

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
MAY 24, 2011
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, May 24, 2011, at 7:00 p.m. in Conference Room A.

Present were: Chairman-Andrew Howe, Vice Chairman-Scott Davis. Regular Members: Ellen Mulligan, Robert Dion, Mark Corry and Alternate(s): Stephan Nix.

Absent Member(s): Paul Kiely.

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

Chairman Howe led the Pledge of Allegiance and introduced the Board members and staff.

A. Howe introduced the first application.

A. Howe and the Board discussed amending the agenda to hear the variance application before the Special Exception application.

1. Gilford Village Knolls and Anthony Ferruolo

Variance request from Article 11, Section 11.4.7 (h), Senior Housing, of the Gilford Zoning Ordinance, to allow the construction of twenty-four (24) one-(1) bedroom units where the a mix of one-(1) and two-(2) are required as part of Gilford Village Knolls Senior Housing Development on Tax Map & Lot#226-078.001 located at 43 Potter Hill Road in the Single Family Residential Zone and Historic District. File #Z11-05.

Anthony Ferruolo, agent representing the application, gave a brief presentation to the Board.

He reviewed the criteria for the Variance as outlined in the application. He explained the current federal funding requirements will fund two bedroom units only as resident Manager Occupied units and he said they are not proposing resident Manager Occupied units. He said the current zoning requires a mix of one and two bedroom units and they are proposing one bedroom units

A. Howe asked since most of the existing units already have one bedroom units, why did they not need a variance for those applications. D. Andrade said the requirement didn't come into effect in the ordinance into late 2000's and those units were built before that. He asked D. Andrade why the Planning Board chose to amend the ordinance to require the need for the variance. D. Andrade explained they were looking to expand housing for residents 55 and over. He said they are proposing to add more units to an existing development that already has a mix of one and two bedroom units and asked if they even need a variance at this point.

S. Nix agreed and said he believes since each of the existing buildings have two bedroom units that satisfies the intent of the ordinance and does not see the need for the variance application.

Discussion ensued about whether or not the application needs a variance based on the existence of one and two bedroom units.

Discussion ensued about ownership of the buildings and units. A. Ferruolo explained the development has common ownership under Stewart Property Management.

A. Howe said they are not in the habit of approving variances if they are not needed. He also believes since each of the existing buildings have a mix of one and two bedroom units, that meets the intent of the ordinance and does not see the need for this applicant to obtain a variance.

A. Howe opened the hearing for public input.

Scott Dunn, Town Administrator representing the Board of Selectmen, said the administrative decision has been made that this application requires a variance and there is no Administrative Appeal in front of the Board questioning the need for the variance, so he is requesting the Board act upon the Variance as submitted. He said the Board of Selectmen supports this proposal and believe this application meets the intent of the Zoning Ordinance and the Master Plan as well as a benefit to the community.

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

A. Howe introduced the next application.

2. Gilford Village Knolls and Anthony Ferruolo

Special Exception request according to Article 11, Section 11.4.7, “Senior Housing” and Article 4, Sections 4.2.10, 4.7.2 (j), of the Gilford Zoning Ordinance to allow twenty-four (24) one-bedroom units to be constructed as part of Gilford Village Knolls Senior Housing Development on Tax Map & Lot#226-078.001 located at 43 Potter Hill Road in the Single Family Residential Zone and Historic District. File #Z11-04.

Anthony Ferruolo, agent representing the application, gave a brief presentation to the Board.

He reviewed the criteria for a Special Exception as outlined in the application.

R. Dion asked if the units are for Gilford residents only and A. Ferruolo said there are some residents from the Lakes Region but most are from Gilford.

A. Howe opened the hearing for public input.

S. Dunn, Town Administrator representing the Board of Selectmen, spoke in favor of the application and said they believe the application meets the intent of the Zoning Ordinance and

the Master Plan. He said as Town Administrator he sees the need for suitable housing for low income seniors.

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

Alternate Member Stephan Nix recused himself from participation on the next application.

A. Howe introduced the next application.

3. Steven Buzzotta

Variance request from Article 5, Section 5.1.3 (a) to allow the construction of a proposed addition to encroach into the required 50 foot front setback and Variance request from Article 5, Section 6.5 to allow the expansion of an existing restaurant into the required 50 foot buffer area on Tax Map & Lot #267-210.000 located at 2667 Lakeshore Road in the Resort Commercial Zone. File # Z11-06.

Tom Selling, agent representing the application, gave a brief presentation to the Board. He reviewed the first variance request, which is a proposed addition to encroach into the required 50 foot front setback. He submitted additional pictures to the Board of the site. He reviewed the criteria for the first variance as outlined in the application.

A. Howe spoke about the total number of seating and T. Selling said it would be increased to 204. A. Howe asked about the egress of the building and if there was egress on the east side of the building. T. Selling spoke about the egress for the apartments will be changed and made to be safer and more direct.

S. Davis asked if there would be one rental unit and the retail area would stay the same with the proposed additions and T. Selling said yes. S. Davis asked about the parking situation and questioned the parking delineation and if the proposed parking will be adequate because it looks like a busy plan with a lot of mixed uses. He asked if the applicant has contacted the NHDOT for review and approval of the proposal. S. Davis said since the applicant is increasing the seating from 177 to 204 that intensifies the use. T. Selling said it is his professional opinion they did not see the need to go to NHDOT when they are only increasing the parking from 62 spaces to 63 spaces. S. Davis disagreed.

A. Howe spoke about the applicant already has reasonable use of the property and would like the applicant to explain the hardship to the property. T. Selling said construction of a smaller addition would create an architectural void in the look and design of the building and would not meet the spirit of the ordinance. He said the applicant has been improving the property and would like to be able to improve the design of the building with this proposed addition. A. Howe asked again what the need for the variance would be if the applicant already has reasonable use of the property. T. Selling said, yes his client has reasonable use of the property and the variance request is for design and function of the building and the business.

E. Mulligan asked if there was another spot on site for the kitchen expansion. T. Selling said no any other location would make the kitchen smaller.

S. Davis asked about the expansion of the restaurant and the kitchen and its purpose. T. Selling said the intent is to expand the restaurant and along with that, the kitchen has to be expanded.

A. Howe opened the hearing for public input.

Robert Vellhue, agent for abutter Mineral Springs, said they have no issues with the expansion of the restaurant, their concern is over parking. A. Howe said the parking is not an issue the ZBA addresses that is a Planning Board issue. R. Vellhue acknowledged that and said they have no issues with the proposed restaurant additions.

T. Selling reviewed the second Variance request from Article 5, Section 6.5 to allow the expansion of an existing restaurant into the required 50 foot buffer area. He reviewed the variance criteria as outlined in the application.

A. Howe asked D. Andrade about the increased seating and if that required the Fire Department to require the cistern. D. Andrade said yes and another type of activity, live music for example, would also require a cistern. T. Selling said yes with the age and type of the building, the construction proposed and the increase in seating mandates the cistern.

A. Howe asked T. Selling to explain the hardship. T. Selling said the hardship is that to build and expand on the site within the setbacks would not be beneficial to the business and would put a financial burden on the owner because they would have to redesign the entrance and other architectural issues would arise in order to comply with the ordinance. It would also not keep in line with the historical look of the building that the owner is trying to keep. A. Howe said but the addition could be done to comply with the ordinance. T. Selling acknowledged it could be done to comply with the ordinance.

A. Howe opened the hearing for public input.

Robert Vellhue, agent for abutter Mineral Springs, said they have no issue with the addition but on the east side of the site they have concerns about the additional parking and the loss of the buffer screening. He referred to the buffer requirements in the ordinance and would like to see the year round screening kept in place. He said they have concerns over the noise and headlights coming from the parking lot with the reduction in the buffer setback requirements.

A. Howe asked T. Selling to review the proposed parking spaces. T. Selling said they have graded the elevation on that side of the parking lot with a 2 foot grade so the headlights would point down. He said at the Planning Board meeting, they agreed to additional buffer and screening would be added if the abutter does not feel the proposed vegetation and the re-grade of the parking light to reduce the light from the headlights is sufficient after construction. He said there will be a minimal removal of trees for the addition of the parking spaces.

S. Davis referred to the two buffer and screening requirements for the different zones in the ordinance and he reviewed the site plan that shows more vegetation that looks like it would need to be removed for the parking spaces and he questioned the parking again. He said they are increasing the seating in the restaurant by 40% and cannot understand why they do not have to increase the parking. He said the site currently cannot handle the parking as far as the existing space and with the gravel parking. D. Andrade said the parking requirements have changed.

Robert Vellhue, agent for abutter Mineral Springs, spoke about requiring the owner to install year round screening and what would their recourse be if the applicant does not cooperate with the screening. A. Howe said that would be an issue for the Planning Board.

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

A. Howe introduced the next application.

4. Jessica and Jeremy Vega

Administrative Appeal according to Article 10, Section 10.2.1 where the applicant's are appealing the Building Inspector's decision to apply the Town of Gilford Site Plan Regulations to a pre-existing condominium unit for the purpose of adding a deck on Tax Map & Lot #216-009.003 located at 289 Dockham Shore Road in the Single Family Residential Zone. File #Z11-07.

Friedrich Moeckel, attorney representing the application, gave a brief presentation to the Board. He explained he would like to have their interpretation of the ordinance heard. He said the proposed deck will not be located within the NHDES required 50' setback. He said the condominiums were approved by the Town of Gilford in 1981 and properly recorded. He said there is an RSA that protects recorded plans from being subject to current zoning requirements and the fact that this property is not a commercial site plan, it is a residential site they are not subject to the site plan regulations. He referred to RSA 674:19 that states expansion is allowed that do not substantial change the use and it is their opinion a deck is not a substantial change to the use. He said his clients researched the files and found a building permit was issued in 1999 for a deck to be constructed on another unit and did not have to go through the site plan requirements.

S. Davis said there was a letter from J. Ayer that said there was a previous deck on this unit and that the cottage was expanded over the previous footprint of the deck to increase living space and now they are coming back for another expansion. F. Moeckel said he believes the addition of the deck would not substantial change the use of the property.

A. Howe does not understand why F. Moeckel is classifying this as a Non-Conforming Use with this application as this is a residential zone and this is a residential use. D. Andrade said it is considered multi-family and they are non-conforming. He said in the site plan regulations in 1981 were amended to be included in the general provisions of the zoning ordinance and does not differentiate between residential and commercial uses. He reviewed the previous permits

that were issued for other units in the development. He said the footprint stayed the same and therefore they were not required to go to the site plan process. He said this applicant received a permit to expand the cottage and they did an expansion within the previous footprint, which included the previous footprint of the deck. He said there are other things to consider in current zoning that have to be applied to expansions.

F. Moeckel said it is their opinion that RSA 674:19 prevents current regulations from preventing them from expanding.

S. Nix spoke about the Condominium Act RSA 356:B and said this is a condominium subdivision and site plan application and therefore it would be required to go through the Planning Board process. He reviewed the specific condominium documents of the development and determined they have to come to the town for Planning Board approval. He said RSA 674:19 discussed uses and structures and therefore still has to go through the Planning Board process.

Discussion ensued about the expansion of the structure versus the use.

F. Moeckel discussed the RSA's that protect non-conforming uses from any future zoning changes, which is what they are arguing. He is asking the Board to overturn the Code Enforcement's decision and allow the building permit to be issued with the condition to get the NHDES approval.

S. Nix disagrees with that interpretation and since the site is a condominium it is subject to site plan and subdivision plan review process.

A. Howe opened the hearing for public input.

Kevin Jones, President of Spinnaker Cove Condominium Association, said they have recently voted to allow the units to have decks and expand to a construct a second floor. He spoke about the Vega's remodeling the unit and making the unit look nicer and that they are improving the entire property. He said the Association is in support of the application.

Jeremy Vega, owner, said he hopes the Board will rule in their favor and thanked them for their time.

The Board asked if the condo voted to amended the by-laws and the K. Jones said he was not sure.

Discussion ensued about the deck being common area or part of the unit. K. Jones said the deck is considered common area to the entire condominium property.

DELIBERATIONS

Variance request- Gilford Village Knolls and Anthony Ferruolo

E. Mulligan discussed this Board is not in the position to hand out variances when they are not needed and they just had another case last month where the applicant did not need approval from the ZBA. She does not like to disagree with the Town Administrator but, she spoke about the fact that because J. Ayer didn't think about the fact that this is part of an existing organization that has existing one and two bedroom units that they do not need a variance.

S. Nix agreed with E. Mulligan and said Gilford Village Knolls does not need a variance based on the fact there are two buildings with a mix of one and two bedroom units and this is a continuation of an existing development.

Motion made by A. Howe, seconded by E. Mulligan, to vacate the need for **Gilford Village Knolls and Anthony Ferruolo** to apply for a variance pursuant to Article 11, Section 11.4.7 (h) the Gilford Zoning Ordinance to allow twenty-four, one-(1) bedroom units where the mix of one-(1) and two-(2) are required, as having met all the variance criteria

Based on the following:

- 1 Gilford Village Knolls is an existing Senior Housing Development which consists of a mix of one and two bedroom units therefore complying with Section 11.4.7 (h), "Unit Mix", of the Gilford Zoning Ordinance.

E. Mulligan-Yes

M. Corry-Yes

R. Dion-Yes

S. Davis-Yes

A. Howe abstained.

Motion carried with all in favor. The request for a Variance pursuant to Article 11, Section 11.4.7 (h) of the Gilford Zoning Ordinance, to allow twenty-four, one-(1) bedroom units where the mix of one-(1) and two-(2) are required, **was vacated**.

Special Exception- Gilford Village Knolls and Anthony Ferruolo

A. Howe spoke about the submitted plan for the Special Exception that does not show the elements required for the Special Exception criteria, i.e.

- 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.*

The Board agreed. The Board discussed the plan requirements for special exception need to be included in the 2012 zoning amendments.

S. Davis said he does not see an issue with most of the criteria being met and discussed but can conditionally approve it upon final engineering review.

The Board discussed having a joint meeting with the Planning Board to fulfill the site plan requirements for the special exception.

Motion made by, seconded by, to approve the **Gilford Village Knolls and Anthony Ferruolo** application as having met all the criteria for special exception pursuant to Article 11, Section 11.4.7 and Article 4, Sections 4.2.10 and 4.7.6 (j) of the Gilford Zoning Ordinance, as follows:

Conditional approval for a special exception the following criteria have been met

- 1 *The site is appropriate for the proposed use or structure.* The site is already approved use for Senior Housing Development.
- 2 *The proposal is not detrimental or injurious to the neighborhood.* It is consistent with the two previous projects and is compatible to the neighborhood.
- 3 *There will not be undue nuisance or serious hazard to pedestrian or vehicular traffic.* The site has not impacted 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.* This will be determined via a joint meeting with the Planning Board after engineered plans are submitted to the Planning Board.
- 5 *The proposal is consistent with the spirit of the zoning ordinance and the Master Plan.* Since it is considered Senior Housing it is consistent with the spirit of the zoning ordinance.
- 6 *A letter of denial was issued by the Town of Gilford on.*

Discussion on the motion

E. Mulligan-Yes

R. Dion-Yes

S. Davis-Yes

M. Corry-Yes

A. Howe abstained.

Motion carried with all in favor. The requirement for a Special Exception request for a “Senior Housing” **was granted with conditions.**

Variance request-Steven Buzzotta

The Board discussed the existing footprint and the east side of the building and that some of the proposed addition is included in the existing footprint.

Motion made by E. Mulligan, seconded by M. Corry, to approve the Variance request from Article 5, Section 5.1.3 (a) to allow the construction of a proposed addition to encroach into the required 50 foot front setback area as having met all the variance criteria as follows:

1. *Granting the variance would not be contrary to the public interest because:* It is a permitted, existing use in the zone and the proposed additions will provide safer egress from the restaurant and residential unit and increase the fire suppression ability and overall safety of the building.
2. *The Spirit of the Ordinance is observed because:* Allowing the structure and small business to expand in a productive manner.
3. *Substantial Justice is done because:* The owner can expand his restaurant in a productive manner that would be beneficial to the town and neighborhood.
4. *The values of surrounding properties will not be diminished because:* The proposed addition will improve the value of the restaurant and surrounding properties by addition more room in the restaurant and fire protection.
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 additions will maintain the same style and design of the existing building.
 - () *The proposed use is a reasonable use:* Because an addition to an existing permitted use is reasonable.

Discussion on the motion.

S. Davis remarked these variances will allow the restaurant to expand by 40% and he believes there is a safety concern with the parking availability and allowing gravel parking with no delineation for the spaces. He does not feel this safety issue has been adequately addressed.

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

S. Davis-Yes

A. Howe abstained.

Motion carried with all in favor.

The request for a Variance pursuant to Article 5, Section 5.1.3 (a), to allow the construction of a proposed addition to encroach into the required 50 foot front setback **was granted**.

The Board discussed the second part of the application.

M. Corry asked about the cistern access manhole cover and where if it is supposed to be located in the seating area.

Motion made M. Corry, by seconded by E. Mulligan, to approve the Variance request from Article 5, Section 6.5 to allow the expansion of an existing restaurant into the required 50 foot buffer and as having met all the criteria as follows:

1. *Granting the variance would not be contrary to the public interest because:* The restaurant expansion is beneficial to the public and the Town of Gilford.
2. *The Spirit of the Ordinance is observed because:* Increase public safety to the building with the cistern and allowing the restaurant to expand.
3. *Substantial Justice is done because:* The restaurant will be allowed to expand.
4. *The values of surrounding properties will not be diminished because:* It is an existing use being allowed to expand and improve safety to the building.
5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:* It will impact the architectural design of the building.

(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: Because an addition to an existing permitted use is reasonable.*

Discussion on the motion.

S. Davis mentioned the motion included “financial hardship” and they cannot use “financial hardship” to approve a variance. A. Howe agreed.

A. Howe believes the addition can be built without the need for a variance. He does not see the need for the hardship or that the applicant has proven the need for this variance. He agrees with S. Davis that the site will be more intense than it is now and he has concerns with the parking situation. He believes there are other ways to expand the business and the addition can be constructed without needing a variance.

M. Corry withdrew his motion, E. Mulligan withdrew her second.

Motion made by M. Corry, seconded by E. Mulligan to deny the Variance request from Article 5, Section 6.5 to allow the expansion of an existing restaurant into the required 50 foot buffer area. The variance was denied because the Board determined there was not a hardship with the application because the addition can be achieved without the need for the variance and therefore the applicant could not meet all of the hardship criteria for a variance.

1. *Granting the variance would not be contrary to the public interest because:* The restaurant expansion is beneficial to the public and the Town of Gilford.
2. *The Spirit of the Ordinance is observed because:* Increase public safety to the building with the cistern and allowing the restaurant to expand.
3. *Substantial Justice is done because:* The restaurant will be allowed to expand.
4. *The values of surrounding properties will not be diminished because:* It is an existing use being allowed to expand and improve safety to the building.
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:* the Board determined there was not a hardship with the application because they determined the addition can be achieved without the need for the variance.

(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:*

S. Verdile Philibotte polled the members

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

A. Howe abstained

The Variance request from Article 5, Section 6.5 to allow the expansion of an existing restaurant into the required 50 foot buffer area **was denied** because the applicant cannot meet all the required criteria for a variance.

Administrative Appeal request-Jessica and Jeremy Vega

S. Nix discussed the issue is not whether the deck is a reasonable request but that these applicants have encountered a situation where other changes have been made to the site and other units that have not gone through the site plan process. He said this is a condominium and the Condominium Act regulations apply which requires Planning Board approval for changes. He asked D. Andrade to clarify and D. Andrade said the regulations require the site plan application process and they have applied it to other condominium plans.

A. Howe discussed Section IX-A. 2. of the Site Plan regulations that explains Minor Site Plan deviations.

S. Dunn suggested the Board issue a decision to uphold the Building Inspector's interpretation and then he, the Code Enforcement Officer and the Planning Director will meet to determine what can be done administratively for the applicant. The Board explained once they make a decision, no other body can overturn or change that decision.

The Board discussed options for how a final decision can be made.

Motion made R. Dion, seconded by E. Mulligan, to table the application to June 28, 2011.
Motion carried with all in favor.

OTHER BUSINESS

MINUTES

Motion made by E. Mulligan, seconded by R. Dion, to approve the minutes of April 26, 2011.
Motion carried with all in favor.

E. Mulligan talked about the list of potential 2012 zoning amendments the Board is preparing. S. Verdile Philibotte explained she has not received anything from J. Ayer from the March meeting where the creation of the list was initially discussed. E. Mulligan said she would research her information to see if she can locate the information. S. Verdile Philibotte informed the Board the Planning Board rejected one of their proposals, which was to reduce setbacks on non-conforming lots.

ADJOURNMENT

Motion made by E. Mulligan, seconded by R. Dion, to adjourn the May 24, 2011, Zoning Board of Adjustment meeting at 11:05 p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte
Technical Assistant