

**GILFORD ZONING BOARD OF ADJUSTMENT  
MINUTES  
JULY 26, 2011  
CONFERENCE ROOM A  
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, July 26, 2011, at 7:00 p.m. in Conference Room A.

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

Absent Member(s): Robert Dion.

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

Chairman Howe led the Pledge of Allegiance and introduced the Board members and staff. He explained that due to the length of the agenda the Board reserves the right to adjourn at 10:30 PM

He welcomed new Alternate Member Bill Knightly. He announced the resignation of Regular Member Robert Dion and thanked him for his service to the Board. He appointed S. Nix to serve as Regular Member in the place of R. Dion. S. Nix reminded A. Howe he has to recuse himself from participating on the first application but agreed to sit on cases #2, #3, #4, #5. A. Howe then appointed Alternate Paul Kiely to serve as a Regular Member in place of R. Dion on the first application.

Discussion ensued about what members are going to hear which applications. A. Howe asked Town Attorney Walter Mitchell, if he should recuse himself from the Steve Buzzotta's Request for Rehearing application. A. Howe explained he participated in the original variance applications, without objections from the applicant. The applicant stated to Land Use Department staff after the cases were heard that A. Howe should have stepped down from the participating on the variance application due to a conflict of interest because A. Howe and S. Buzzotta have done business together. W. Mitchell clarified that the objection made by the applicant was after the original cases were decided and A. Howe said yes. A. Howe said he is willing to step down and asked W. Mitchell if he should. W. Mitchell asked if the applicant submitted anything in writing so the Board can consider why the applicant is claiming A. Howe should step down. A. Howe and staff said there is nothing in writing the application. S. Davis said the application for the request for rehearing is based on item of hardship. W. Mitchell said if the applicant has not raised anything specifically for the Board to consider and if A. Howe cannot think of any reason why he cannot objectively consider the request than he suggests A. Howe not step down. A. Howe agreed and will sit on the request for rehearing application.

A. Howe will preside as Chairman on the Steve Buzzotta. Member Stephan Nix recused himself from participation on the Buzzotta application and A. Howe appointed P. Kiely to serve as a Regular Member on the first application as well as on applications #2, #3, and #4 because

Regular Member Ellen Mulligan has to recuse herself.

S. Davis asked if the Board should approve the minutes from the May 24, 2011 ZBA meeting in case there is discussion about that meeting. W. Mitchell agreed in case there is any discrepancy. The Board agreed.

## **MINUTES**

Motion made by S. Davis, seconded by E. Mulligan, to approve the minutes from May 24, 2011 meeting. Motion carried with all in favor.

A. Howe introduced the first application.

### **1. Steven Buzzotta**

Applicant submitted a Request for Rehearing regarding a decision made by the Gilford Zoning Board of Adjustment on May 24, 2011. Wherein the Board of Adjustment voted to deny a request for a Variance 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#Z11-10.

Tom Selling, agent for the applicant, and Ken Choice, General Manager of Ellacoya Bar and Grill, were in attendance to represent the application. T. Selling gave a brief presentation to the Board. He reviewed the original application for the benefit of the new members P. Kiely and B. Knightly that are now hearing the application. He explained the variance requests for the addition to the kitchen and for the second addition and to house the fire cistern. He said due to the expansion of the building, the codes require the installation of a fire suppression system.

T. Selling reminded the Board of their judicial functions. They are to make interpretations, consider fact specific requests and provide a safety valve to prevent inequitable hardships. The hardship in this case is due to the unique characteristics of the real estate. The original building was constructed over 200 years ago, prior to zoning and on a much larger tract of land. Since then it has been substantially divided several times into the current configuration. He said this is not a self imposed hardship. He said Mr. Buzzotta has not created any facts to create this hardship. He only wishes to expand his thriving business. In order to do so, he agrees with the Gilford Fire Department for the need for the fire suppression system for the restaurant. Consistent with the spirit of the ordinance, he wishes to preserve the historic structure while expanding his business. He said they are not asking the Board to consider this a financial hardship. The applicant realizes that the financial hardship is not sufficient reason for a variance and the variance request cannot be just about the cost to comply. Financial consideration may be an element in the hardship, not the sole justification. Mr. Buzzotta's main consideration is not financial. The reason for Mr. Buzzotta's request can be stated by his wish to expand his business that he has worked hard to establish and he would like to do it correctly. He has consulted with experts and considered alternatives. His request represents the proper approach to the do the project, which is the overall purpose of planning and zoning regulations,

to do the job right. Pursuant to RSA 677:2, Mr. Buzzotta requests a re-hearing of file #Z11-06 pertaining to the variance request from Article 5, Section 6.5, for the required 50' buffer between a residential and commercial use. The applicant has requested the Board do a site walk so the Board can observe how strict compliance with Article 5, Section 6.5 creates an unnecessary hardship, specifically strict compliance with the setback requirements creates a hardship for Mr. Buzzotta because of the following reasons. It would involve extensive structural engineering, analysis and a different design which may jeopardize the structural integrity of the building. Moving the addition would interfere with the existing entrance, result in the removal of one handicap parking space, remove trees from the required screened buffer and it would encroach into the 50' required fire land as mandated by the Gilford Fire Department. T. Selling referred to discussion he had with Dana Pendergast, Fire Inspector, where it was discussed that a 50' unobstructed fire lane must be maintained. The parking lot was redesigned to accommodate the fire lane so if they have to move the addition to prevent a variance, they would encroach into the required fire lane. T. Selling said at the May 24, 2011 meeting, they heard from the abutters that they have no issues with the expansion of the restaurant or with the addition and also David Andrade, Gilford Building Inspector, spoke in favor of the variance request. T. Selling introduced a letter written by Jeffrey Denis, CET of Life Safety Fire Protection, dated June 23, 2011. In that letter he discusses reasons why the cistern has to be located where it will encroach into the buffer setback. For the reasons outlined, Mr. Buzzotta asking the Board accepts his Request for Rehearing application for the variance request.

For clarification E. Mulligan asked A. Howe if the Board is rehearing the case now or are they deciding to rehear the case at all and if they do decide to rehear the case, it will be at a future meeting. A. Howe said yes.

A. Howe announced there is no public hearing for this application as the Board is only being asked whether or not to hold a Rehearing for the application.

A. Howe discussed the new location of proposed addition for the cistern. T. Selling said if the cistern is moved to a location to comply with the 50' buffer setback; there would not be enough wall space for access to the plumbing equipment for the cistern.

S. Davis asked where the equipment was originally proposed to be to house the sprinkler system. T. Selling said underneath the restaurant, which is commonly called underneath the "barn". T. Selling said there is a common wall space. S. Davis asked how come they cannot move the cistern and pipe to the same location as they were going to have before and insulate the pipe instead. T. Selling said this is the solution the applicant's expert came up with. S. Davis commented that T. Selling is an engineer and in T. Selling's opinion they couldn't insulate a pipe to install the system without the need for a variance. T. Selling said he is not a life safety engineer and he would not comment.

A. Howe referred to the minutes of May 24, 2011, citing the discussion between A. Howe and T. Selling about if the cistern could be relocated so there would not be a need for the variance. T. Selling said it could be relocated to comply but it would be at great cost and engineering to the owner and the building would have to be redesigned. T. Selling said he was speaking to the

architectural aspect of A. Howe's question and that he was speaking generally and not specifically to the case.

B. Knightly said part of the purpose of the rehearing is to determine if there is any new information submitted at this time for the Board to consider. He asked where the new information is for the purpose of the rehearing and if it was based on the location of the cistern and the way it has to be piped. T. Selling said yes.

A. Howe closed the Board discussion on the rehearing request.

S. Nix returned as a Regular voting member. Regular Member E. Mulligan recused herself from the Wainwright/Onofrio applications. A. Howe appointed P. Kiely to act as a Regular Member for the Wainwright/Onofrio applications #Z11-08 and #Z11-09.

A. Howe introduced the next application. S. Nix suggested both applications be heard at the same time due to the issue of whether the applicant filed timely appeals applies to both File #Z11-08 and File #Z11-09. The Board agreed.

**2. Ann M. Wainwright and Donald Onofrio**

Administrative Appeal according to Article 10, Section 10.2.1 of the Gilford Zoning Ordinance, where the applicant's are appealing the Building Inspector's decision to not issue a Cease and Desist order regarding the Building Permit #2011000062 on Tax Map & Lot #252-026.000 located at 157 Scenic Drive in the Single Family Residential Zone. File #Z11-08.

**3. Ann M. Wainwright and Donald Onofrio**

Administrative Appeal according to Article 10, Section 10.2.1 of the Gilford Zoning Ordinance, where the applicant's are appealing the Building Inspector's decision to issue Building Permit #2011000062 on Tax Map & Lot #252-026.000 located at 157 Scenic Drive in the Single Family Residential Zone. File #Z11-09.

Phil Brouillard, attorney representing the applications, he began to give a brief presentation to the Board. He said the applicants noticed a discrepancy in the plan for a building permit that was issued.

Walter Mitchell, Town Attorney, apologized for interrupting Mr. Brouillard, but he suggested the Board should determine if the Board feels the appeals have been filed in a timely manner before they hear the merits of the case. If the Board finds they have been filed in a timely manner, than the Board has jurisdiction to further consider the appeals. So he said for both Wainwright/Onofrio applications that is the first question the Board should be addressing. P. Brouillard agreed and waited until the Board made their decision.

The Board reviewed information submitted by D. Andrade and by W. Mitchell. W. Mitchell explained the first question raised is in a filing in the format of a pleading in each case made by Attorney Regina Nadeau. He explained R. Nadeau advocates that neither of the appeals has

been timely filed and W. Mitchell suggested the Board review that information before the Board decides. A. Howe explained to B. Knightly that applicants have 30 days to appeal any decision made by any Board or Land Use staff. B. Knightly said S. Verdile Philibotte explained that to him.

S. Nix would like the applicants to present their case as to explain the timeliness issue. The Board agreed. A. Howe asked if the Board allows the applicants to present their arguments, does that mean the Board is accepting the appeals. W. Mitchell said no the Board can ask the applicants to limit their comments to the timeliness issue.

A. Howe requested that D. Andrade provide a brief explanation of the timeline of the events for these applications. P. Brouillard said he believes that would be getting into the merits of the application. W. Mitchell said the Board could hear the arguments from both sides and then if D. Andrade has any disagreement to the timing of either application then he could weigh in.

P. Brouillard clarified that File #Z11-08, relates to the appeal of the "Cease & Desist Order" and File #Z11-09 relates to the appeal of the building permit application. He began by discussing File #Z11-09 and acknowledged they did not file their appeal within the 30 day appeal period, which is specified in the ZBA's procedures. However, they filed immediately upon having actual knowledge of the application (File #Z11-09) and they recognize that may not be adequate but they needed to exhaust their administrative remedies. So while they were appealing the "Cease & Desist" order (File #Z11-08) they appealed the building permit application (File #Z11-09).

P. Brouillard began discussing the merits of File #Z11-08. He said he believes this application should be heard because there has to be some forum for abutters to make sure that when people file for a building permit and when conditions of approval are included in the building permit, that there has to be some enforcement procedure to allow them to stop the building and have it corrected. They believe Mr. Andrade specifically said in the approval of the building permit that the garage would be no closer than the existing garage and in fact it is closer. D. Andrade said P. Brouillard is discussing the merits of the case. A. Howe agreed. P. Brouillard repeated they believe there has to be some procedure that allows an abutter to make sure approvals for building permits are enforced and that is what they are trying to do regarding File #Z11-09. S. Davis discussed the applicant acknowledged they filed in an untimely manner. But they filed it as soon as they were made aware of the application. S. Davis said they were given ample opportunity that a decision was forthcoming. He said it sounds like there wasn't due diligence on the applicant's part in pursuing the fact that the permit was going to be issued and they waited too long. P. Brouillard agreed to a point. He said Mr. Onofrio received a notice about the Wetlands work sometime in November and the building permit wasn't applied for until March and it was granted the same day it was filed on March 7. He said Mr. Onofrio was in Florida and Mr. & Mrs. Wainwright had no idea anything was applied for. He said his clients would have to stop in the Planning office every day or twice a month to see if a permit had been issued and he said the Planning staff was aware that his clients were interested in this project. He said that is a different issue than the second matter. He said they suspected something wasn't right with the building permit that had been granted and they asked for a "Cease & Desist" and that

was denied. He said they should be heard on that application did file that appeal in a timely manner.

A. Howe explained this case is not able to allow public input at this point and he allowed Regina Nadeau, attorney for the applicant, John Jolin to present their case.

R. Nadeau explained they filed the two motions to dismiss these applications. She discussed the law is clear that there is a 30 day appeal period for the issuance of a building permit and also noted that when you apply for a building permit, you are not required to give notice to your abutters. She said the law understands that people have to be diligent. She spoke about another case where an applicant was in Florida when a permit was issued and the permit was displayed on site. The court said they say on their rights and "the world doesn't stop because you went to Florida". In this case she said it doesn't event reach that point. She said the Planning Department sent notice and it was signed by both parties on December 3, 2010 and she filed the NHDES permit application, which does require notice to abutters, so they actually got more notice than is typical for a building permit. They signed a letter that said they saw the plan, they knew what was being applied for, and they knew there was a NHDES application and that they wanted to state an objection when the building permit was filed. She asked how much more knowledge could her clients have provided. And they had a response from the Planning Department that said notice is not required and suggested that they periodically check in. She said they would only have to check in once every 20 days. She said her client called Mr. Onofrio and he still didn't appeal within 30 days of the phone call. She concluded that the abutters knew of the project throughout the planning process and they had ample time to file a timely appeal. She said the ZBA does not have the power to extend the appeal period time frame and if there are extenuating circumstances the ZBA can change the appeal period but under the facts of this case, if the Board grants that kind of relief they are opening the door to numerous appeals well beyond the 30 day time period because there is written evidence signed by the abutters, saying they knew of the project months before. She discussed her clients disagree with the reasoning given by P. Brouillard's claim that the garage is built in the wrong place from what it was approved. She said that's a premature argument because there is a condition on the building permit that stated everything is staked out ahead of time. She said P. Brouillard is arguing there should be a procedure in place to protect the abutters. She said there is a procedure and that is the 30 day appeal period. She said for both applications she does not see where the law would give the latitude to grant an extension to the 30 day appeal period, especially where there is evidence signed by the people filing the appeals, that they had proper notice. She explained it should be noted they have been delayed in the construction process, they have sent notice by mail, made phone calls, hired contractors, and they have been shut down for the summer and are hoping to get a decision tonight.

P. Brouillard said there is a dispute about the notice so if the Board wants to recognize that is clients don't agree to the facts stated about the notice, then his client (Mr. Wainwright) doesn't have to speak, but if the Board is going to consider that whether his clients did or didn't receive notice than he would like his client to speak.

D. Andrade reviewed the information from the letter he wrote on May 23, 2011 to P. Brouillard that was provided to the Board and is part of the file.

The Board will deliberate on the applications.

Discussion ensued about the merits of the timeliness of the applications.

Motion made by S. Nix, seconded by S. Davis, to uphold Building Inspector's decision to not issue a Cease and Desist order regarding the Building Permit #2011000062 for File #Z11-08, based on the following:

- 1 Attorney Phil Brouillard's letter of May 18, 2011 to Gilford Code Enforcement Officer requesting a Cease and Desist was a request for an "enforcement action" to be executed and the ZBA does not have jurisdiction on enforcement actions.
- 1 The Code Enforcement Officer's response to attorney Phil Brouillard's letter dated May 23, 2011 did not raise any new issues or decisions regarding and interpretation of the Gilford Zoning Ordinance for the application that would be cause for appeal as described in RSA 676:5.

Discussion on the motion.

W. Mitchell referred to discussion by the Board about D. Andrade's May 23, 2011 letter to P. Brouillard, and that there was no new decision over and above the March decision of D. Andrade. He asked if that was intended to be part of the motion. S. Nix said yes and went on to amend the motion that D. Andrade's response to the May 18<sup>th</sup> letter, from Attorney Brouillard, was not an additional interpretation of zoning ordinance that would allow an administrative appeal.

S. Verdile Philibotte reviewed the motion with the Board.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members

P. Kiely-Yes

S. Nix-Yes

M. Corry-Yes

S. Davis-Yes

A. Howe- abstained

The Board decided to uphold Building Inspector's decision to not issue a Cease and Desist order regarding the Building Permit #2011000062 for File #Z11-08. The Administrative Appeal will not be heard.

Motion made by S. Davis, to deny File# Z11-09, the Administrative Appeal of the building permit based on its un-timeliness.

Discussion on the motion.

S. Nix said that the facts of this case appear not to be disputed, were that at some time in April of 2011 there was contact between Mr. Jolin and at least one of the abutters regarding the building permit and that it had been issued and that the abutters had already been put on notice by the Planning Department in writing regarding the process and that they needed to check in with the Planning Department over time.

P. Brouillard said the motion should be the reason for the Board to not hear the application is because it was not timely filed. He said the motion sounds like they are denying something that they have not heard because that would be unconstitutional.

S. Verdile Philibotte reviewed the motion for the Board.

Walter Mitchell said that the intent of the motion is clear to deny it because the appeal is not timely therefore; there is no jurisdiction to go forward and hear the merits. He suggested the Board move forward on the motion made.

Amended motion made by S. Davis, seconded by M. Corry, to deny the application for appeal based in the application's un-timeliness.

Discussion on the motion. S. Nix reiterated his previous comments on the motion.

A. Howe called for a vote on the motion.  
S. Verdile Philibotte polled the members.

P. Kiely-Yes  
S. Nix-Yes  
M. Corry-Yes  
S. Davis-Yes  
A. Howe- Abstained.

The motion carried with all in favor. The Board denied the application for Administrative Appeal File #Z11-09. The Board will not hear the application.

Regular Member E. Mulligan recused herself from the Bosworth application. A. Howe appointed P. Kiely to act as Regular Members for the Bosworth application.

A. Howe introduced the next application.

**4. Weldon Bosworth**

Administrative Appeal according to Article 10, Section 10.2.1 of the Gilford Zoning Ordinance, where the applicant is appealing the Building Inspector's decision that Article 4, Section 4.6.7, regarding the residence at 40 Hillside, is not being utilized as a "Rooming House" as defined in the Gilford Zoning Ordinance. The Tax Map & Lot # is 203-184.000. The property is located in the Single Family Residential Zone. File #Z11-11.

Weldon Bosworth, applicant, gave a brief presentation to the Board. He explained the location of the property. He wants the Board to interpret exactly what constitutes the definition of “Roomer” and he referred to the Gilford Zoning Ordinance. He said there is a transient nature to this use at 40 Hillside Dr. He believes this is single family residential and that the property owner should have gone through the SE process in order to have a “Rooming House”. He said he does not

D. Andrade said there are other types of rentals that are not considered “Rooming House”. He referred to Section 4.7.6 (h). He said this section of the ordinance was to be reviewed last year as part of the ordinance amendments to be clarified but it wasn’t. He said he has spoken with the property owner and she is not running a “rooming house” and that she is running it as a “family” member and that is allowed in the ordinance.

W. Bosworth said he sees different people living there over the past year. He referred to the ordinance definition of “Roomer”. He said he has had discussions with the renters themselves that they say they are “roomers”.

S. Davis said he read the advertisements and he does not believe it indicates a transient nature.

Agi Volkommer, property owner of 40 Hillside Dr.-she wants to clarify the weekly renting she put in the ad. She said it is easier for some people to pay by the week and that is not the intention to rent weekly it was just a method of payment. She said she is not advertising at this time for renters.

A. Howe reminded A. Volkommer what the merits of the case are and he asked her how she is renting the rooms. He asked her how the people rent the property. She said they rent rooms and they have access to all the facilities on the property. She said she has enough space and acreage to handle the residents. She said she thinks she should have the freedom to have renters.

M. Corry asked her how many people live there now and she said three and there are six bedrooms.

W. Bosworth spoke about the definitions of “family” and “roomer” and clearly believes that a Special Exception is required in order to allow the “rooming house”. He said if the Board does decide it is not a “rooming house” he ask they enforce the limit of 2 roomers.

D. Andrade said he does not agree that A. Volkommer is renting to “roomers”

S. Davis asked how he would define a “roomer”. D. Andrade said she has a single family residence that she rents out to people under the “family” definition and that is allowed

The Board discussed the definitions and S. Nix said they meet the definition of roomers in a single family home and therefore they should require a Special Exception.

Discussion ensued about the occupants sharing facilities and which definition this application

falls under.

A. Volkommer said the property is owned by Volkommer Family Trust which is her ex-husband and she pays rent to the ex-husband. She said she does not rent out the rooms she and the renters share the expenses and they pay the ex-husband.

A. Howe asked D. Andrade if he knew that A. Volkommer was not the current owner of the house. He said no.

W. Bosworth reminded the Board that the ordinance states if you take in roomer than you need a special exception.

S. Davis said that there are four people that are occupying the house that have a separate room to sleep but share the facilities. He said he doesn't interpret it as a "rooming house".

A. Howe opened the hearing for public input, with no comments from the public, A. Howe closed the public hearing.

A. Howe introduced the next application. E. Mulligan returned as Regular Member and P. Kiely returned as an Alternate member for the Nicolas application #Z11-12.

#### **5. Victor and Sara Nicolas**

Applicant requests a Variance from Article 5, Section 5.1.3, Front Setback, of the Gilford Zoning Ordinance in order to build a 10'x 20' addition to an existing house on Tax Map & Lot #227-027.000 located at 55 Farmer Drive in the Single Family Residential Zone. File #Z11-12.

Victor Nicolas, applicant, gave a brief presentation to the Board. He reviewed the application for the Board. He explained the hardship is there is no other place on the property to locate the addition due to the proximity to the neighbor's house on one side, the septic system on another side and steep slope on another side. If he were to build an addition to conform the roof pitch would be much lower and can be dangerous and would not fit well with the rest of the house. V. Nicolas submitted pictures of houses in the rest of the neighborhood showing their proximity to the setbacks and the road noting that their addition would not be negatively impacting the neighborhood.

Discussion ensued about the location of the proposed addition will be located along the Farmer Dr. frontage.

A. Howe would like the applicant to submit a plan with the location of where the property pins are located and that the proposed addition, the setback distances, and the septic system need to be shown on the plan.

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

S. Nix said he thinks the applicant made some good arguments about the lay out of the lot but the plan does not provide enough information for the Board to determine the need for a variance. He would like a more accurate plan submitted for the Board.

Discussion ensued about whether to require a surveyed plan for this applicant. A. Howe said the Board has accepted all types of plans however the Board should accept a more accurate plan in order to determine the variance.

S. Nix discussed in the future the Board needs to determine what they will accept for plans to be submitted but for now he thinks a more accurate plan should be submitted.

S. Davis discussed the issue here is how much relief should the Board grant for this variance application. He said he believes the applicant has met the hardship criteria.

D. Andrade referred the Board to 5.1.3 (f) for an interpretation. The Board believed that was more restrictive.

M. Corry asked about the frontages on the property and D. Andrade explained he has frontage on three roads therefore he has three frontages with the larger setback

## **DELIBERATIONS**

### **Re-hearing request- Steven Buzzotta**

E. Mulligan asked about the new information submitted. A. Howe said they have submitted information from an engineer discussing the need for variance due to the proposed location. E. Mulligan said they had that information from the first hearing.

S. Davis discussed that new information is needed or that the Board made a mistake during the first hearing to justify the request to re-open the hearing.

A. Howe agreed and said the Board should be looking to see if there is new information submitted now that was not made available to them before in order for them to hold a re-hearing.

Motion made by M. Corry, seconded by P. Kiely, to grant the request for rehearing based on the information in the letter dated June 23<sup>rd</sup> from Jeffrey Denis, CET, Life Safety Fire Protection stating the cistern has to run along the foundation a minimum of 5'0" to properly install the supply pipe to the basement.

Discussion on the motion.

S. Davis said if they rehear the case based on the information submitted from the June 23, 2011 letter he doesn't see it as new information. T. Selling said for this application for a rehearing, they asked the fire engineer specifically if they move the proposed building could the cistern be constructed. The fire expert said no the cistern cannot be built as proposed if they had to move

the addition. T. Selling also said if they move the proposed addition it would affect the aesthetics and architectural of the building as well as removing a handicap parking spot. T. Selling said that if you move the building then you have to move the parking spot and then you encroach into the entrance. And he said the

E. Mulligan-Yes

M. Corry-Yes

P. Kiely-Yes

S. Davis-No

A. Howe-abstained.

Motion carried with a vote of 3-1. The Re-hearing request **was granted to be heard on August 23, 2011.**

### **Administrative Appeal- Weldon Bosworth**

Motion made by P. Kiely, seconded by M. Corry, to uphold the Building Inspector's decision that Article 4, Section 4.6.7, regarding the residence at 40 Hillside, is not being utilized as a "Rooming House" as defined in the Gilford Zoning Ordinance. The Tax Map & Lot # is 203-184.000. The property is located in the Single Family Residential Zone. File #Z11-11

Discussion on the motion.

S. Davis said the ambiguity over the definitions of "roomer" and "family" needs to be addressed and clarified in the zoning amendment process.

S. Nix said the definition of "roomers" and "family" applies in this case and when you compare the definitions that it is "roomers". He believes because A. Volkommer is also renting the house defines it as a "roomer" and that they would need a special exception.

M. Corry said it seems as if there is an overlap in the definitions between "roomers" and a "family unit". If there are four adults living in the house and they are sharing expenses/rent is that a "family unit" or is it "roomer".

D. Andrade said the Planning Board should have gotten to this issue as a zoning amendment last year and they did not include it in the amendment process. He told Mr. Bosworth last year the Planning Board would address this issue and Mr. Bosworth has been waiting a year for this issue to be resolved.

P. Kiely referred to section 4.7.2 of the ordinance for "Boarding House" wants to know what the difference is between that and "Roomer". D. Andrade said that is part of the issue is it is confusing within the definitions. S. Nix said the resident owner is also renting the rooms; it is not individual units being rented. He said because the owner of the house is renting the rooms, it fits the definition of "Roomer".

A. Volkommer admitted that she is not listed as an owner on the deed. M. Corry said it sounds like these are four individual people renting rooms with a principal person having other people rent rooms in her house.

W. Bosworth discussed the definitions and said if you take in “roomers” which are people who pay rent for a room, you need a special exception to have the use allowed. D. Andrade said they are not paying rent for a room they are paying rent to share the entire house and property.

A. Volkommer asked what the difference is for people who rent out their house and do not live there. She wanted to know if those people have to get approval.

W. Bosworth said the evidence is if you advertise a room for rent than that means the people renting the rooms are “roomers”. D. Andrade said they share amenities of the property. W. Bosworth said but they are still renting a room. S. Davis said he interprets it as the residents are all equally renting a share of the house and they have privacy of a room, but they share and have access to the entire house. He said that is not the case with a “Rooming House” where you rent a room and do not have access to the entire property. He sees the difficulty in D. Andrade’s position trying to properly define the uses. He does not interpret this as a “Rooming House”.

W. Bosworth thinks there should be due process and that this application falls under the requirements for a special exception.

A. Howe called for a vote on the motion.

S. Verdile Philibotte polled the members.

P. Kiely-Yes

S. Nix-No

M. Cory-Yes

S. Davis –Yes

A. Howe-Abstained.

Motion carried by a vote of 3-1. The Administrative Appeal was denied, the Board upheld the Code Enforcement’s Officer Interpretation that 40 Hillside Drive is not being used a “Rooming House”.

### **Variance request-Victor and Sara Nicolas**

Motion made by S. Davis, seconded by M. Corry, to approve the request for a Variance from Article 5, Section 5.1.3, Front Setback, of the Gilford Zoning Ordinance in order to build a 10’x 20’ addition to an existing house as having met all the variance criteria as follows:

1. *Granting the variance would not be contrary to the public interest because: It will not directly affect any abutters.*

2. *The Spirit of the Ordinance is observed because:* No negative impact will be made to the neighborhood as there are other homes located close to the road.
3. *Substantial Justice is done because:* The property owner will be able to add value to his home.
4. *The values of surrounding properties will not be diminished because:* He submitted pictures showing similar houses in the neighborhood that were closer to the road and he will be adding value to the home.
5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:* The design of the lot, the lot having 3 frontages, and the applicant has shown that there is sufficient distance to maintain the right of way

(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 proposed use is reasonable for the house to have another bathroom.*

Discussion on the motion.

A. Howe would still like a plan submitted showing the distances and setbacks located on the plan.

S. Nix-Yes

M. Corry-Yes

E. Mulligan-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**.

### **OTHER BUSINESS**

S. Dunn announced there is an opening on the Board for a Regular Member and he offered the position to Alternate Stephan Nix. S. Nix accepted and is now a full time member

### **ADJOURNMENT**

Motion made by E. Mulligan, seconded by S. Davis, to adjourn the July 26, 2011, Zoning Board of Adjustment meeting at p.m. Motion carried with all in favor.

Respectfully submitted,

Stephanie Verdile Philibotte  
Technical Assistant