

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
DECEMBER 8, 2010
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Wednesday, December 8, 2010 at 7:00 p.m. in Conference Room A.

Present were: Chairman- Andrew Howe and Regular Member(s): Robert Dion, Mark Corry and Ellen Mulligan.

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

Absent Member(s) Vice Chairman-Scott Davis.

Chairman Howe led the Pledge of Allegiance. He explained since there is not a full Board, there will have to be a majority of three voting members for each application. He gave the applicants the option to either continue to another meeting or move forward at this meeting.

Kim Cedarstrom, representing Kim Cedarstrom/Wide Open Spaces Revocable Trust, Mark Woglom, agent for Lakes Professional Center LLC, and Regina Nadeau, agent for Lorraine Lavalliere all understand the Board does not have 5 voting members and all decided to move forward with the members that are in attendance.

A. Howe introduced the first application.

1. **Kim Cedarstrom, Wide Open Spaces Revocable Trust.**
Special Exception request pursuant to Article 4, Section 4.3 of the Gilford Zoning Ordinance to allow a "Salesroom" use on an existing commercial site with an existing retail seafood store, create storage space within the existing building, add an Automobile Repair use, and an Automobile Sales use with Outdoor Display area located on Tax Map & Lot #210-011.002 located at 2 Lily Pond Road in the Industrial Zone and Aquifer Protection District. File #Z10-14.

Kim Cedarstrom, applicant, gave a brief presentation to the Board. He explained the location of the property and the proposed use. He also explained they received a special exception in 2000 for Sections 4.3.22 & 4.3.23. He reviewed the criteria for special exception as outlined in the application.

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

D. Andrade explained the issue with Section 5.2.1 (b) as it should be applied to this application and he explained the applicant went to the Planning Board and received approval subject to the applicant obtaining a variance from Section 5.2.1 (b).

K. Cedarstrom presented the Board with information of other commercial uses in the area that were not held to this section of the ordinance or required to obtain a variance in order to proceed with the use, such as Lowe's, Gilford Home Center, Gilford Getty, etc. D. Andrade acknowledged there are uses that are non-conforming that are operating in the area but they are grandfathered.

Discussion ensued regarding how to interpret the ordinance for this application. M. Corry said he believes the ZBA would be out of line if they were to require this applicant to obtain a variance when no other businesses had to obtain a variance. A. Howe spoke about which ordinance is more strict the Aquifer Protection District or the Island and Shorefront District. D, Andrade said the Island and Shorefront District is more strict

The Board discussed contacting the Town Attorney for an interpretation. M. Corry asked staff what the options are and staff said they could interpret the ordinance and make a decision or they could contact the town attorney. The Board decided to contact the town attorney for an opinion on Section 5.2.1(b).

A. Howe introduced the next application.

2. Lakes Professional Center, LLC.

Applicant is appealing the October 19, 2010
Administrative Decision of Fire Inspector Dana

Pendergast which required the building at 369 Hounsell Avenue to be sprinkled pursuant to Section 8.02 of the Gilford Fire Prevention Code.~ The applicant asks that the decision be reversed because the building was started, but not completed, prior to enactment of the ordinance.~ Located at 369 Hounsell Avenue, Tax Map and Lot #204-003.009, in the Industrial Zone, Aquifer Protection Overlay District, and Business Park Overlay District. File #Z10-15.

D. Andrade gave a brief history of the application and said they received a Certificate of Occupancy in January 2009 for one unit and then the revised Gilford Fire Prevention Code was adopted and the requirements changed.

Mark Woglom, representing the application, gave a brief presentation to the Board. He explained the history of the property and why he believes the sprinkler requirement should not apply to this project as the building was built prior to the enactment of the new Fire Prevention code. He is asking the Board to allow them to continue with the original building permit they obtained for the 8 units and not apply the revised Gilford Fire Prevention Code that was approved in March 2010. He said the building is now unfinished space with the exception of one unit of a total of 8 units. He said the unfinished space has dirt floors, no lights, limited heat, no ceilings, no water or sewer lines, etc. and they plan to complete the space as the units are sold.

A. Howe asked D. Andrade why he issued a Certificate of Occupancy (CO) when the building was not completed. D. Andrade said they had to be able to allow the occupant of the unit to legally occupy the space.

Dana Pendergast, Gilford Fire Inspector, pointed out the building has heat and has existing fire alarms; emergency lighting and they had to be installed in order for the Certificate of Occupancy (CO) to be issued. He explained the old Fire Code had not been updated since 1989 and he and (Retired) Chief Hayes rewrote the new code and he noted that this code is not as strict as other codes in the state. He said he explained to Mr. Woglom at the beginning, the building has to be sprinkled and the renovations they are planning to do fall under the 50% threshold requirement that requires the sprinklers. He said he explained the sprinkler requirements to Mr. Woglom at the beginning of the building

permit process and that Mr. Woglom chose to move forward.

M. Corry asked what determines when a building is completed. D. Andrade said when all the systems are installed and completed. The Board discussed what is considered renovations.

Discussion ensued about when the CO should have been issued and what type of certificate of occupancy should have been issued. D. Andrade said he has not issued a CO for the entire building and in order to close out the original building permit he issued a CO for that one unit. He said they have to obtain a new building permit for each unit and then each unit will receive a separate CO.

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

A. Howe introduced the next application.

3. Lorraine Lavalliere

Variance request to Article 20, Section 20.4.1 of the Gilford Zoning Ordinance to allow the addition of 13'.3" in height to an existing wind turbine where 38'.7" is the maximum height allowed on Tax Map & Lot #242-207.400 located at 62 Belknap Point Rd. in the Single Family Residential Zone. File #Z10-16.

Regina Nadeau, agent representing the application, gave a brief presentation to the Board. She reminded the Board they applied for a variance a year ago and they ended up withdrawing the application. They wanted to obtain more information on the wind turbine to prepare another application. They obtained the information and have returned with another variance application.

Steve Gorse, Skystream Energy Consultant, has worked with the applicant on the current turbine; spoke about the reason the current wind turbine is not as efficient as it could be in the current location because it is not tall enough at this time. He said by raising the height of the turbine it would enable the turbine to operate more efficiently. He said the proposed additional height of 13' will not affect the required setback distance the turbine has currently.

R. Nadeau spoke about the value of the property not being diminished and she submitted information from a local realtor that reported the property value would not be diminished as the turbine has been in existence for about a year. She said the year

She spoke about the variance criteria have changed and they are prepared to move forward with the application as she believes they can meet the revised variance criteria.

R. Dion asked without the leaves on the trees how what the energy production and S. Gorse said it is still too low.

Discussion ensued about the prevailing winds as being west to northwest and that if the tower were to fall it would fall toward Belknap Point Rd. S. Gorse and R. Nadeau agreed.

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

The Board entered into the deliberative session.

DELIBERATIONS

The Board discussed **Kim Cedarstom, Wide Open Spaces Revocable Trust**

M. Corry said the Planning Board and the Conservation Commission seem to have addressed the major issues with this application.

Motion made by R. Dion, seconded by M. Corry, to grant the **Kim Cedarstom, Wide Open Spaces Revocable Trust** application as having met all the criteria for special exception pursuant to Article 11 and Article 4, Section 4.3 of the Gilford Zoning Ordinance, as follows:

- 1 *The site is appropriate for the proposed use or structure. There is already a sales use in the building.*
- 2 *The proposal is not detrimental or injurious to the neighborhood. No because there is already a sales use existing.*

- 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 utilities are existing on site.*
- 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 10/14/10.*

S. Verdile Philibotte polled the members.

M. Corry-Yes
E. Mulligan-Yes
R. Dion-Yes

A. Howe- abstained

Motion carried with all in favor. The **Kim Cedarstom, Wide Open Spaces Revocable Trust** Special Exception application **was granted.**

The Board discussed the next application. **Lakes Professional Center, LLC**

E. Mulligan said she does not consider it a remodel, she considers it a completion of the existing building.

R. Dion said the building was started but not completed so it is not new construction and it is not a remodel.

Motion made by E. Mulligan, seconded by M. Corry, to grant the Administrative Appeal request from **Lakes Professional Center, LLC** for the Appeal of an Administrative Decision made by Fire Inspector Dana Pendergast.

Based on the information provided and testimony received at the Public Hearing the Board determined the following:

- 1 The building is not considered a renovation it is considered a

completion of an existing, unfinished building that was constructed and permitted prior to the enactment of the Fire Code Ordinance of March 2010.

S. Verdile Philibotte polled the members.

M. Corry- Yes
E. Mulligan-Yes
R. Dion-Yes

A. Howe abstained.

Motion carried with all in favor. The **Lakes Professional Center, LLC** Appeal of an Administrative Decision **was granted.**

The Board discussed the next application. **Lorraine Lavalliere**

R. Dion said none of the abutters have showed up so there appears to be no objection to the existing turbine or the proposed increase in height.

E. Mulligan said she went to the site and said it is difficult to hear any noise from the turbine.

The Board discussed the direction and paths of the wind currents and how it would affect the property.

Motion made by M. Corry, seconded by E. Mulligan, to approve the variance request made by **Lorraine Lavalliere** has having met all the criteria for a variance as follows:

1. *Granting the variance would not be contrary to the public interest because:* It will conserve electricity and will fall within the property lines not impacting abutters.
2. *The Spirit of the Ordinance is observed because:* It is currently located in the least conspicuous area on the property.
3. *Substantial Justice is done because:* By increasing or limiting the height of the tower will allow the turbine to be used to its full capacity

4. *The values of surrounding properties will not be diminished because:*
Applicant submitted a letter from a realtor explaining the value of the surrounding properties will not be diminished.

5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:*

(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 use is allowed within the zoning district.*

S. Verdile-Philibotte polled the members

M. Corry- Yes

E. Mulligan-Yes

R. Dion-Yes

A. Howe abstained.

Motion carried with all in favor, The **Lorraine Lavalliere** variance request **was granted.**

OTHER BUSINESS

D. Andrade will contact the Town Attorney for his opinion on Section 5.2.1 (b) and on how to handle the Kim Cedarstrom application. The Board discussed the need to try reworking the ordinance.

MINUTES

Motion made by M. Corry, seconded by E. Mulligan, to approve the minutes of October 26, 2010 as presented. Motion carried with all in favor.

ADJOURNMENT

Motion made by E. Mulligan, seconded by M. Corry, to adjourn the December 8, 2010 Zoning Board of Adjustment meeting at 9:30 p.m.
Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Technical Assistant