe- Abstained. Motion carried with all in favor, the special exception was granted.

Edward and Louise Bastille

C. Grant spoke about the bunkhouse being a dwelling in the past. D. Andrade said it used to be a dwelling unit but when they built the two-family house, they had to take the kitchen out of the bunkhouse in order to comply with the ordinance.

C. Grant spoke about this application seems to be able to allow the applicants the flexibility to utilize their business to their advantage. E. Mulligan agrees with allowing them to enhance their business.

D. Andrade said they meet all the parking requirements and any expansion to the Inn would be detrimental to the environment due to the steep slopes.

Motion made by C. Boucher, seconded by R. Dion, to approve the area variance pursuant to Article 5, Dimensional Regulations, Section 5.1.1(b) Lot Size and Buildable Area, of the Gilford Zoning Ordinance, to allow the creation of a lot with less than one (1) acre of buildable land area, as having met all the criteria as follows:

I *The variance will not be contrary to the public interest.*

I *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.*

With no discussion on the motion, A. Howe called for the vote.

S. Verdile Philibotte polled the members.

S. Davis-Yes

R. Dion-Yes

E. Mulligan-Yes

C. Boucher-Yes

A. Howe- Abstained. Motion carried the variance was granted.

Michael Palmiter

A. Howe spoke about the court system determining a garage as reasonable use of the property and cannot be denied. He would like conditions of approval to include a revised plan with the setbacks shown on the plan and the shed moved onto the Palmiter property.

R. Dion spoke about tabling the application in order to get the revised plan to show the setbacks on the plan. He is uncomfortable with approving the plan without the setbacks shown and the exact distances on the plan. S. Davis agreed.

Motion made by R. Dion seconded by E. Mulligan to table the application until May 26, 2009 in order to have the applicant submit a revised plan showing the setbacks. Motion carried with all in favor.

OTHER BUSINESS

Election of Officers:

Motion made by R. Dion seconded by C. Boucher, to nominate A. Howe as Chairman. Motion carried with all in favor.

Motion made by C. Boucher, seconded by R. Dion, to nominate S. Davis as Vice-Chairman. Motion carried with all in favor.

S. Davis is still concerned with the practice of approving garages. He discussed what constitutes a reasonable use of the property and that they used to deny garages because they did not meet the setbacks, now they have to approve them and he wants clarification from the Town Attorney on how to review the variances.

Walter Mitchell will be attending the May 26, 2009 meeting to assist the Board on how to handle variance applications

MINUTES

Motion made by S. Davis, seconded by C. Boucher, to approve the minutes of March 24, 2009 as presented. Motion carried with E. Mulligan and C. Grant abstaining.

ADJOURNMENT

Motion made by C. Boucher, seconded by R. Dion, to adjourn the April 28, 2009 Zoning Board of Adjustment meeting at 8:50 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Administrative Assistant