

**Gilford Board of Adjustment  
Minutes  
March 29, 2011**

The Gilford Board of Adjustment met on March 29, 2011 in Conference Room A of the Gilford Town Hall. The meeting was convened at approximately 7:00 p.m. Those present included Andrew Howe, chairman; Scott Davis, vice chairman; Ellen Mulligan, regular member; and Stephan Nix and Paul Kiely, alternates.

Also present were David Andrade, Code Enforcement Officer, and John Ayer, Director of Planning and Land Use.

Those absent included regular members Robert Dion and Mark Corry, and Technical Assistant Stephanie Verdile Philibotte.

Chairman Andy Howe welcomed new alternate members Stephan Nix and Paul Kiely to the Board of Adjustment. He led the Pledge of Allegiance and introduced the first item.

**item 1 – Samantha Jewett & Brian Connelly** – Variance request pursuant to Article 5, Section 5.1.4. Side Setback and 5.1.5 Rear Setback, of the Gilford Zoning Ordinance to allow a small addition to an existing residential dwelling unit to “square off” a corner and construct a new breezeway with garage. ~The proposed construction will place the house addition in the side setback 12 inches and 3 feet into the rear setback and the proposed garage will encroach 3 feet into the rear setback. ~The property is located on Tax Map & Lot #223-455.000 located at 57 Varney Point Road Left in the Single Family Residential Zone. ~File #Z11-02. *Tabled from March 22, 2011.*

Attorney Bill Philpot was present to represent this item. B. Philpot identified where the areas are needing relief. He noted there was a need for twelve (12) inches of relief and three (3) feet of relief in existing corner. The three (3) feet is needed in the east corner in an addition. He showed the board 32 photos of interior and the exterior of the house noting the stairs not being to code. He showed floor plans as it relates to the site plan. B. Philpot also noted that the interior door to the stairway is not three (3) feet wide but should be. He showed photos that illustrate where the remodeling would take place. He pointed out there is ledge in front of the house (west side) so the addition could not be made in that direction without blasting. That could put the house at risk and be very expensive.

A. Howe asked to have the floor plan reoriented to match his site plan. B. Philpot showed photos illustrating a buffer around the property. B. Philpot reviewed the five Gelinas points for his variance request:

The variance is not contrary to the public interest because the setback areas are tree lined, vegetated, and the ground rises up to the neighboring lots. In this zone it is important to have

building plan that meets code. A bump out in the corner is needed due to the landing for the stairs and needing a three (3) foot wide door at the top of the stairs to meet code. He said originally the building was a camp. The public interest is served to bring this home up to code.

The hardship for this variance is that the property is unique. Much of the house is already within the setback. To take the building from a camp to a residence, and interior redesign is reasonable. The ledge outcrop in front of the house prevents the ability to add on to the front of the house. Blasting is too hazardous. The configuration of the basement does not permit kitchen design. Taking care of that bump out in a building design.

B. Philpot noted that this is a residential area where separation is important, but given the rise in elevation and the other features of the land and trying to make this house layout work out, this variance is necessary.

Mr. Philpot noted that substantial justice would be done in that the setbacks are met for the most part, the setbacks are effective as setbacks because of the vegetation and grade difference, and so a variance does not tamper with the intent of the ordinance.

B. Philpot noted that there is no drop in surrounding property values as the garage is needed in this climate and there is no evidence that the values of surrounding properties will drop.

A. Howe asked the applicant to provide a plan showing the existing house clearly labeled. B. Philpot said it is provided on the plan and labeled. A. Howe asked that it be more clearly labeled. B. Philpot said he will submit the photos, plans and related materials as part of the record.

S. Davis asked for the basement floor plan. Samantha Jewett, applicant, said the basement will not be touched with this proposal.

A. Howe asked why they push back the garage into the setback. B. Philpot said it is due to the presence of the ledge outcropping primarily. A. Howe asked if the ledge is above ground. B. Philpot said it is. S. Jewett showed a photo of the area with the ledge. A. Howe said he is OK with the house encroaching into the setback, but he has trouble with the garage encroaching.

Brian Connelly, applicant, said the other hardship is the room wouldn't work if it were moved forward. He showed a detailed drawing to the Board.

S. Davis asked if the left line of the garage is where the slab begins. B. Connelly said yes. S. Davis said there are options to blasting such as a hydraulic hammer. B. Philpot said yes, but that approach may not be appropriate here if it's the wrong type of ledge outcropping. B. Connelly said moving the garage forward ruins the flow of the room. He said they want only 8 inches in one corner and a foot in the other.

S. Davis asked why a three (3) foot door was needed, to take appliances to the basement? A two foot eight inch (2'8") door should work. B. Connelly said it would make it easier to move a freezer, washer, and other appliances. E. Mulligan asked if there was any other access to the

basement such as a bulkhead. B. Connelly said no, there was no other access to the basement. Discussion ensued. D. Andrade said the landing has to be thirty-six (36) inches. The width of the expansion is for the stairs, not the door.

B. Philpot said the geometry is for the landing. One could make other parts skinnier, but it would not be as functional.

A. Howe asked what the minimum lot size is in this zone. D. Andrade said one (1) acre. An adjacent lot has one and fifteen hundredths (1.15) acres so this property could not be further subdivided, right? D. Andrade said it is highly unlikely – especially since they would also need one hundred fifty (150) feet of frontage and there is not enough extra of that here.

S. Nix said the plan doesn't show setback and other dimensions on the northeast corner. B. Philpot said they could add that information. A discussion on setback distances ensued. S. Nix said they cannot tell how much of a variance they are granting. D. Andrade left the meeting to get a scale to measure the setback encroachments for the Board.

A. Howe asked if there were variances previously granted for this site. S. Jewett said no, it was built in 1936.

D. Andrade returned and measured the proposed setbacks. At the northerly corner the building is proposed to be eleven (11) feet from the northerly property line. Currently the building is twelve (12) feet from the property line.

S. Nix clarified that it will be an eleven (11) foot setback where the requirement is twenty-five (25) feet. S. Nix commented on the applicants' plan to take down the building, noting that taking down the existing building would open options on design of the interior and overall layout of the home so it could be built to conform to the regulations. He noted that aesthetics are important in New Hampshire, but that it is not clear to him that aesthetics couldn't be accommodated some other way than by the variance requested.

A. Howe suggested that the applicant could take out a foot of living space from the building or remove the ledge, then no variance would be required. B. Philpot said yes, but this is not a situation where they are bumping into their neighbors. There is no way for a subdivision of the land to occur. He noted that if they keep setting things back, they will have only a "large dog house". B. Philpot said this is a reasonable request for a reasonable variance.

S. Nix said he thinks the one (1) foot bump out will look odd and aesthetics are important. He thinks it is down to a matter of hardship. He thinks making that little add-on in today's world makes sense to him.

E. Mulligan asked about the four-season room. B. Connelly described the floor layout and function which dictate the layout and variance. S. Davis discussed how alterations could be made and not need a variance.

A. Howe opened the public hearing to anyone in the audience who may wish to speak to the

application. There being none he closed the hearing to public input and called for any other comments from Board members. S. Nix asked for clarification on the process on taking action and the chair gave a brief explanation.

A. Howe closed the public portion and the public meeting.

S. Nix moved that the dog leg addition to the main house be approved with no greater encroachment than fourteen (14) feet (an eleven (11) foot setback) with the condition that the exact dimension be added to the plan and that the labeling of the existing house be clarified on the plan.

S. Davis seconded the motion.

E. Mulligan said that since this is a nonconforming lot and a nonconforming structure, does that create a hardship? A. Howe said yes and no. The hardship is caused by the dimensions of the house. S. Nix said the house is there so it is part of the lot. E. Mulligan said these encroachments are not impactful on neighbors. Discussion ensued.

S. Davis asked if the intent of the motion is only to allow construction on the north side or allow an eleven (11) foot setback all around? S. Nix said the intent is to apply this to only the entire dog leg. A discussion regarding setbacks ensued. S. Davis said he feels there is no hardship to extend the house one (1) foot to the east at the back of the house. A. Howe noted S. Nix's comment that aesthetics is the reason for the variance. Further discussion ensued. S. Nix reiterated that the whole dog leg would be included in the variance.

A. Howe said the entire rear setback line needs to be delineated. E. Mulligan asked if it would affect their stairway if they did not do the one (1) foot build out at the back of the house. D. Andrade said it would. S. Davis asked if they could move the stairs in another foot. D. Andrade said he can't really say not knowing the construction details.

S. Nix said the overall impacts of a one (1) foot encroachment at the back of the house are de minimis. They are already into the side setback. If it were a one (1) foot encroachment also into the rear setback that would be different.

A. Howe said he would like to see the plan amended to show the entire rear setback line and the motion amended to require it.

S. Nix moved to amend the motion to also require as a condition of approval that the plan be amended to show the rear setback line extended across the entire width of the lot.

E. Mulligan seconded the motion to amend the original approval motion.

Motion passed with all in favor.

A. Howe called for a vote on the amended motion to approve the variance. S. Davis asked if it was the only motion. S. Nix said it was not his intent, he only was peeling away this portion of

the application.

Vote on motion to approve a variance for a reduced side setback:

Scott Davis	NO
Ellen Mulligan	YES
Stephan Nix	YES
Paul Kiely	YES
Andrew Howe	ABSTAIN

Motion to **approve** the application for a side setback variance for a home addition was approved.

A. Howe asked if there was a motion regarding the variance request pertaining to the rear setback for the garage addition. P. Kiely clarified that the Board cannot consider a financial hardship. He continued saying if moving the garage is costly, the Board cannot consider that, right? Board members responded in the affirmative.

P. Kiely moved to deny the variance application for reduced rear setback for the garage addition.

Seconded by S. Davis.

E. Mulligan asked if a boundary line adjustment is possible. B. Philpot said it depends on the bank.

A. Howe called for a vote on the motion to deny a rear setback variance. Voting was as follows:

Scott Davis	YES
Ellen Mulligan	ABSTAIN
Stephan Nix	YES
Paul Kiely	YES
Andrew Howe	ABSTAIN

Motion to **deny** the application for a rear setback variance for a garage addition was approved.

A. Howe discussed upcoming events – namely a Planning Board and Board of Adjustment workshop on June 11, 2011.

A. Howe opened a discussion on what took place earlier in the meeting for the benefit of new board members. E. Mulligan said it seems like on a difficult lot and with a small encroachment, this could have been approved. A. Howe said the applicant had other space on the property to use. S. Nix said maybe the ordinance should let smaller setbacks happen on smaller residential lots. P. Kiely said he saw they could have changed the plans and built elsewhere without a variance. S. Davis said the Board has to apply the rules equally to each application. Further discussion ensued. The Board discussed the need to discuss ordinance amendments with the Planning Board.

It was proposed to write a letter to the Planning Board to list issues to address in zoning amendments, and to keep a running list of issues through the year which list shall be maintained by the DPLU Technical Assistant. A vote of support was unanimous. A. Howe said he would like to see a Purpose and Intent statement at the beginning of each section as it would help the ZBA know what the intent is of each ordinance.

#### MINUTES

Motion by E. Mulligan, second by A. Howe, to approve the minutes of the January 31, 2011 meeting. Motion passed 3-0-2.

Motion by S. Davis, second by E. Mulligan, to approve the minutes of the February 22, 2011 meeting. Motion passed 3-0-2.

#### ADJOURNMENT

E. Mulligan moved to adjourn at 9:00 p.m., second by S. Davis. The motion passed.

Respectfully submitted,

John B. Ayer, AICP  
Director of Planning and Land Use