

**GILFORD ZONING BOARD OF ADJUSTMENT  
MINUTES  
APRIL 27, 2010  
CONFERENCE ROOM A  
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, April 27, 2010 at 7:00 p.m. in Conference Room A.

Present were: Chairman- Andrew Howe; Vice Chairman-Scott Davis and Regular Member(s): Robert Dion, Ellen Mulligan.

Absent Member(s) Mark Corry and Alternate Connie Grant.

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

Chairman Howe led the Pledge of Allegiance. He announced there are only four members and explained a majority of three votes constitutes a decision. He provided the applicants the choice to either proceed with four members or table until there is a full Board.

J. Parandes, representing Glenn Cooper, said they would move forward with the members present.  
eHe announced

A. Howe introduced the first application.

**Glenn Cooper**

Variance request pursuant to Article 5, Section 5.1.4. of the Gilford Zoning Ordinance, to construct a deck within the twenty-five (25) foot setback located on Tax Map & Lot #267-151.000 located at 46 Terrace Hill Road in the Single Family Residential Zone. File #Z10-02. *Tabled from the March 23, 2010 meeting.*

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

The Board discussed opening the public hearing in order for the applicant's agent to present additional information to the Board and copies of the surveyed plan the property owner completed.

A. Howe opened the hearing for public input.

J. Parandes, JP Builders Co. LLC, agent representing the application, gave a brief presentation to the Board. He presented the Board with copies of a surveyed plan of the lot. He explained the surveyed plan shows the location of the existing house on the lot with the setbacks included. He

said the surveyed plan shows they are not able to build the deck according to the old plans as the survey shows the deck and house closer to the setbacks than originally thought. He said they would still comply with their NHDES permit after the surveyed plan was completed. He said all the houses in the neighborhood have decks and feels the addition of this proposed deck is not out of character with the rest of the neighborhood. He said the revised dimensions for the deck are 8' x 20' which would have the deck run across the front of the house.

S. Davis said he doesn't understand why the applicant didn't plan for the deck to remain the same size at the time of the reconstruction. He said the applicant gave up the existing deck in order to have a larger deck and is still concerned about the issue of meeting the hardship.

D. Andrade explained they could have built a deck that was 10' x 18' without the need for a variance but there was a concern by the abutter's view.

R. Dion said he went to the site and explained there would not be a loss of view from the abutter's property.

J. Parandes suggested the Board place a condition of approval on the application stating the owner cannot add onto the deck.

S. Davis discussed the applicant chose to expand the house higher vertically instead of keeping the original deck. He said they didn't plan properly and now they have to request a variance.

E. Mulligan asked how much the new deck will encroach on the setback after the survey.

J. Parandes said it would be about 10' from the setback and will not encroach on the setback from the water.

A. Howe reviewed the need for the applicant to prove a hardship with this application.

J. Parandes said the property owner gave up the old deck not realizing the setbacks would be an issue to have a deck.

S. Davis asked Mr. Piper, abutter, to provide an overview of his property. Mr. Piper provided a copy of a 1985 survey of the property. He said his father applied for a variance to put a deck on his house and it was granted. S. Davis said the zoning and setbacks were different then than they are now for Mr. Piper. He wants J. Parandes to understand the neighboring existing structures and decks may have been approved when the setbacks and zoning requirements were different.

Mr. Piper discussed the original building permit for the applicant was not for an expansion it was for renovations and said a variance should have been applied for earlier. He said he does not have a problem with the deck as it is proposed but he would like to have the surveyed plan recorded and have a deed restriction placed on the property preventing any further expansion.

J. Parandes said they never thought they would need a survey as they found the property pins and they did not know the lot lines would change after the recent survey.

E. Mulligan asked if the Zoning Board can place restrictions in deeds. A. Howe said no.

Mr. Piper said he never thought the building permit would have been issued due to the increase in the height of the non-conforming structure. He said the ordinance says the expansion should not increase the encroachment and this structure does. He does not have an issue with the proposed deck.

D. Andrade said the ordinance allows for vertical expansion.

J. Parandes said the owner would be willing to re-write a deed to include no further expansion of the structure or deck. He said he believes he has proven a hardship to have the proposed deck.

D. Andrade spoke about another zoning amendment to the Zoning Ordinance regarding accessory structures. They discussed section 5.1.4 b only refers to detached accessory buildings and does not apply to decks.

A. Howe closed the public hearing.

A. Howe introduced the next application.

**Gilford Community Church**

Variance request pursuant to Article 8, Section 8.10.5.1 of the Gilford Zoning Ordinance to allow a sign to be located five (5) feet from the front property line where fifteen (15) feet is required on Tax Map & Lot #226-079.000 located at 19 Potter Hill Road in the Single Family Residential Zone and the Historic District. File #Z10-04. *Tabled from the March 23, 2010 meeting.*

A. Howe said they would deliberate on the Church application.

**DELIBERATIONS**

**Glenn Cooper**

E. Mulligan asked if because the applicant did not know the results of the new survey and the setback location that now since they cannot build a deck if that is a hardship. She said they could have built 10' x 16' deck before the recent survey and now they can't.

The Board reviewed the variance criteria.

A. Howe spoke about the reasons for setbacks and is concerned this application does not meet the spirit of the ordinance. The Board agreed the value of the properties would not be diminished, the proposed use is a reasonable use and it would not be out of character with the neighborhood as there are other decks on surrounding properties.

A. Howe said the applicant had a deck they removed the deck and they did not complete a due diligence review of the property and he does not believe there is a hardship for that.

The Board discussed how to restrict future expansion of the building as Mr. Piper has suggested.

Motion made by R. Dion, seconded by E. Mulligan, to grant the variance with the following conditions:

- 1 The 8' x 20' deck shall remain single level with no expansion either vertical or horizontal.
- 1 An as-built plan shall be recorded and copied to the Department of Planning and Land Use

And that the application has met all the criteria for a variance as follows:

1. *Granting the variance would not be contrary to the public interest because:* There are other decks in the neighborhood.
2. *The Spirit of the Ordinance is observed because:* The proposed deck fits with the neighborhood.
3. *Substantial Justice is done because:* There are decks in the neighborhood and they should be able to have a deck.
4. *The values of surrounding properties will not be diminished because:* All neighboring properties have decks.
5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:* there are other decks in the neighborhood.

(A) *For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:*

(i) *No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property:*

( *The proposed use is a reasonable use:* The other waterfront houses have decks and this is a reasonable use of the property.

### **Discussion on the motion.**

S. Davis does not agree with getting a deck because just because the property is located on the waterfront. He does not agree with the argument that 'because my neighbor has a deck, I should have one'. He does not believe that not having a deck is a hardship; he said it is an inconvenience.

E. Mulligan agrees there is a hardship because they did not know the setbacks were located

where they are before they removed the old deck and because they found the property pins.

A. Howe spoke about what is reasonable for this applicant and do they approve the proposed size or a different size.

E. Mulligan-Yes

R. Dion-Yes

S. Davis-Yes

A. Howe abstained. The variance **is granted**.

### **Gilford Community Church**

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

The Board discussed what type of sign is being proposed and how the application meets the variance criteria and how the location and design of the sign meets the argument for a hardship.

S. Davis would like to have the sign designed with safety issues added not just announcing the Church. The Board would

Motion made by R. Dion, seconded by E. Mulligan, to table the Church application until May 25, 2010 in order to have the applicant appear in front of the Board to clarify and explain the proposed sign.

### **OTHER BUSINESS**

#### **MINUTES**

Motion made by S. Davis, seconded by R. Dion, to table the minutes of March 23, 2010 until May 25, 2010, due to not enough members that attended the March 23, 2010 meeting to approve the minutes. Motion carried with all in favor.

#### **ADJOURNMENT**

Motion made by E. Mulligan, seconded by R. Dion to adjourn the April 27, 2010 Zoning Board of Adjustment meeting at 8:45 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte

Technical Assistant