

**GILFORD ZONING BOARD OF ADJUSTMENT  
MINUTES  
MAY 26, 2009  
CONFERENCE ROOM A  
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, May 26, 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 Alternates: Connie Grant and Mark Corry.

Absent:

Also present were: John Ayer, Director of Planning and Land Use; David Andrade, Code Enforcement Officer/Building Inspector and Stephanie Verdile Philibotte, Administrative Assistant.

Chairman Howe led the Pledge of Allegiance.

A. Howe introduced the first case. C. Boucher recused himself from participating on the application. E. Mulligan informed the audience of her client whom at one time had interest in buying the Aichinger house. Attorneys for the abutting property owners, the Sutton's and the Aichinger's, did not see a conflict with E. Mulligan sitting on the case.

C. Grant recused herself from participating on the application because of her role and involvement as a Selectman. C. Boucher also recused himself

**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 February 24, 2009.*

Motion made by R. Dion, seconded by S. Davis to take the application off the table. Motion carried with all in favor.

Motion made by S. Davis seconded by, R. Dion to table the application until June 23, 2009 in order for the Board to obtain legal counsel.

Discussion on the motion.

A. Howe explained the Town of Gilford's Attorney has to recuse himself from advising the

Board therefore; they must obtain different legal counsel.

Motion carried with all in favor.

A. Howe introduced the next 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. *Tabled from the March 24, 2009 meeting*

Motion made by C. Boucher, seconded by R. Dion, to take the application off the table. Motion carried with all in favor.

Catherine Broderick, attorney representing the application, gave a brief presentation to the Board. She reminded the Board they granted a variance from the front setback and that they requested more information and a surveyed plan of the property. She reviewed the recent information the Beyrent's submitted per the Board's request.

Michael Clairmont, builder for the Beyrent's, explained how difficult and expensive it would be to accommodate the Board's suggestions to relocate the side addition to the back of the house because they would have to relocate a load bearing wall, relocate a slider door, remove a four year old deck, and the addition would be close to the septic system.

C. Broderick reviewed the criteria of the variance as outlined in the application.

S. Davis said the original request for encroachment into the setbacks does not match the dimensions submitted by the surveyed plan submitted by the applicants.

Discussion ensued about the differences in the dimension relief the applicant is asking.

A. Howe is very concerned the applicant's are asking for almost the entire front setback of twenty-five feet, actually 24.8. He is suggesting the applicant reduce the size of the garage and move it back into the property.

Discussion ensued about whether to continue with the garage application. The applicant decided to withdraw the garage portion with the understanding they will have to re-apply and re-notice the application for any changes made to the proposed garage.

C. Broderick said they will withdraw the garage portion of the application and would like to move forward with the side setback request.

A. Howe opened up the hearing for 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. *Tabled from the April 28, 2009 meeting.*

Motion made by R. Dion seconded by S. Davis to take the application off the table.

Michael Palmiter, representing the application, gave a brief presentation to the Board. He explained the revised plans reflect what the Board asked.

A. Howe wants to have the shed relocated onto M. Palmiter's property. S. Davis wants the setbacks shown on the revised plan. A. Howe wants the exact distances the garage will be located within the setback listed on the revised plan

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

A. Howe introduced the next case. E. Mulligan recused herself. A. Howe appointed C. Grant to sit on the application.

**Mark and Maureen Mello**

Equitable Waiver request pursuant to Article 5, Section 5.1.3 and Table 2 of the Gilford Zoning Ordinance on Tax Map & Lot #240-115.000 located at 10 Northview Rd in the Limited Residential Zone. File #Z09-07.

Mark and Maureen Mello, property owners, gave a brief presentation to the Board. M. Mello explained there was a mistake made in the location of the house during construction. It was not discovered until the as-built for the septic system was created.

S. Davis asked how this happened and why it wasn't identified during the foundation inspection. D. Andrade explained the back fill material was in the way and they could not determine the exact location of the pin and that it was a good faith effort on the builder's part to relocate the house, they just made a mistake.

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

The Board entered into the deliberative session.

## Board Deliberations

### John and Alice Beyrent

A. Howe explained they are deciding the side setback portion of the application

The Board discussed the application.

Motion made by S. Davis, seconded by C. Boucher, to grant the variance request based on the following:

- 1 The variance request is for the dimensions of 17.6 feet and 23.8 as shown on the plan submitted by Wheeler surveying,
- 1 Based on the statement by the builder that it was not feasible to expand the deck side of the house financially and structurally

And as having met all the criteria for a variance 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.*

Discussion on the motion.

A. Howe said the size of the existing room is very small and to expand it, is a reasonable use. He said the contractor explained any other alternatives to the proposal would not be physically or financially feasible. He said the use of the property is not changing and the spirit of the ordinance and public interest will not be negatively affected.

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**

The Board discussed the application.

Motion made by R. Dion, seconded by E. Mulligan, to approve the application as having met all the criteria for a variance 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 lot is very small.*

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. Because the lot is so small. 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 because a garage is a reasonable use for the property.*
- V. *The value of surrounding properties will not be diminished.*

And to include the following conditions:

- 1 Front setback distance will be 21.1 feet and the side 5.2 feet be shown on the plan.
- 1 The shed shall be located on entirely on the applicant's property, outside the setbacks.
- 1 The correct setback lines for the zone be shown on the revised plan.

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. Variance was granted.

**Mark and Maureen Mello** E. Mulligan recused herself from deliberations and C. Grant participated on the application.

C. Boucher said the applicant showed the error was not intentional and it is only a ten (10) foot error

Motion made by C. Boucher, seconded by S. Davis to approve the application and that the violation was not noticed until the structure had been substantially complete. Get from application. S. Davis spoke about the application meeting all the requirements RSA 674:33-a.

C. Grant-Yes

R. Dion-Yes

C. Boucher-Yes

S. Davis-Yes

A. Howe abstained. Motion carried with all in favor.

### **OTHER BUSINESS**

### **MINUTES**

Motion made by S. Davis, seconded by C. Boucher, to approve the minutes of April 28, 2009 as presented. Motion carried with E. Mulligan and C. Grant abstaining.

### **ADJOURNMENT**

Motion made by E. Mulligan, seconded by R. Dion, to adjourn the May 26, 2009 Zoning Board of Adjustment meeting at 8:30 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte  
Administrative Assistant