

**GILFORD ZONING BOARD OF ADJUSTMENT  
MINUTES  
OCTOBER 27, 2009  
CONFERENCE ROOM A  
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, October 27, 2009 at 7:00 p.m. in Conference Room A.

Present were: Chairman- Andrew Howe, Vice Chairman-Scott Davis, and Regular Member(s): Robert Dion, Charles Boucher, Ellen Mulligan, and Alternates Connie Grant and Mark Corry.

Absent: Regular Member(s).

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

Chairman Howe led the Pledge of Allegiance. He read a request from the **Lorraine Lavalliere, Trust of the Revocable Lorraine Lavalliere Revocable Trust of 1996**, requesting the application for a variance be withdrawn without prejudice. The Board accepted the withdraw request.

A. Howe said there was an error in the public noticing and two applications will not be heard. He explained the **Moyers & Hughes Investment Properties** application and the **ATT Mobility** application will be tabled until November 30, 2009 at 7:00 pm.

**3. Moyers & Hughes Investment Properties**

Special Exception request pursuant to Article 15, Section 15.4.2 (a) of the Gilford Zoning Ordinance, to allow one (1) wetland crossings for a driveway on Tax Map & Lot #207-002.000, located at 140 Young Rd., in the Limited Residential Zone. Case #Z09-13.

**4. ATT Mobility**

Special Exception request pursuant to Article 4, Section 4.3.18 and 4.7.3 (r) of the Gilford Zoning Ordinance to allow the co-location of wireless antennae on an existing Telecommunications Tower on Tax Map & Lot #213-094.000, located at 9 Old Lake Shore Rd. in the Commercial Zone. Case #Z09-14.

Motion made by R. Dion, seconded by E. Mulligan, to table the **Moyers & Hughes Investment Properties** application and the **ATT Mobility** application until November 30, 2009 at 7:00 pm. Motion carried with all in favor.

A. Howe introduced the first application.

**1. New Earth Real Estate, LLC**

Special Exception request pursuant to Article 4, Permitted Uses, Section 4.2,

Residential Uses; Section 4.2.8, Multi-Family Development; Section 4.7.2 (e), Residential Uses, Multi-Family Development and Article 11, Section 11.4.6, Multi-Family Development to allow the development of a five (5) unit Multi-Family Development on Tax Map & Lot#267-258 located at 2645 Lake Shore Rd. in the Resort Commercial Zone. Case #Z09-11.

Doug Hill, attorney representing the application, gave a brief presentation to the Board. He explained the location of the house and they are proposing a five (5) unit, Multi-family dwelling in the existing building on site. The units will be divided up as two (2) one-bedroom apartments, two (2) two-bedroom apartments, and one (1) three-bedroom apartments. He reviewed the standards for Affordable Housing as set forth by RSA 672:1 III e defined as the establishment of housing that is affordable. He mentioned Gilford has received a grant to update the ordinance to comply with the Workforce Housing regulations, he emphasized this is not subsidized housing.

He reviewed the standards in the zoning ordinance Section 11.4.6, Multi-Family Development and as outlined in the application. He explained the application will meet the density requirements of the ordinance as they are proposing five (5) dwelling units even though are allowed six (6). He said they are not changing anything to the building or footprint for these units and they are not changing any terrain or other features on site. He explained the existing out buildings will not be removed from the site because they will probably be used for storage during construction and they could be restored in the future. He explained the new approval for the septic system.

Dean Clark, septic designer and surveyor, explained the proposed system will not impact any wetlands with the installation of the new tank. He said the existing leach field was tested and it appeared to be in good condition. He said the system is constructed of stone and pipe. He explained he took pictures of the system and components of the system and sent them the NHDES Subsurface Division. D. Hill noted that the proposed use is not as intense as the previous use as a restaurant.

D. Hill then reviewed Section 11.2 of the zoning ordinance regarding Special Exceptions and as outlined in the application.

A. Howe asked about the water supply for the site and D. Hill said there is a well on-site. A. Howe asked about fire suppression and if the building has to be sprinkled. D. Andrade said they will have to comply with all fire safety codes during the permitting process. D. Hill said they will comply with what the fire department requires in order to obtain the permits.

Discussion ensued about the water supply and the existing well on site. D. Hill said is not defined as a community water supply so there are not additional standards placed upon the water quality. He said they will be sending samples to the state for quality tests.

S. Davis wants to know how the Workforce Housing costs will be enforced when people attempt to rent the units. He wants to know how the public will know they are actually being charged correctly for rent. D. Hill said there is no definition in the RSA and there is no way to determine that cost of Workforce Housing. E. Mulligan said it is based on the current real estate

market. D. Hill said there is no mechanism to verify the rents being charged are in fact the valid workforce housing rates.

S. Davis is concerned that there should be a designation of a recreational area for the residents in an effort to provide something that meets the ordinance requirements. D. Hill thought the ground details of this site were Planning Board issues and suggested as a condition of approval that a common recreation area be shown on the site plan that will be reviewed by the Planning Board.

A. Howe opened up the hearing for public input.

Carolyn Rand of 2652 Lakeshore Rd., abutter, is concerned about the traffic coming in and out of the site. She has seen a lot of accidents there and she would like to have them access the site off Cumberland Rd. She wants to know if it is for low-income housing or workforce housing. She is concerned about the septic system on site and she said she is hooked up to the public sewer. She has said that her renters have gotten into several car accidents entering and exiting her property and she is directly across from Cumberland Rd.

D. Clark said he met with NHDOT on site and they had no objections to the access point. A. Howe referred to the driveway that has access to Cumberland Rd. D. Clark said the two entrances along Route 11 are about 100' feet apart and said the site distance is better from the driveway toward the Alton side than from Cumberland Rd.

Discussion ensued about the driveway issue being reviewed at the Planning Board level. D. Hill said the building will have to go through extensive exterior construction so it will go through a phase of exterior changes but they will not be permanent. He said the housing is not low-income, subsidized housing it is workforce housing that is considered middle income housing.

D. Clark spoke about the sewer issue. He said he met with the Town of Gilford Sewer Department and said the pump site on the abutter's lot is a private pump line as well as the Mineral Springs and they were allowed to be connected to the Mineral Springs Association line and the applicant is not allowed to tie into a private sewer line.

With no other public input, A. Howe closed the public hearing.

A. Howe introduced the next application

**New Earth Real Estate, LLC**

Applicant requests Variances from Article 11, Section 11.4.6 (a), requiring a Multi-Family Development to have a minimum area of five (5) acres; Section 11.4.6 (b) requiring Multi-Family Developments to be in buildings having no more than two (2) stories; Section 11.4.6 (c) (9), requiring Multi-Family Development to have underground utilities and be connected to a public sewer system; Section 11.4.6 (c) (11), requiring a Multi-Family Developments to have a fifty (50) foot wide "landscaped green space buffer strip" at their outer boundary on Tax Map & Lot #267-258.000, located at 2645 Lakeshore Rd. in the Resort

Commercial Zone.  
Case #Z09-12.

Doug Hill, attorney representing the application, gave a brief presentation to the Board. He reviewed the variance requests as outlined in the application.

A. Howe spoke about the fact the ordinance is confusing regarding section 11.4.6. D. Hill agrees and that because of the physical conditions of the property and building he said they cannot comply completely with the ordinance.

A. Howe urged the applicants to add the required 50 foot buffer by moving the parking lot back. D. Hill agreed to have a condition of approval that would require a buffer.

E. Mulligan said it seems that moving the parking back into the lot may reduce the amount for recreational area and that putting more of a vegetated buffer along the front may reduce the sight distance from the site.

A. Howe would like to see the required 50 foot buffer utilized on site. D. Hill said they received a call requesting that some saplings be removed at the driveway entrance to the site. R. Dion suggested the buildings along Cumberland Rd. be removed and replaced with vegetative buffer.

Discussion ensued on the existence of an apartment located on the third floor. D. Andrade said it was an in-law apartment that was not rented to the public.

S. Davis asked about the four variance requests on one application and how will the Board vote on this application. D. Hill said other communities act on them separately. The Board agreed.

S. Davis is concerned about the fire department having access the site with the overhead power lines in place. He said the applicant is asking for many variances and they are not willing to give back on any other issues with the site. He suggested they remove the outbuildings so they can create more recreation area, move the parking back and create a buffer and even if the buffer is not the required 50 feet, any amount of buffer would be better than not having it all.

A. Howe opened up the hearing for public input. With no public input, A. Howe closed the public hearing. He reopened the public hearing for D. Hill.

D. Hill spoke about the buffer along Cumberland Rd. and said the applicant would be willing to remove part of the building along Cumberland Rd. that is located in the setback and turn it into buffer space that will run along Cumberland to Route 11. D. Hill said all emergency vehicles can access the site and the overhead wires would not interfere with safety issues on site.

A. Howe reminded the audience they will not continue the meeting past 10:00 pm.

### **DELIBERATIONS**

#### **New Earth Real Estate, LLC-Special Exception**

S. Davis wants to see a designation on the site plan for a recreational area for the residents on site and he does not think the applicant has made an effort to meet this requirement. R. Dion said they could remove the rest of the non-conforming building.

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, Section 4.2, Residential Uses; Section 4.2.8, Multi-Family Development; Section 4.7.2 (e), Residential Uses, Multi-Family Development and Article 11, Section 11.4.6, Multi-Family Development to allow the development of a five (5) unit Multi-Family Development on Tax Map & Lot#267-258 located at 2645 Lake Shore Rd. Permitted Uses, 4.3 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.*

Discussion on the motion.

Conditions of approval to include:

- 1 Have the Planning Board at their discretion designate a location and size they see most appropriate to have a common recreational area for the residents.

S. Verdile Philibotte polled the members.

E. Mulligan-Yes

R. Dion-Yes

C. Boucher-Yes

S. Davis-Yes

A. Howe-abstained.

Motion carried with all in favor. The application for a special exception **was granted**.

### **New Earth Real Estate, LLC-Variance**

Motion made by, seconded by, to approve the area variances pursuant to Article 11, Section 11.4.6 (a), requiring a Multi-Family Development to have a minimum area of five (5) acres;

Section 11.4.6 (b) requiring Multi-Family Developments to be in buildings having no more than two (2) stories; Section 11.4.6 (c) (9), requiring Multi-Family Development to have underground utilities and be connected to a public sewer system; Section 11.4.6 (c) (11), requiring a Multi-Family Developments to have a fifty (50) foot wide “landscaped green space buffer strip” at their outer boundary as having met all the criteria as follows:

The Board discussed the variance requests and decided to review and vote on them individually.

The first variance request is from Section 11.4.6 (a) requiring a Multi-Family Development to have a minimum area of five (5) acres.

A. Howe asked D. Andrade if the ordinance has been interpreted to mean you cannot have a multi-family with less than five acres or no more than 25 acres. D. Andrade said yes.

Motion made by S. Dion, seconded by R. Dion, to approve the variance request from Section 11.4.6 (a) requiring a Multi-Family Development to have a minimum area of five (5) acres. as having met all the variance 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.*

S. Verdile-Philibotte polled the members.

- E. Mulligan-Yes
- R. Dion-Yes
- C. Boucher-Yes
- S. Davis-Yes

A. Howe- abstained. The motion carried with all in favor.

The first variance request from Section 11.4.6 (a) requiring a Multi-Family Development to have a minimum area of five (5) acres **was granted.**

The second variance request is from Section 11.4.6 (b) requiring Multi-Family Developments to be in buildings having no more than two (2) stories.

Discussion ensued about Section 11.4.6 (b) requiring Multi-Family Developments to be in buildings having no more than two (2) stories.

Motion made by S. Davis, to approve variance request from Section 11.4.6 (b) requiring Multi-Family Developments to be in buildings having no more than two (2) stories based on misinterpretation of the existing regulations requiring that multi-family developments be limited to no more than 2 stories.

Discussion on the motion.

A. Howe said he thinks a variance is not required and that the Board should make an interpretation that nullifies the need for a variance.

Motion made by S. Davis, seconded by E. Mulligan, to clarify and after further review of Section 11.4.6 b. Permitted Uses, that Multi-Family developments are not limited to 2 story structures only. Although the ordinance addresses specific configurations it does not specifically limit building to 2 stories or less therefore; negating the need for action on the variance request submitted.

Discussion on the motion.

A. Howe asked the interpretation of the intent of the ordinance be clarified in the motion.

Motion made by S. Davis, seconded by E. Mulligan, that after further review of Section 11.4.6 b. Permitted Uses, the Zoning Board of Adjustment interpreted and clarified that Multi-Family developments are not limited to 2 story structures only. Although the ordinance addresses specific configurations it does not specifically limit buildings to 2 stories or less therefore; negating the need for action on the variance request submitted by the applicant.

A. Howe requested a voice vote from the members.

E. Mulligan-Yes

R. Dion-Yes

C. Boucher-Yes

S. Davis-Yes

A. Howe -Yes

Motion carried with all in favor. The Zoning Board has made an interpretation to the zoning ordinance that negates the need for a variance from Section 11.4.6 b. Permitted Uses, that Multi Family developments are not limited to 2 story structures only.

The third variance request is from Section 11.4.6 (c) (9), requiring Multi-Family Development to

have underground utilities and be connected to a public sewer system.

The Board discussed the request. To allow the existing septic system on site be utilized instead of connected to the public system.

Motion made by S. Davis, seconded by C. Boucher, to approve the variance request from Section 11.4.6 (c) (9), requiring Multi-Family Development to have underground utilities. The Board will approve the request to allow the existing septic system which has been approved by the NHDES with modifications, specifically an additional septic tank, in lieu of connecting to the public sewer system as it would be an unnecessary hardship to the applicant to connect to the sewer system in the area and the applicant has met all the variance 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.*

S. Verdile Philibotte polled the members to accept the variance for the septic system.

E. Mulligan-Yes  
R. Dion-Yes  
C. Boucher-Yes  
S. Davis-Yes

A. Howe abstained.

The motion carried with all in favor for the first part of the variance request from Section 11.4.6 (c) (9), requiring Multi-Family Development to have underground utilities, to allow the septic system **has been granted.**

The Board discussed the second part of the variance request from Section 11.4.6 (c) (9), requiring Multi-Family Development to have underground utilities.

Motion made by C. Boucher, seconded by R. Dion, to approve the second part of variance



request from Section 11.4.6 (c) (9), requiring Multi-Family Development to have underground utilities as there is an unnecessary hardship to require existing utilities to be installed underground and as having met all the variance 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.*

Discussion on the motion.

S. Davis does not see a hardship with locating the utilities underground during construction and it avoids having to go under Route 11 and it is an alternative that is not an unnecessary hardship. C. Boucher said financial hardship can be considered. S. Davis said he does not believe installing the electric underground is a financial hardship.

E. Mulligan-Yes  
R. Dion-Yes  
C. Boucher-Yes  
S. Davis-No

A. Howe abstained. The motion carried with all in favor.

The variance from Section 11.4.6 (c) (9), requiring Multi-Family Development to have underground utilities **has been granted**

The fourth variance request is from Section 11.4.6 (c) (11), requiring a Multi-Family Developments to have a fifty (50) foot wide “landscaped green space buffer strip” at their outer boundary.

Motion made by R. Dion, seconded by E. Mulligan, to approve the variance request from Section 11.4.6 (c) (11), requiring a Multi-Family Developments to have a fifty (50) foot wide “landscaped green space buffer strip” at their outer boundary as having met all the criteria 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.*

With the following conditions:

- 1) The parking spaces shown as #1, #2, #13, #14 are moved away from Route 11 and replaced with a 50 vegetative buffer.
- 2) Existing portion of the outbuilding in the southern corner will be removed and replaced with the vegetative buffer to run along Cumberland Rd. to Route 11.
- 3) The existing driveways shall remain in their present location.
- 4) Parking areas that are located in the setback along Cumberland Rd. shall be removed and replaced with a 50 foot vegetative buffer.

Discussion on the motion.

A. Howe asked if a vegetative buffer e included in condition #1. R. Dion and E. Mulligan agreed.

- E. Mulligan-Yes
- R. Dion-Yes
- C. Boucher-Yes
- S. Davis-Yes

A. Howe abstained. The motion carried with all in favor

The fourth variance request is from Section 11.4.6 (c) (11), requiring a Multi-Family Developments to have a fifty (50) foot wide “landscaped green space buffer strip” at their outer boundary **has been granted** with conditions.

## **OTHER BUSINESS**

**MINUTES**

Motion made by R. Dion, seconded by E. Mulligan, to approve the minutes of September 29, 2009 as presented. Motion carried with all in favor.

**ADJOURNMENT**

Motion made by R. Dion, seconded E. Mulligan, to adjourn the October 27, 2009 Zoning Board of Adjustment meeting at 10:25 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte  
Technical Assistant