

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
JULY 1, 2009
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Wednesday, July 1, 2009 at 7:00 p.m. in Conference Room A.

Present were: Chairman- Andrew Howe, Vice-Chairman- Scott Davis, Regular Member: Robert Dion and Alternate: Mark Corry.

Absent: Regular Members: Ellen Mulligan, Charles Boucher and Alternate: Connie Grant. C. Boucher and C. Grant have recused themselves from participating in the **Barbara Aichinger, Trustee of Barbara P. Aichinger Revocable Trust** application.

Also present were: James Sessler, Attorney representing the ZBA; David Andrade, Code Enforcement Officer/Building Inspector and Stephanie Verdile Philibotte, Administrative Assistant.

Chairman Howe led the Pledge of Allegiance. A. Howe appointed M. Corry to replace absent regular member C. Boucher. He explained since they have a quorum of four members he offered the applicant the option to move forward with four members or have the application tabled. Attorney Patrick Wood, for the applicant, stated for the record they would move forward with a four member board.

A Howe asked P. Wood to explain why the Board should hear the case.

P. Wood said the issue in front of the ZBA tonight has not been heard by the Superior Court. He discussed the ruling that the Town of Gilford had the right to enter into the agreement with Barbara Aichinger stating there were two lots. He said they were not prepared to present the merger information they have now to the Superior Court at that time. He said they reserve the right to present further evidence in the future and they never got the opportunity to present to the Court any information about previous mergers. P. Wood said they asked to have the case re-opened to present the merger information but that was denied by the Superior Court. He is asking the ZBA to hear the case so they can present merger information they have now and have it become part of the record.

A. Howe said they have no authority to overturn the Superior Court's decision. P. Wood said the Court said they have to go back to the Town of Gilford to get the proper approvals and that is what they are asking for tonight.

S. Davis asked if the appeal to the Supreme Court is based on one issue because the Superior Court denied their request to re-open the case. P. Wood said yes that is part of it and said he believes the Supreme Court would remand it to the trial court, but the trial court would probably

remand it back to the ZBA. P. Wood said this is the natural step for them in order to have the additional merger information submitted into evidence. He said the court said without the approvals from the Town of Gilford, there is only one lot. They are in the process of following the Court's decision and trying to obtain the approval from the Town of Gilford through this application in front of the Board now.

P. Wood said the ZBA is the correct Board to make the decision. He discussed the agreement they entered into with the Town that states there are 2 lots but that was ruled invalid by the Superior Court and they are appealing that to the Supreme Court.

A. Howe said the ZBA should not be in the position to overrule the Superior Court's decision because this issue has been decided by them. He said they are subject to honor the Superior Court's decision.

P. Wood discussed the material they want to present tonight as it deals with the Administrative Decision made by J. Ayer. P. Wood said the ZBA's decision is assumed to be correct unless it can be shown they have made a mistake in law or have been not presented with all the facts.

Jim Sessler explained the deferral means the court refers to the ZBA's findings of fact and they will determine there was enough evidence for the ZBA to make the decision they made. He said this decision is based on a decision of law and that is not for the ZBA to decide.

Tom Maloney, attorney for the Sutton's the abutter's, explained they filed a declaratory action to prevent the building of the second house and the Superior Court ruled that the Aichinger owns one lot that has been approved. He said Judge Smukler ruled that Ms. Aichinger would have to apply for a subdivision in order to have 2 lots.

J. Ayer, Director of Planning, explained what was not enforceable by the Selectmen's agreement and that the Court said the Board of Selectmen have no authority to take a position, and then he would most likely not have the authority to enter into any agreement. He referred to a letter he submitted to the Board explaining get #2 from the letter.

B. Aichinger, applicant, asked the Board to hear this case on administrative gloss because there are other cases in town about merging lots that the Town of Gilford has not enforced.

A. Howe spoke about the proper process for the applicant to follow is to go before the Planning Board for a subdivision. B. Aichinger she said she is being treated in a vastly different manner by the town and no other applicant has had to apply for a subdivision. P. Wood said they cannot go to the Planning Board because they have changed the process and there is no longer a denial of jurisdiction process.

Discussion ensued about the denial of jurisdiction process that includes going to the Planning Director instead of the Zoning Board.

J. Sessler said the court invited the applicant to follow the proper procedure, not specifically go to the ZBA.

A. Howe introduced the first case.

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 May 26, 2009.*

Motion made S. Davis, seconded by M. Corry, to adjourn to meet in private with attorney J. Sessler.

Motion made by S. Davis, seconded by R. Dion, to deny scheduling a hearing in the matter of the appeal of Barbara Aichinger, Trustee Barbara P. Aichinger Revocable Trust for the following reasons:

1 The Superior Court issued a ruling that addressed the merger provisions of the Town of Gilford.

The issue of the merger of the lots has been fully litigated between these very same parties in a court having jurisdiction, Mrs. Aichinger should not be allowed to challenge those rulings now in a second proceeding before the Zoning Board of Adjustment.

The Superior Court ruling is under appeal to the New Hampshire Supreme court and the Zoning Board of Adjustment will abide by any decision made by the Supreme Court.

S. Verdile Philibotte polled the members.

M. Corry-Yes
R. Dion- Yes
S. Davis- Yes
A. Howe-Yes

Motion carried with all in favor. A hearing regarding B. Aichinger, Trustee Barbara P. Aichinger Revocable Trust, has be denied.

OTHER BUSINESS

MINUTES

Motion made by M. Corry, seconded by S. Davis, to table approve the minutes of May 26, 2009. Motion carried with all in favor.

Motion made by S. Davis, seconded by R. Dion, to approve the minutes of June 28, 2009.

Motion carried with all in favor.

ADJOURNMENT

Motion made by S. Davis, seconded by R. Dion, to adjourn the July 1, 2009 Zoning Board of Adjustment meeting at 7:55 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Administrative Assistant