

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
DECEMBER 29, 2009
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, December 29, 2009 at 7:00 p.m. in Conference Room A.

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

Absent: Regular Member(s) Chairman- Andrew Howe and Robert Dion.

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

Vice Chairman Davis led the Pledge of Allegiance. He appointed C. Grant to replace absent member R. Dion. He appointed M. Corry to replace A. Howe. He explained the Board does not continue business past 10:00 p.m.

eHe announced

S. Davis introduced the first application.

Philip Roger Burt

Equitable Waiver request pursuant to Article 5, Section 5.1.3 and Table 2 of the Gilford Zoning Ordinance on Tax Map & Lot #213-016.000 located at 12 Liscomb Circle in the Commercial Zone. File #Z09-15. *Tabled from November 30, 2009.*

Motion made by E. Mulligan, seconded by M. Corry, to take the application off the table. Motion carried with all in favor.

Philip Roger Burt, representing the application, was present.

S. Davis reviewed the information and allowed D. Andrade to give a brief presentation to the Board.

D. Andrade explained in August 2009, Mario Triano applied for a permit to construct a garage with living space. He said the permit was issued with the notation of the front setback of being at 35' and he did not notice on the application that it said 35' from the "COR"(center of the road). He notified Mr. Triano and notified him a revised plan needed to be submitted to comply with the setbacks. He went to the site in October and identified the structure being in the setback and that the garage doors were not facing in the direction as shown on the plans. He said he explained to Mr. Triano that he may have an issue with meeting the parking setback requirement of 15'. He said he notified Mr. Triano that the garage needed to be relocated. Mr.

Triano asked if he could apply for a variance and D. Andrade said he may not be granted a variance because he could have met the setbacks and he advised Mr. Triano to get a surveyor. He said the surveyor advised Mr. Triano to apply for an equitable waiver.

M. Corry asked if the house meets the 35' setback and D. Andrade said no it is pre-existing, non-conforming like the other houses in the neighborhood.

S. Davis said the plans received and dated November 9, 2009 at the last meeting showed that the garage is 26' x 28'.

S. Davis asked about the wall facing Liscomb Circle is a frost wall and P. Burt said no it is a full wall. S. Davis suggested a way to allow for the garage wall to be moved and relocate a door in order to have the garage meet the setback.

P. Burt reviewed other equitable waiver applications where the cost of removing the wall outweighs the benefit. S. Davis said when the Board is presented with an equitable waiver it is from the house being substantially complete and even totally complete, and whether having one wall of the foundation can be considered substantially complete.

P. Burt said other equitable waivers granted were for garages substantially complete and he believes this situation counts as being substantially complete.

M. Corry asked if they have a cost estimate to remove the wall and P. Burt said no and he does not have any money to move it.

D. Andrade asked P. Burt why the building department wasn't contacted when they decided to change the plans. P. Burt said they thought the changes complied. D. Andrade said he made Mr. Triano sign the amended plan that stated what the setbacks should be and that he explained the setbacks to Mr. Triano.

S. Davis opened up the hearing for public input; being none, he closed the public hearing.

S. Davis introduced the next application.

Gilford Young Road, LLC

Special Exception request pursuant to Article 15, Section 15.4.2 (a) of the Gilford Zoning Ordinance, to allow access for a proposed ten (10)-lot subdivision on Tax Map & Lot #231-001.000 located at 146 Young Rd. in the Limited Residential Zone. File #Z09-16.

Bryan Bailey, agent representing the application, gave a brief presentation to the Board. He reviewed the location of the property at the end of Young Rd. and runs along the town line between Gilford and Belmont. He said there are two parcels of land associated with this proposal. The front parcel of land is owned by Tammy Dunn with an existing house on it. He explained the back property, which has the special exception wetland crossing, is a 200 acre tract of land that runs all the way to Liberty Hill Rd. He explained a lot of the property consists of steep slopes and wetlands and is not buildable. He explained the Wood property, that abuts the

Dunn property, has a large wetland on it and that the proposed road and subdivision is designed to avoid many of the wetlands and steep slopes on site. He showed the proposed house sites for the subdivision explaining they are proposed to be in the front of the lots and within the adequate buildable area. He said the proposed road meets the town standards for length of road at 1000 ft. He said the wetland impact is less than 3000 sq. ft. but he has not submitted a dredge and fill application to the NHDES Wetlands Bureau because he wanted to secure town approval first. He presented another plan showing the location of the road and house locations and plans that included the signatures and stamps of wetland scientists.

B. Bailey reviewed the standards for a special exception as outlined in the application.

C. Grant asked about the amount of the wetlands on site and she asked about Lot #9. B. Bailey explained you cannot use wetlands or steep slopes to be included in the buildable area calculations and that all the lots have the one acre contiguous buildable area.

D. Andrade explained according to Section 15.2 of the ordinance, if the wetland area being impacted is less than one acre the applicants do not have to apply for a special exception, so he wants to be sure of the size of the wetland being impacted is an acre or more. B. Bailey is not sure of the total size of the wetland being impacted.

Discussion ensued about the wildlife that will be impacted and B. Bailey said the area is more of a wooded wetland with not a lot of standing water so there is no amphibious wildlife that will be impacted.

S. Davis opened up the hearing for public input. With no public input, S. Davis closed the public hearing.

Bob Powell, Belmont resident, said the land was strip logged and that the Town of Belmont has had a lot of problems with run off in the area and on Hoadley Rd. ever since it was logged and his property has been negatively impacted due to the increased run off from the site. He asked where the Belmont land is located. B. Bailey explained the location in relation to the roads and properties in Belmont. He said Liberty Hill Rd and Hoadley Rd and Durrell Mtn. Rd. is from different watersheds than this property. B. Powell asked if there is anything the Town of Gilford would do for increased runoff or require the builder to install retention pond. S. Davis explained this application is only for the wetland crossing at this time and they will not address any other issues relating to the subdivision and that is an issue for the Planning Board to review when the application is presented to the Planning Board. S. Davis encouraged B. Powell to attend the Planning Board meeting. B. Bailey explained that this proposal will also be heard in Belmont and they will be noticed for the NHDES wetland permit as well

Steve Oliver, 48 Swallow Rd. Belmont- asked about the staging area that was used for the previous logging operation. B. Bailey said that staging area is located on the Dunn property and in front of proposed Lot #7 and the cistern. He said the special exception is for the wetland impact on the Wood property. He explained there will be on site water retention systems in the subdivision plans.

S. Oliver said Swallow Rd. in Belmont is now classified as a Class VI road due to the

degradation to the road from the run off and from 4-wheel drive trucks.

Discussion ensued about the drainage studies that will be reviewed by the NHDES and the Planning Boards in Gilford and Belmont.

With no other public input, S. Davis closed the public hearing.

DELIBERATIONS

Philip Roger Burt

Equitable Waiver request pursuant to Article 5, Section 5.1.3 and Table 2 of the Gilford Zoning Ordinance on Tax Map & Lot #213-016.000 located at 12 Liscomb Circle in the Commercial Zone. File #Z09-15. *Tabled from November 30, 2009.*

Philip Roger Burt, the applicant, wanted the public hearing for his application to be reopened. The Board explained the Pub hearing was closed but offered the applicant to have the application tabled in order to open the public hearing again and P. Burt declined to have the application tabled.

The Board discussed what the cost would be to remove the wall. D. Andrade explained the applicant could cut half the wall and then back fill over it meaning the entire wall would not have to be removed.

D. Andrade explained he notified the applicant before construction began that the plans have to meet the setback of 35' from the property line not from the center of the road. Then he said the plans were amended to show the garage would meet the setback.

S. Davis asked what D. Andrade would attribute the problem to in the location of the setback was. D. Andrade said it could be confusing as to where the existing culvert is and that is where he measured from and it is only about a five foot difference.

The Board discussed the “substantially complete” portion of the equitable waiver requirements.

M. Corry asked when he moved it the second time he moved it from what he thought was his property line which was the culvert. D. Andrade said yes. M. Corry said he misinterpreted the location of the property line. D. Andrade agreed.

S. Davis spoke about the well located on the site was the limiting factor relating to the setbacks and that that was reason to relocate the garage and that relocating the well would be very expensive.

C. Grant said she said believes it is a legitimate mistake. E. Mulligan said she believes a foundation is a substantial investment. S. Davis said the statute reads that the work is substantially completed not substantial financial completion.

Motion made by C. Grant, seconded by E. Mulligan, to approve the application has having met the criteria for an Equitable Waiver, in this particular application, as outlined in RSA 674:33-a as follows:

- 1 The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official until after the structure was substantially completed.
- 2 The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent.

That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of such property.

That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

An equitable waiver granted under this section shall not be construed as a non-conforming use, shall not be exempt future use, construction, reconstruction or additions on the property from full compliance with the ordinance.

C. Grant also discussed the person who is building the structure will be living in the building and that there has been substantial financial investment already made and that constitutes substantially complete. There is no public benefit to be gained by moving the wall.

Discussion on the motion.

C. Grant said they are in a unique situation that a family member will be living there and that she considers the foundation in this situation to be substantially complete.

S. Verdile Philibotte polled the members.

C. Grant-Yes

M. Corry-Yes

C. Boucher-Yes

E. Mulligan-Yes

S. Davis-abstained.

Motion carried with all in favor. The Equitable Waiver **has been granted.**

Gilford Young Road, LLC

E. Mulligan wanted to know why they are even hearing the application since the wetland impact area cannot be determined to be less than one acre. B. Bailey said he was told to appear in front

of the ZBA. S. Davis agrees with E. Mulligan statement as well as the rest of the Board.

Motion made by C. Boucher, seconded by M. Corry, to approve the application has having met all the criteria for a special exception as outlined in Section 11.2 a-f and Article 15, Section 15.4.2 (a), as follows:

- 1 *The site is appropriate for the proposed use or structure. The wetland crossing is very small*
- 2 *The proposal is not detrimental or injurious to the neighborhood. There is an existing easement in place for the road and the road will be built to town standards.*
- 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. The project will comply with the latest state and town regulations*
- 5 *The proposal is consistent with the spirit of the zoning ordinance and the Master Plan.*
- 6 A letter of denial was issued by the Town of Gilford on November 10, 2009.

This approval is contingent upon NHDES approval for the wetland crossing.

S. Verdile Philibotte polled the members.

C. Grant-Yes
M. Corry-Yes
E. Mulligan-Y
C. Boucher-Yes

S. Davis-abstained. Motion carried with all in favor.

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

OTHER BUSINESS

MINUTES

Motion made by C. Boucher, seconded by E. Mulligan, to approve the minutes of November 30, 2009 as presented. Motion carried with all in favor.

ADJOURNMENT

Motion made by C. Grant, seconded C. Boucher, to adjourn the December 29, 2009 Zoning

Board of Adjustment meeting at 9:00 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Technical Assistant