

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
MARCH 27, 2012
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, March 27, 2012, at 7:00 p.m. in Conference Room A.

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

Absent Member(s): Stephan Nix

Also present was: David Andrade, Building Inspector/Code Enforcement Officer and Sandra Hart, Secretary.

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

Howe presented the first application.

- 1 **Paugus Bay Plaza Condominium Association** Application # 2012000051
Variance request from Article 3 under "Transient Occupant" definition to allow extended stays at their motel beyond 30 days, Tax Map & Lot #201-001.000 located at 131 Lake Street in the Commercial Zone.

Craig Donais, Esq. of Donais Law Offices stated that he was representing the applicant Paugus Bay Plaza Condominium Association; there are 63 resort units and 29 commercial units that are under condo ownership right now. He referred to their application from 2 years ago and that they came before the Zoning Board to do some sort of a modified 55 and over senior housing between September and May or alternatively some sort of work force or dormitory style housing. The challenge with the property is that in the summer occupancy is great and in the off season occupancy is a little challenged. The issues from two years ago are still the same. This property is fairly unique in that it is condominium owned with commercial and resort units with certain restrictions as well. The unit owners have been struggling in the last couple of years and in the last 2 years or so approximately about 10% of the units have been foreclosed. Economic pressures are effecting the association, values are down and economy is down. The association used to have on site management, running a front desk has not been economically viable to so in recent years. It wasn't functioning effectively as an association in that matter, so the individual unit owners have been tasked with trying to rent their resort units out subject to the restrictions in the zoning as well as in the declaration condominium. At this point the situation isn't getting any better; this is a locally owned unbranded type property.

The association is here tonight on behalf of all the unit owners perhaps looking for some relief from the zoning ordinance, from the definition of transient occupant of Section 3. The association understands the towns concerns about establishing occupancy and the demand of the

town's services and is cognizant of that, so the association has some concepts and ideas of self policing. If someone were to stay for an extended period they would have to have permanent occupancy somewhere and wouldn't be able to vote, register vehicles and etc. The association is completely opened to transparency so, that the town would have access to the information about any extended stay guest.

David Akridge stated that he is a unit owner and is also one of the directors of the association and he then presented binders to all of the zoning board members. He stated that as Craig mentioned we were here almost 2 years ago, and at that time we withdrew that application. The concern at that point in time was how to self police, how do we meet the goal of not having people establish residency. We have developed a policy, which is referred to in the lime tab #2 in the binder. Self policing by-laws, which has been unanimously adopted by the board of directors and it is subject to if we were to get a favorable relief from this organization. He then summarized the policy to the board members.

The key is that this is not a landlord tenant, there is no lease. One of the concerns that he has heard is that you don't want this to be a low income housing development. The beauty of an Innkeeper law is that it is license and not a lease. So, that you don't have the landlord/ tenant issues or evictions. If the guest breaks the rules, just as any guest at any hotel within the town of Gilford breaks a rule you can pick up the phone and ask the guest to leave. If the guest doesn't comply then the guest can be removed. He referred to the Innkeeper statute and that it was also in the binder for the board's information.

He then asked if there are any questions from the board.

A. Howe stated that he was aware of the Planning Department being there and evicting people and that some of them are of a questionable character. How would we intend to change that? David Akridge replied that when you are renting a hotel room, you don't do a back ground check on those people. You just have no way of knowing that someone may have a record. If we get this variance then the task that we have will be to educate our unit owners as to what their responsibilities are and we aren't asking you to do that for us. We have outlined in the policy, that if you have a guest then they will need to provide a permanent resident address elsewhere other than 131 Lake St. To who asked A. Howe? D. Akridge replied to the unit owner first and the unit owner will be required to then provide the information to the association. If we as the association believe that there is an individual unit owner who is not in compliance with the policy and the variance we have adopted a financial penalty. He stated that the fiancés of four years ago were in a shambles and that now our people are paying, because we enforce their need to pay the association fee. The policy has been ratified by the board of directors and if they get the variance than the association will have to impose a \$25.00 a day penalty for any unit owner that has not provided the necessary information.

D. Akridge stated that if the unit owners don't give him the meals and lodging permit information, it is on the State of NH website and then he referred to the purple tab#2. The website does show everyone in the town of Gilford that has a meals and lodging permit. They are all supposed to have these permits.

A. Howe stated that you have a board of directors, such as a President, Vice-President, Secretary, Treasurer and however many sitting board members, but he wasn't sure what they were actually going to be reviewing.

D. Akridge replied that they have a property management company called Great North and they have been with them almost 4years. We pay this company to operate the premises.

A. Howe asked if the rentals were made through this company. Yes, replied D. Akridge because each individual unit condo unit at this point in time is individually owned and operated. A. Howe then asked what mechanism is there other than the owner's responsibility to notify the association or let the association know that they have someone who is doing an extended stay. If they don't say anything to you, nobody's going to know except maybe a nosey neighbor. What assurances do you have that these will be picked up, that there is a failsafe system to know that certain units have an extended stay? A. Howe stated that based on the history that he's heard through D. Andrade and at some point he will have D. Andrade share it with the board. He doesn't mean to disparage any of the current owners, but it wasn't happening. They weren't letting you know, the town or anybody. They were just renting them out to extended stays, so what mechanism do we have now to insure that specific units will have an extended stay.

D. Akridge replied that the association will be actively involved with the self policing policy that they have adopted with a financial penalty. Every unit owner in there at this point in time knows that if they don't pay they will lean, we discontinue association services and ultimately we foreclose. The other part recommended by Attorney Donais is that if we get the variance we would probably add some additional language to adopt.

He understands the concerns if the unit owner doesn't comply with the policy, he can go to the State of NH website and he could show you the unit owners that have a meals and lodging permit. I can tell you tonight that there are many unit owners that will have to get that permit immediately. He also stated that once they get the meals and lodging permit if somebody is trying to hide the revenue they would run a lot of risk, because they are then defrauding the State of NH. He stated that you have to file a meals and lodging return even if you have zero income every month and if you don't do it by a certain date the state will send you a letter telling you that you haven't filed yet.

Howe asked David Andrade to share the recent history to the board.

D. Andrade stated that could see the confusion between what is extended stay and what has occurred up to date. He stated that what had occurred prior to the establishment of an extended stay program was merely renting for the purposes of residency and that is what the big difference is.

They are asking for hotel transient use to allow longer a stay than 30 days. The violation before was the fact that they were renting these units out as apartments and people were establishing residency and that was contrary to the zoning. He stated that he has had to spend a lot of time going over there doing surveillance and trying to pick up exactly what was going on and finding several violations of people utilizing the units as apartments. We did receive several calls from

the Police Department, other neighbors and other tenants that were being evicted. We did discover that there were a couple of felons living there and one in particular the Gilford Police had arrested due to outstanding warrants, and also had been running an illegal business in the unit. This tenant was tattooing someone when the Police walked in to arrest him. The Fire Department has reported that they had made 14 calls or visits since September and majority of them were alarm or sprinkler failures and there were 4 EMS calls. If they are being utilized as apartments, they do put a drain on the town's resources. He stated that if there was way of registering and that the association would have control of each unit owner if they were required to register at a central location.

He's having problem with vehicles over there and identifying who owns what vehicles. He stated that usually in a motel/hotel if he rents a room, he is required to give them his license plate number. D. Akridge stated that he was correct and then he referred to the sample folio. He stated that it's just like registering at a regular hotel, because it is a regular hotel. You just have 63 individual unit owners and that's the difference. D. Andrade stated that at a regular hotel he can go right to the front desk and ask for certain information. D. Akridge stated that one of the things that they have discussed internally is to have a website exclusive to the association. You wouldn't have to go to the front desk to see who was listed as extended stay, because what they can do is put all the information by unit owner with limited administrative access to the association website, which you can look and see all the necessary information.

So, you have an administrative website, asked D. Andrade. D. Akridge stated that they do have a website administered by Great North and each and every unit owner has the ability to look at their particular account. Board members have administrative access; he stated that he posts on monthly basis financial statements so that all of the unit owners can see it and he could do it himself or have Great North do it for him.

Howe stated that based on the history, you can understand the concerns about keeping this under control, which it hasn't been in the past. He hopes that through this application process we can get something in place that will work. He stated that when you state things like self administering it does send shivers and he hates to say that, but the fact of the matter is that you've been having problems and costing the town money and we don't want to continue this way. D. Akridge stated that self policing was the direction they were given about 2 years ago and they have done that.

D. Akridge stated that within the 4 years of being on the board their financial situation for this association has improved. He noted that 2 units were a problem and they continue to be a problem and he believes that those were the same units that D. Andrade has dealt with. He can show you an aging report from 3 years ago versus today and that 90% of the owners are 100% current.

He stated that the one thing that will be addressed this spring, which has been identified in their long term planning will be the roof line and that it needs to be improved. It is their intention to that this spring.

Howe stated that if we gave you the self policing comments from the last meeting it was from the

point of view where we had no history of problems, now we have problems and that changes their approach and concerns. At this time we have a different set of concerns based on different circumstances and now we are having problems and we want those problems to go away. You aren't in conformance with the ordinance as it stands, but we are hoping that whatever it is that you do put in place makes it much easier and will have 100% compliance with the ordinance and or the variance application being granted.

D. Akridge replied that the other thing that they put in their policy is that we are not only going to administer the fines, discontinue association services, lean the property, we will provide D. Andrade with the list. We will join you, because we want to run a clean operation and we want to run as a hotel/motel. I can tell you that our individual unit owners and if you look at the declaration from the period of June 1st through Sept. 30th and by declaration there is no limit for time that somebody can rent a unit. Each of these unit owners and the last time that he was here they spoke of the hospitality business in general, Bike week occupancy is down and yes you fill, but you're not going to get the rate you were getting 5 years ago.

D. Akridge referred to other hotels in the area and that anyone can walk in and ask for extended stays and that the customers have a permanent residence somewhere else. He referred to orange tab #2 in regard to other locations, which he was able to make reservations for extended stays. So, are they in violation of the current zoning ordinance, yes they are and is it unreasonable for them to want to rent for more than 30 days, no not all. The business has changed and that's what he does every day for a living, operate hotels.

B. Knightly stated that his question goes back to the way the deeds are registered and they all show restrictions; will they all have to be changed? D. Akridge stated that they would have to be amended and they would eventually have to come back to get ZBA approval.

B. Knightly stated that it states the resort may not be rented to the same tenant or occupied by owners or guest for a period of greater than 2 weeks consecutively from September 1st to June 1st of any year. Correct, replied D. Akridge. So, the owners could only come up for like two weeks, is that two weeks at time or is that a total of 14 days. D. Akridge stated that it was probably written that way, because if you're going to have hotel/condo relative to the tax laws, then you shouldn't occupy it more than 2 weeks out of the year.

B. Knightly stated that during September 1st to June 1st if this variance is granted and we offered an extended stay, would there still be limit to how long it would be rented.

D. Akridge replied that if they have a permanent residence elsewhere that is valid than it probably shouldn't matter. Practically if somebody doesn't want to do an extended stay rental in June, July and August because they can rent that guest unit for \$100-\$150 a night, which is not what they would get if they do an extended stay. Typically when you do an extended stay the longer you stay the less you pay.

B. Knightly stated that there are some owners that own more than one unit. Yes that is correct replied D. Akridge. B. Knightly then stated that some of them are using the units for income as a business. Yes they are replied D. Akridge.

E. Mulligan asked how would you police if somebody does have a legal residence somewhere else and they were going to stay for an extended period. Anyone could give you their parents address and that's what is listed on their license and how would you regulate that. D. Akridge stated that he wasn't sure that they or any other hotel have the ability to say affirmatively. The other thing that you can do is ask for a copy of the driver's license and maybe match that up and that might be the best way. E. Mulligan stated that it seems that the owners are going to be anxious and if not in some cases desperate to rent these out and maybe checking it would work out initially, but what keeps somebody from changing. D. Akridge stated that desperate is what they have been and he's sure that it's part of what the problem has been.

D. Akridge stated their many unit owners with their concerns and he stated that they weren't going to be and will never be residential.

B. Knightly referred to his son and that he is a landlord and that they have a law in place with regard that if someone moves to NH they have to register their car within 60 days. D. Akridge made an example in regard to a permanent address and what it is. Are we going to run a DMV on every vehicle in the parking lot, no. But do have other unit owners here on a regular basis in addition to Great North. One of our unit owner's, which also performs a maintenance function, is there 4 days a week on site.

Howe asked if the applicant would address the 5 criteria for a variance.

1. *Granting the variance would not be contrary to the public interest because:* Not contrary to the public interest. The property right now is contemplated for resort use, transient type use by individuals who could be occupying the property. At this point we are not anticipating any expansion of the footprint or the actually maximum utility and use of the property as a whole. The property itself could be utilized in its current configuration under its current permitting with the current zoning restrictions by unit owners so that each unit could theoretically be occupied every day all year long. The change that we are requesting would just be the number of times that that the room has to cycle In the course of a year or in the course of a two month period would be diminished. So, in terms of impacts of property in the community it wouldn't be any greater than theoretically possible for the property as currently configured today.
2. *The Spirit of the Ordinance is observed because:* We think that the variance request is within the spirit of the existing zoning ordinance and we believe that the concern that the town has most significantly is the establishment of permanent residency in town by folks living in these units. With the self policing policy the association has spoken about and making sure that the individuals that are occupying the units on an extended stay are not residents and can't establish residency. The objective of having this be a resort type unit is satisfied through the variance as well.
3. *Substantial Justice is done because:* Substantial justice would be done by granting the variance at this point, because consistent with what we've discussed before the variance would allow the property to be utilized to its maximum capacity as already could exist on

the property today. It would reduce some of the administrative burden on the individual unit owners and would allow for some flexibility for the unit owners to have those extended stays. We understand there have been violations, and that individual unit owners have been renting these and it is something that has been brought as a topic at the annual meeting, since he has been representing the association dating back to 2005-2006 of what the zoning provisions are even though the unit owners are aware of it there are violations. If the board were to grant a variance to allow for an extended stay, allow for some additional flexibility, allow for that transparency so that unit owners could have those extended stays. That information could be made public, individual unit owners there would self police between and among themselves. The association would self police and that information would be made available to the town. If there are violators who continue to that and not comply with the policy, we won't stand in the way at that point as Mr. Andrade spoke about and we want to hand that information over, because these folks are in violation. So, we think that substantial justice would be done and that a lot of the problems the town has spoken about would disappear and the overall quality of the property would improve.

4. *The values of surrounding properties will not be diminished because:* This will not diminish surrounding property values given the uses that are in the neighborhood and what the property could be used for today. Again it's just a change in the use of how the property itself is being utilized, but the reality is that it could be utilized by guests every day in every unit all year long. It's just that administrative burden that currently exists.

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:*

Denial of a variance would result in a hardship and that goes with the issues the town has with the individual unit owners and the desperateness of those unit owners to break policy despite their knowledge that the town is opposed to it and that there in violation of the zoning ordinance and the despite the instructions of the association of how the property can be utilized.

Howe stated they've hear the association say that if they are granted the variance their going to make these changes to their bylaws. He stated to Attorney Donais that you would press them to make the change even if they don't get a variance. Attorney Donais stated that the existing declaration dates form 1995 and he wasn't involved with the association until about 2005.

When he did get involved with the association there was on site property management, front desk, ability to call in to make reservations and that went away once the economy turned sour. So, because of the process that is involved to amend the declaration the goal is to get all of the things that we have to do in a single bundle, so that we can present them to the unit owners and get them to approve it and then by statute the approval of the 1st mortgage holders. If we do get this approval then the process will take about 2 years to get all of the approvals together to come back to the town and get the approval from the town.

E. Mulligan asked if there was something in the binder that she needs to absorb in order to make a decision, because if so then we may have to table our decision, so that they could read through it and understand it. D. Akridge explained what was in the binder to the members. He then referred to other extended stays. He also had an example in which he then passed out to the members with regard to long term stays that he printed off from the hotels websites. E. Mulligan asked about the rates of the unit owners and how much they would charge. D. Akridge stated that rates vary by hour, daily, month, season or exactly and that the best analogy would be the airlines and he then explained what he was referencing.

David Belthmen stated that the different people pay different fees and that he doesn't believe that it reflects on the type of person/renter that they are. He stated that he's been coming here to this area for 50 years and that he likes this property, because it has potential. He stated that overall he would like to keep this location running, looking good and making people happy that are staying there. If for some reason they don't have the ability to rent those units then it will become an abandoned property at some point in time and if someone wants to come in and buy it and take it over they will have a difficult time trying to run it the way we are. He also wanted to state that this board is a very strong board and that they are dedicated to keep this property up and running. We will do our best as far as the policing policy is concerned to make sure that the people are the right people in terms of the conditions that we want to put in the variance and make sure that it is a meaningful property to the community.

D. Belthmen referred to the two week stay and that if he rented 26 times a year to someone that it would be a lot of traffic going in and out of there. Someone could stay at a hotel even for one night and something bad could happen, and they are concerned about those things. So, you understand our goal is your goal which is to keep the property up and running, making it a successful property and changing with the times.

D. Andrade stated that he wanted to make a couple comments. He's not hearing a response coming from your direction and it may help if you do respond. There have been questions directed at you as far as are you planning to establish a time frame. How do you propose to establish your organization from preventing what was happening? The town was required to assist someone who was living in one of these units. By law the town is required to assist these people, if they aren't capable of supporting the move on their own.

D. Belthmen stated that comparing this to a rental problem and could it happen anywhere not just to the extended stay units. He stated that they would be happy to voice concerns and that he wants to work with the town and would like to come up with a solution that any reasonable group could understand under these circumstances.

D. Andrade stated that the Innkeeper laws are treated differently. That is what we are trying to accomplish is to get out of the realm of residency, because that it employs other legal streams that the town would have to follow. The Innkeeper law was referred to as transient is referred to in the zoning ordinance and that was what was explained by D. Akridge. He also stated that they would probably be ok with the extended stay from September to June 1st. Practically the unit owners are trying to derive the most income and the pattern should be from June to September because that is the busiest times there are the races, bike week and the lake.

How does the board feel about a time frame asked D. Andrade?

B. Knightly doesn't really know about a time frame and he wasn't aware that this was this type of place and that what bothers him and are the violations. He agrees with D. Andrade, because there is no central place for rentals to take place. Paugus Plaza has been in violation all along and has been caught because someone dropped a dime on them. He stated that most of the time just a letter to the violators usually solves the problem. If the hotel did have a central location and a way of enforcement would make things different, because if not it's going to go back on our Police Department and our code enforcement officer.

D. Belthmen replied that they are here to make a change and if they are penalized for what has happened in the past then nothing will never change and the property will deteriorate and become useless at some point.

A. Howe stated that he doesn't see anything in place that he feels is effective to prevent this from happening and he has heard all of the testimony about the penalties and he understands that. He just doesn't see anything in place that will catch it the moment it happens.

D. Akridge stated that he has only been a unit owner for 4 years and out of the 63 unit owner's only small percentage were actually paying their fees. He stated that since he has taken over things are getting done and now they can actually afford to get these things that need to be done. He stated that every time D. Andrade has called and that as a representative of the board he has been responsive to him.

D. Akridge stated that the message that he has received is to develop a self policing policy and he's not sure what else he can do.

A. Howe stated that he heard all this, but has not yet heard an answer that they want to hear as far as what's going to happen on a daily basis is concerned.

D. Beltham stated that they now have someone 4 days a week and they could make that person 5 days a week and can give them that additional responsibility. So, that they can check those units and make sure those things are done. We also have a very strong board of directors that will follow up on that in addition we have a management company and we can work out something with them, so that they can help us comply with that.

D. Andrade asked didn't you say that you would register on your website. D. Akridge replied

that there is a folio just like any hotel; you have to provide a permanent address, provide a check and check out date, vehicle information and in addition to the folio that you would get on the hotel you're going to have to acknowledge the rules and regulations of the condominium association. You will have to affirmatively acknowledge that this is not landlord tenant situation, it is Innkeeper and that is a license which can be revoked if you don't follow the books. He stated that his would be accessible for the town, just for the extended stays, but if you want to go on the website and see what's happening in a particular unit, where they're from etc.

D. Beltham stated that in other words we can do it. Instead of having an office inside of the property we can do it virtually, because the ability to that is now available to us. So, all you have to do is go on line and see who's in there immediately and address it.

E. Mulligan asked if would make since for them to come up with a specific plan, while we the board digest this information and table this application until next month. Sure replied A. Howe.

E. Mulligan asked if they will be changing their bylaws, wouldn't that be a Planning Board issue. D. Andrade replied that it would go through the town attorney for review.

D. Akridge stated that they understand that if we get this, you can make the granting of the variance conditional on adoption by the association. He can tell you if they get the variance they are going to adopt it and at that point take care of a running list of things that need to be changed within the declaration to allow us to be more responsive and stronger as an association.

D. Andrade stated that you can amend your declaration and submit it for review by the town attorney. A. Howe asked D. Andrade if he was aware of any other ordinance that may effect this application or be affected by this application or is this the proper ordinance. D. Andrade stated yes it is lined up correctly, but that in future the reviews would be in the hands of the Planning Board and that limitation to accommodate the current motel/hotel operational standards. A. Howe asked if we had any other similar hotels/motels in this zone. D. Andrade replied that there is the Fireside and Misty Harbor, but they have front desk individuals.

E. Mulligan stated that they also don't discount for extended stay. She stated that Misty Harbor's condo owners are allowed to charge their own rates, but the condo association itself charges specific daily rates. D. Andrade found it interesting that the Marriott approved a longer stay than 30 days, because when he went out there they told him they honor the town restrictions.

S. Davis stated that it may seem that this is redundant questioning, but he wanted to ask a few questions. You have been very quick to point out that you can book extended stays at the other locations. Did you do any diligence in terms of investigating as to whether they have had similar problems at these two facilities, similar to what the town has had at your location? D. Akridge stated that he wouldn't have the availability to do that. S. Davis than asked D. Andrade the same questions. D. Andrade stated that the only way was that we had received a formal complaint to this specific location.

D. Andrade stated that they may not have similar problems mainly due to the fact that these other locations have centrally controlled operations. It's not to say that the same types of people

aren't renting at these other locations. S. Davis stated that we just haven't had issues at the other locations with extended stays. No we haven't had a problem like this, replied D. Andrade.

D. Andrade stated that he is a very strong opponent of single point of controls versus the policing of your own. S. Davis stated that he could see a front desk, where someone could come in and know exactly who is in there, when they check in, when they'll be checking out, and he could almost envision that the condo owners could be scheduled to have front desk duties. He didn't think it would need to be hired out all of the time. He thinks the front desk concept and knowing whose in there is a huge issue for him. He stated that this after the fact self policing thing doesn't make him feel comfortable in knowing that you'll have a handle on it, just because you're going to approach it from that direction.

A. Howe opened the hearing for public input. No public input.

B. Knightly stated that he agreed with S. Davis and that his big issues would be having a central location with the rentals and also the rental advertising should come from that central location. He is also concerned with the state and the taxes that are paid. He stated that the front desk is the real major issue.

Howe closed the public hearing.

A Howe introduced the second application.

- 2. Stanley & Frances Meisser Application #2012000053**
Variance request from Article 5, Section 5.1.4 & Table 2, Table of Dimensional Requirements to permit a 364 sq. ft. encroachment into the 25' sideline setback to allow construction of a Single Family Residence, Tax Map & Lot #223-454.000 located at 63 Varney Point Road, Left in the Single Family Residential Zone.

Patrick Wood of Patrick Wood Law Office stated that he was representing Ashley Grant and Tyler Davis who have a contract to purchase this property from Mr. & Mrs. Meisser. He displayed a copy of the proposed building to the members and the property. It is an odd shaped parcel of land and that it is 100 ft. along Varney Point Rd, 100 ft. on the S.W. side, 105 ft. on the N.E., and only 63.4 ft. on the rear side S. E side. Due to the trapezoid shape of the lot they don't meet the zoning requirements.

What they are asking for is a variance for 64 sq ft. and that it would put it at its closest point at 8 ft to the property line. It meets all of the setbacks except of the N. Easterly side. The proposed structure will be a small two bedroom home with two garage bays; the idea is that this is a starter home. There is a telephone pole in the front of the lot, so it makes it difficult to maneuver for garage space. He stated that the lot next to it is a very small triangular shaped parcel and it would never be able to be built on because it's not wide enough to one or two of the setbacks. The applicants have spoken to the owners of that parcel the Curley's and they indicated that they don't want to sell the property. The nearest house to the East is about 50 ft. to the proposed house.

The proposal is to build a small 2 bedroom house and the plan for the house would be modified to accommodate their needs, but the foot print will not change. They may do different things inside or add dormers to the 2nd floor living space, but the house itself would be the same.

We are asking for the variance, well to have a house that fits in the ordinary construction mode is critical. You could build a house that would like another trapezoid, but this is a very small lot. To build a trapezoidal house on this lot would not be feasible or usable and wouldn't be of benefit to the neighborhood or to the applicants and the owners of the property would lose the sale of the property.

1) The variance will not be contrary to the public interest. 1st of all, will this variance that we are requesting be contrary to the public interest. Well the setback provisions of the zoning ordinance were designed primarily to encourage a development that wouldn't over crowd the land within the town of Gilford. This development on Varney Point Road has been in place for decades. The lot was first subdivided and surveyed back in 1937, and the description has remained the same. He stated that sometime in the late 40's it was purchased by the family across, which they just sold and they still have this lot.

The public interest by reducing overcrowding is basically met because of the unique situation of this lot, and the adjoining triangular parcel of land. If you add the two dimensions on the plan it's 35 ft. approximately from the northerly part of the lot to the line of the triangular piece and it's 17.4 ft. to the back corner, so if we use that line, it would only be 8ft. to one small corner of property. This would be a rational approach, because that triangular lot could never be build on.

A. Howe asked if there was anything on that lot currently. No it is vacant land replied P. Wood and to his knowledge there was nothing on the property.

The granting of the variance would allow this moderately sized residence on this very irregularly shaped lot. It wouldn't alter the central character of the neighborhood and that many of the houses in this neighborhood are on similar size lots although they are rectangular, so they are a little bit larger. Some of the houses are even larger than this one. It is a very nice residential neighborhood.

2) The spirit of the ordinance is observed. One of the purposes of the setback is to provide adequate space between buildings. We have indicated that the house to the S.W. is approximately about 25 ft. or closer and it is about 45 ft. from that house to this proposed house.

A. Howe asked if that was the lot to the S.W. Yes, replied P. Wood and that was the property that came for a variance last year.

S. Davis asked if they could purchase the triangular piece of land to make that other triangular shaped lot buildable. I don't believe so, replied P. Wood. E. Mulligan stated that it wouldn't have enough road frontages first of all. P. Wood stated that there lot is 164 ft. on the road and 150 ft. back, so it looks like it's just barely an acre and that's just looking at it from the tax map and that is approximate not absolute. But again one of the reasons for the setback is to provide

ample space between buildings and we think the spirit of the ordinance would be observed.

3) *Substantial justice is done.* In order to determine that is whether the gain to the public outweighs any loss to the individual and whether the proposed development is consistent with the areas present use. The present use is residential and that is what is being proposed and this has no benefit to the public by requiring a house to be so small that it really doesn't have any viable use and in our opinion not that great. Allowing a house that while small is still livable and reasonable and useable does have a benefit to the public. It adds to the character of the neighborhood in a positive sense, it adds to the tax base to the town of Gilford. Most importantly it provides housing to a young couple that have made a commitment to stay in the town of Gilford.

4) *The values of surrounding properties are not diminished.* No, almost all of these lots have already been built upon adding another house on a residential lot in a residential neighborhood development will not diminish the value of surrounding properties. To us it is inconceivable that 364 sq. ft. encroachment to one side will have a negative impact on the values of the surrounding properties in particular the neighboring properties.

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:*

There has been some history given on the lot. It was owned exclusively by people who had their primary house across the road on the waterfront and now the current owners want to sell this lot. They want to sell it for residential purposes. The applicants have purposed to buy it and build a small house on it. The agreement is contingent upon obtaining the appropriate variance in order to build. Is there a fair and substantial relationship between the general public purpose for the side setback in light of the existing development at Varney Point, we don't think so, not for this particular lot. We think that the substantial relationship between the general purpose of the ordinance, reducing overcrowding, providing ample space between buildings with this proposal and the location of the house is reasonable. Again three of the setbacks are met and we are only talking about one. It would allow the applicants to build a new home and it's a permitted use. It would be a reasonable in just means to allow them to construct a two bedroom home.

If the variance were to be denied it would be a substantial hardship on them, because of the required reconfiguration of the home and it would be a substantial hardship for the owner's of the land, because this proposal is probably the only one that will work on this site for a residence

and if they can't get approval to build this house then the lot will basically become unbuildable

S. Davis asked about the green area on the plan that P. Wood had displayed. P. Wood stated that it was 364 sq. ft. S. Davis then asked about the 3 areas that are not being utilized in side of the setback area that is show on the plan. Do you know what the footprint area would be that isn't being used? He stated that he was trying to see if could help reduce that number. P. Wood didn't know what the #'s were in that area, but he could do some quick calculations.

A. Howe stated that he was confused about the sketch of the garage and he stated that it looked like a big garage. D. Andrade stated that it was a 48' x 41'cape over a 2 car garage. Howe asked, so the living space is above the garage. Yes, that's correct replied P. Wood. P. Wood displayed and explained the house and garage to the members. There will be some configuration of the house, but not of the footprint stated P. Wood.

Howe asked if there were any members of the public that wish to speak:

Samantha Jewett stated that she was an abutter next door to this property. She stated that she has letters from the Curley's and the Elliott's, which she submitted to the board. She stated that she spoke with the applicants and they are a delightful and the proposed house is gorgeous. When she looks at the zoning ordinance and what it is meant for and the plan that was provided, they can build their house within the setback that doesn't require a variance. It may not be the house that they want, but they have that possibility to build the house within the setbacks. She stated that all of the lots are irregular in shape on Varney Point. Her lot next door is very long and very narrow and a year ago they were there for a variance and had many challenges. They were asking for 6 sq. ft. to square up the back of the garage and they were denied, so I understand their frustrations in trying to get a variance that you really want. She stated that you need to meet all of the setback requirements. Within the plan she read that proposed house is 8' from the Curley's property line, but they are also 17' from the Elliott's line. It's almost like we have two variance requirements here.

She stated that there are many other uses for this property. We've heard a lot about that Mr. Meisser and why they purchased this property, well it was because they didn't want anyone to build across the street. This is also why the Curly's bought their little piece of property; they didn't ever want anyone to build there. Mr. Meisser's realtor sent him a letter stating that the best use of the property because of the size would be for an accessory use. This is really what they had used that for forever and to say that it is a hardship for Mr. Meisser is inaccurate. The letter to Mr. Meisser from his realtor states that the value of the property is most effective by the size, so the Meisser's have known all along that there is an issue with the size of the property. The lack of sq. footage along with the length of the rear lot totally dictates the small building envelope.

The highest and best use would be an accessory parcel for one of the neighboring waterfronts or other neighbors. Therefore denying the variance would not be detrimental to the owners. She referred to the 364 sq. ft. and that's about a quarter of the size of the house and that is significant. She knows that they are banking on that if this doesn't have a use and it's a small lot, but none the less the Curly's own that lot and they have a right to obey the zoning ordinance.

The encroachment of 364 ft. is significant and we have heard a lot about them being 50 ft. from the nearest homes. She stated that in her request for a variance she was 100's of ft. away from other homes, and it was in the back of their garage. So, I'm not sure that because its 50 ft. from the nearest home should really hold any weight and that all neighbors should be treated the same.

E. Mulligan stated that they did grant them a variance, yes S. Jewett replied for 6 inches. E. Mulligan thought that they had granted two variances. No, replied S. Jewett we didn't get to square of the garage and if you visit our home you'll see it's deformed in the back.

S. Davis thought that her request had been for two variances in two property lines in two directions. Yes, S. Jewett stated she was aware and it was for 6 inches.

S. Jewett stated that they talked a lot about overcrowding and that the sizing of this house would be overcrowding this small lot. She stated that a house can be constructed on this lot, but it's not the home that they would like to build, but that shouldn't be a hardship. There is another lot in the corner for sale. Mr. Meisser is under no hardship, because he has been offered money for this lot from many neighbors.

S. Davis stated that this is not a subdivision is it? No replied P. Wood.

A. Howe then asked if there were any other members of the public that wish to speak.

There being no further public input we go back to the board.

P. Wood stated again the reason they were here is because they are asking for a variance and we understand what it says and what it requires. We are asking you to consider is this a reasonable alternative to the proposals made by S. Jewett. It the best use was to tie in this lot with the waterfront lot, they obviously didn't tell Mr. Meisser because he's selling them separately.

A. Howe asked P. Wood that if he didn't mind if he could respond to Samantha Jewett's concern about the 364 sq. ft. being a substantial portion of the house and that there are other unused portions outside of the setback about 200 sq. ft. So, we could reduce that impact of the setback. P. Wood stated that if we were to reconfigure how the house sits the difficulty would be the total area even if it is 200 sq. ft. The total buildable area would then provide for a house that would be less than 1000 sq. ft. and would have some really strange angles.

A. Howe stated that if you could reconfigure the house, so that we were utilizing the 200 sq. ft. outside the setback that isn't currently being utilized thereby reducing the impact of the side setback. He understands the impact of the odd shape of the property, but still if we were to utilize and trade off that impact to the setback by utilizing some of the sq. ft. outside of the setback then we would have a much smaller impact. P. Wood explained the changes and he stated that he isn't a builder and that he wasn't sure what they could build with all of the angles.

A. Howe stated that he wasn't suggesting that they follow that exact setback on the odd shaped angle side; he was saying that if they took up to 364 ft. that's within the setback and removed

concern of the precedence that this going to set and how we're going to deal with the other entities in the town of Gilford and if it warrants running this by town counsel or not.

Howe asked D. Andrade if the town was to change the ordinance to allow extended stays how many facilities that would impact? D. Andrade stated that based on this case you won't have many others that are prepared to come to the board and ask for a variance to this. What we are concerned with is fact that the Planning Board is aware that the 30 day needs to be addressed, that it's outdated and these folks need it immediately, so they can operate under more flexibility.

E. Mulligan stated that these are condominium units that are sold to individual owners.

E. Mulligan asked if this application should be tabled so that the board can review the information that we were given.

B. Knightly stated that the rental should come out of one location and that the enforcement is the other issue.

MOTION

Motion made by E. Mulligan, seconded by S. Davis to table Application # 2012000051, Paugus Bay Plaza Condominium Association to the April 24, 2012 meeting.

Howe asked if there was any discussion on the motion. P. Kiely suggested maybe having specific information that we would like to have on April 24, right. A. Howe asked if the applicants had any doubt as to what the board is looking for. They replied that they know exactly what the board is looking for.

B. Knightly-yes

P. Kiely- yes

E. Mulligan-yes

S. Davis-yes

A. Howe -abstaining

The vote carried to table the application to April 24, 2012 meeting.

Stanley & Frances Meisser

Application #2012000053

Variance request from Article 5, Section 5.1.4 & Table 2, Table of Dimensional Requirements to permit a 364 sq. ft encroachment into the 25' sideline setback to allow construction of a Single Family Residence, Tax Map & Lot #223-454.000 located at 63 Varney Point Road, Left in the Single Family Residential Zone.

Any discussion on the application, hearing none do we have a motion.

Motion made by B. Knightly, seconded by E. Mulligan to table Application #2012000053 Stanley & Frances Meisser to the April 24, 2012 meeting

A. Howe asked if there was any discussion on the motion.

S. Davis stated that in the past they have given variances for people that have full build outs within the setback envelope on their property for garages, because we deemed that as being an unnecessary hardship. If we haven't done that in the past that it would be a hardship to not have a garage. People have come before us with houses on their lots and asked for a garage totally outside of the setback area. He stated that there has been some fairly creative thought as to how to minimize the impact outside the setback area, the house is in the keeping with the properties in the neighborhood. He feels unfortunately not the same as the abutting neighbor with the 6 inches that she didn't get. We did give her a variance for an existing structure in two setback directions. S. Davis stated that the wedge of unbuildable property being there certainly adds an additional shield to the residence further northeast. It is a very modest attempt at 1,200 sq. ft. for a home with a lot of consideration for the esthetics in the neighborhood and the owner of the property Mr. Meisser will have an issue selling this lot if whoever he sells it to is forced to build it within that setback envelope.

He stated that he would like to grant them the variance request. There might be something that's a compromise, but all in all there are more pluses to the design and the fit in the neighborhood than the encroachment into the setback.

B. Knightly stated that this is a nice well thought out plan, but his concern is the fact that there should be some sort of a compromise between the neighbors that are not happy with this application.

A. Howe asked if there was any other discussion on the motion, hearing none do we have a vote.

Motion

B. Knightly-yes
P. Kiely-yes
E. Mulligan-yes
S. Davis-no
A. Howe- abstained

The vote carried to table the application to the April 24, 2012, meeting.

MINUTES

Motion made by B. Knightly, seconded by S. Davis, to approve the minutes from October 25, 2011 meeting. Motion carried with all in favor.

OTHER BUSINESS

Review of mail by A. Howe.

Local Official workshop's starting April 10th.

NH Town and City, Local Government Center copies will be available at the Department of Planning and Land Use.

A. Howe reminded everyone to hold on to their paperwork for the tabled applications.

Motions made by S. Davis, seconded by E. Mulligan to have Andrew Howe serve as Chairman again this year.

A. Howe asked if there was any discussion on the motion. A. Howe would like to advocate as he does annually that he thinks it would be a stronger board if we were to rotate the chairmanship around.

D. Andrade stated that you should request to the Town Administrator to start advertising for additional board members.

Any further discussion on the motion asked A. Howe.

Motion Carried, with A. Howe- abstaining.

Motion made by B. Knightly, seconded by E. Mulligan to nominate S. Davis to be Vice Chairman.

Any Discussion on the motion asked A. Howe, hearing no discussion on the motion.

Motion carried with all in favor.

W. Knightly stated that he would like to become a full member. A. Howe asked if everyone was comfortable with that and they replied absolutely.

ADJOURNMENT

Motion made by S. Davis, seconded by Ellen Mulligan, to adjourn to the April 24, 2012, Zoning Board of Adjustment meeting at 8:40 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary