

**GILFORD ZONING BOARD OF ADJUSTMENT
MINUTES
JUNE 26, 2012
CONFERENCE ROOM A
7:00 P.M.**

The Gilford Zoning Board of Adjustment met on Tuesday, June 26, 2012, at 7:00 p.m. in Conference Room A.

Present members were Chairman-Andrew Howe, Vice Chairman-Scott Davis, and Regular Members: Ellen Mulligan, Stephan Nix and Bill Knightly and Alternate Member Ann Montminy.

Also present were 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.

1. Samantha Jewett & Brian Connelly App.

#2012000161

Applicant is requesting a rehearing for a variance granted for 63 Varney Point Road Left on April 24, 2012.

E. Mulligan and Ann Montminy recused themselves due to not being at the meeting of April 24th.

A. Howe explained the point of order with regard to 4 members and understanding that a 3 member board would only be available to approve or deny.

Discussion

A. Howe asked if there was any discussion on the request. He would like to have a discussion on the merits of the decision and the merits requesting the rehearing, specifically if the board has made any errors in the process or in their decision.

S. Nix read the appeal in detail and has given it a great deal of thought. He stated that he was a dissenting vote on the motion and that the appeal does provide a wealth of information and the issues that were raised in the appeal were discussed at length and granting the rehearing is not warranted. The facts were before the board and the board discussed then at length and there wasn't an error.

B. Knightly went over the Variance criteria:

- 1 Granting the variance would not be contrary to the public interest.
- 2 The Spirit of the Ordinance is observed.
- 3 Substantial Justice is done by granting the variance. We asked the applicants to modify the original plan and then come back to us, which they did.
- 4 The values of surrounding properties will not be diminished

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

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area.

(i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property.

(ii) The proposed use is a reasonable use.

OR

(B) If the criteria in subparagraph (A) are not established, an “unnecessary hardship” will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

B. Knightly stated that he felt that there was a special condition with this type of the lot as far as it being a trapezoid shape. S. Davis stated that he felt similar thoughts to B. Knightly. He reiterated that the variance granted was for a reasonable use of the property and that he is not in favor of rehearing

Anyone care to make a motion asked A. Howe.

Walter Mitchell, Town attorney from Mitchell Municipal Group, P.A stated that he met with board to discuss some of the legal issues with regard to the case and if the board decided to continue the motion for a rehearing it would take a simple motion, but if the board decided to deny the rehearing he would offer up a motion to deny the rehearing. The board agreed to have W. Mitchell form the motion.

Motion

The Board has before it a motion for rehearing filed by Samantha Jewett and Brian Connelly of its April 24, 2012 grant of a variance to Ashley Grant. The Board members have reviewed the motion and find that it contains no new evidence, nor does it point out any errors of fact or law that mandate that rehearing be granted.

To summarize, based on the facts presented to the Board:

1. Public Interest and Spirit of the Ordinance

The Board does not believe that the granting of this variance will in any marked degree conflict with the ordinance such that it would violate the ordinance’s basic zoning objectives.

2. Diminution of Value

Neither the applicant nor the abutters submitted expert evidence relating to whether there would be an affect on values, but the Board members are familiar with the property and the neighborhood, and do not believe that the variance will cause any diminution in value.

3. Substantial Justice

We believe that the proposed use is consistent with the area's present use.

4. Unnecessary Hardship

While many of the lots on Varney Point are small, this one is unusual in that it is both small and trapezoidal in shape, complicating the ability to meet setback requirements. We therefore believe there are special conditions to the property that distinguish it from others in the area, that given those special circumstances there is no fair and substantial relationship between the general public purposes of the zoning ordinance and the application of the ordinance to the proposed use, and we believe that the proposed use is reasonable.

Therefore, we deny the Motion for Rehearing.

Motion made by Bill Knightly, seconded by S. Davis to accept the motion made by Walter Mitchell.

S. Davis called for a vote on the motion.

S. Hart polled the members.

Bill - yes

Steve - yes

Scott - yes

Andy- yes

The request for rehearing has been denied

2. Gilford Route 11 Realty Trust c/o S.R. Weiner & Associates, Inc. App. #2012000103

Special Exception request from Article 15, Section 15.4.2 (a) for the expansion of existing retail space and reconfiguration of existing vehicle circulation and parking, Tax Map & Lot # 213-023.000 located at 1458 Lake Shore, in the Commercial (C) and Industrial (I) zones, and the Airport and Aquifer Protection overlay districts. *Tabled from the May 22, 2012 meeting.*

Motion made by B. Knightly, seconded by S. Nix to take the application of the table. Motion carried with all in favor.

A Howe stated that he would have to recues himself due to a conflict of interest.

Discussion

S. Davis stated that at the last meeting we tabled the application, so that we could get the towns engineer's review. The storm water runoff calculations proposal that the engineer had presented to us at the last meeting and what we are doing tonight is reviewing the proposed comments that were put forth relative to the drainage review.

Bill Stack of Steve Smith & Associates was representing the application. He discussed the

changes with regard to the 1st and 2nd reviews made by the Towns Engineer. He submitted a new plan to the board and he then explained the changes on the plan to the board. The change of the drainage plan there was more calculations than anything else. What resulted from the change to those calculations was a reorientation of the outflow aprons that the discharge is adjacent to the brook. We have an existing situation and we have a limited amount of room and are unable to get the projected length that the engineer recommended. He discussed the changes that would be made with regard to the Towns Engineer review and referred to plan sheets #7, 8 and 9.

B. Stack stated that he believed that they are very near an agreement to the end of the review for the final changes. S. Davis asked if he could give us an idea of what areas may be on those last comments on review #3 that will be coming. B. Stack stated that the final aspect of those changes would be the ability of the closed system drainage to better facilitate the hydraulic grade line of both those operations under those peak storms and if the *drainage would* behave or would it back up.

B. Stack stated that the facility has been there for 22 years and there's been no record of back watering in those years. Although the calculations do show marginal back watering and he thinks the model is somewhat different then what the actual event is as opposed to the synthetic one.

E. Mulligan asked if the Town Engineer inspects the work after it's done. No, I think he's only been asked to review the proposal replied B. Stack.

S. Nix asked B. Stack received the e-mail from D. Hill of the Gilford Conservation Commission. Yes, I have seen it replied B. Stack. S. Nix brought up question that was raised pertaining to the increase in the number of storms we've had and how that really impacts these incredibly detailed calculations and then when we got on the field thing don't work right. B. Stack stated that what we will building to the AOT development standard which are 2, 10 and 50 year storm event and he explained it to the board. S. Nix stated so this is designed for a 50, yes replied B. Stack.

S. Davis stated that a comment in D. Hill's letter was with regard to the current drainage being in failure. You're not feeling that's in failure, but the point he's trying to make is that there's consideration for some prevision for inspection that would generate ongoing maintenance of this thing.

That we just don't walk away from here today grant this permit based on the engineering work that was done, which in theory works only if its kept in good repair and in 5, 7 or 10 years down the road and the owner isn't maintaining it and its not running as efficiently or like it's designed to and then we have a failure of the system. He's isn't sure how the maintenance will occur and maybe we will need a report or something to continue the maintenance plan. B. Stack stated that they are working on something at the Planning level as part of their approval and we are in the process of working out the details.

B. Stack stated that they've working on several different ways of doing how the inspections will happen and we are looking at doing them either after a 2 1/2 inch rain storm or every 3 months. Or maybe after 2 of the 50 year storm events if they happen if there's a 50 year event back to

back in a calendar year that would happen and that would trip an inspection or something. B. Stack stated that someone would be out there inspecting and going through the check list and copy it to the town.

S. Nix stated that we are looking at this from a Special Exception standpoint and the board has the authority to put conditions on it and now is the time. He would like a professional engineer to review the maintenance procedures as well as recommendations as to repairs. He also likes the idea of having a review and report within a certain time after the 50 year and if it's made as a part of the condition than you know a report will come in.

B. Stack stated that the report could be submitted within a week's time.

C. Perrin from Gilford Route 11 Realty Trust, WS Development and he stated that the theme of maintenance was made a big focus for the project from the beginning and as the owner we have no problem with a maintenance schedule and reporting. Yes, we will certainly agree to provide a maintenance report and we will have no problem in sharing that report with the City of Laconia and the Town of Gilford after each 2 ½ inch rains storm event. We are currently working with the Gilford Planning Department on the condition language as to it being a report annually or bi-annually.

S. Nix stated that instead of trying to nail something down and what he's thinking that maybe we form a conditional approval that has this in it without the details and when you get it all lined out sometime in the future you could come back for a compliance hearing and we finalize it and then were done.

S. Davis stated that it could be conditional upon a final occupancy permit or approval by David Andrade that we have a mutually agreed upon maintenance plan. S. Nix stated that he would actually like to see it. S. Davis stated that what we are trying to do is not let it fall through the cracks.

D. Andrade stated that he's not sure that under the state statute that the Zoning Board can have a compliance hearing. Rod Dyer the attorney for Gilford Route 11 Realty Trust and he thinks that what S. Nix's is suggesting is reasonable and he does think that it is within the province of the board to grant them conditional approval this evening with the understanding and assurance that we are going to present an enforceable plan for review and approval to the Planning Board and as S. Nix indicated with the subject to a compliance hearing that we would come back and also satisfy this board that the pans are acceptable and reasonable to the board and if you give us the conditional approval based on that scenario than we can go forward with the Planning Board hearing on Monday. He thinks this will solve the board's problem and it is within reason for the ZBA to impose the condition and it is in the purview of the board to do so.

B. Stack stated he's concerned about the future and what will happen and who will be responsible for it. C. Perrin stated that he understands that and they are willing to work with the town and we want to do the right thing.

S. Davis asked if there were any members of the public that wished to speak. Hearing none than

the public hearing portion is no closed.

3. Sheryl Smith

App. #

2012000162

Applicant is seeking a variance from Article 5, Section 5.1.3 and 5.1.4 for an addition to the existing house that will measure 4'6" x 22' with a 3' x 4' stair landing. Tax Map & Lot # 266-025.000 located at 2881 Lakeshore Rd, in the Resort Commercial Zone (RC).

Presentation

Sheryl Smith the owner/applicant and Mike Prescott the builder were at the meeting to represent the application. She passed around some photographs for the board to see the different views of the house and the intent of the proposal. She stated that she has a ¾ bath and the addition would allow here to have a full bath and a ½ bath, so she is requesting an addition towards the back side of the property from the existing porch.

S. Davis stated that he received a different drawing than what was in the packet that was given to him by D. Andrade. D. Andrade stated that he wanted to them to get that information for the meeting.

S. Davis asked M. Prescott to explain the plan to them. M. Prescott stated that he was going to tear down the existing porch and build it correctly on sono tubes, with stairs and a landing. They would build back from that existing porch and we will be going straight back from that 22 ft. and we will add a door to that with the landing and the stairs.

A. Howe asked about the plan that was submitted, because it wasn't showing the setbacks and without that he doesn't know how much they would be encroaching into the side setback. S. Davis explained the proposal to A. Howe.

A. Howe stated that at some point he would like a plan included in the file showing the setbacks lines for the front and the side.

S. Davis asked about the discrepancy on one of the dimensions on the sketch, and M. Prescott state that he was correct that he did notice the error when he got to the meeting.

A. Howe asked about the hardship and the board would like to hear about the hardship that you would receive if we don't grant this variance request. S. Smith stated that her existing bathroom is only a ¾ bath, very tiny and she has her washing machine in there and no bath tub. Currently she has the dryer in another room and in the summer months she rents a port a potty for guests to use. This would allow her to have a full bath, with a tub and her washer and dryer in there and then a ½ bath for company. It will also increase her resale value, property taxes and also surrounding neighbor's houses as far as resale.

A. Howe referred to the photos and it looks like you have room for expansion of the house onto the left side and to the rear. S. Smith stated that the rear is all mountains and goes straight up and the garage is on the back side, and there isn't any plumbing over there and the driveway is on the left side that goes to the garage. B. Knightly asked if it was on sewer or septic over there. It's on septic replied S. Smith.

S. Davis asked if there was any interior configuration of the existing house that makes the bathroom construction impossible on the driveway side of the house. S. Smith stated that there are two small bedrooms on the other side of the house and the kitchen is in the middle of the house.

A. Howe asked what the driveway setback was from the property lines. D. Andrade stated that it is 15 ft. from the property line. A. Howe asked if it would be possible to move the driveway and the bathroom to the other side of the house. M. Prescott stated that it is a horrible driveway as it is and there wouldn't be any way to move the driveway, because it is extremely steep. S. Smith stated that she would need a bigger variance to add onto the other side (left).

S. Nix stated that he didn't feel comfortable making a decision on this based on the information that is here. His limited knowledge of this area is that these lots were described on the deeds. S. Nix stated that he would like additional information, such as the setbacks etc.

A. Howe stated that sometimes it takes a professional touch to get it on paper to make sure that it is accurate. S. Nix stated that if the applicant were to withdraw this application and come back with a professionally drawn plan that shows where things are on the property then we could analyze it. The applicant could ask us to table it for a date specific meeting, but that may not be enough time.

A. Howe stated that we need a better drawing, with setbacks, boundary lines, pins, scale. Whoever you have draw it up can meet with D. Andrade to get an idea of what we need on the sketch.

A. Howe stated that typically what we would do is table it to a date specific and usually it's to the next meeting or table it for 60 days and that would be the end of August.

S. Davis stated that we have been fairly, there has been an issue as to whether it needs to be a survey plan or not. Obviously the more accurate plan would be if you were to hire a surveyor to look at the property, but there is an expense to that. You don't have to hire a surveyor to do the plan, but we need a plan with everything on it that accurately represents what's out there it would be acceptable. It doesn't have to be stamped by a licensed surveyor.

B. Knightly stated that it should be to a scale, with the setbacks, the mountain wall should be on the plan and I guess what we are looking for is an accurate plan.

M. Prescott stated that the pins are there and there shouldn't be a reason to have it surveyed. S. Davis stated that if the pins are there then you should go the Registry of Deeds and check for any plans that may be on file.

S. Smith stated that tabling the application for 60 days is fine.

Any members of the public that wished to speak either for or against this application. No public input.

The public portion of this application is now closed.

Motion

Motion made by S. Nix, seconded by E. Mulligan to table the application to the August 28, 2012 meeting. Motion carried with all in favor.

Public portion of the meeting is now closed.

Gilford Route 11 Realty Trust c/o S.R. Weiner & Associates

A Howe recused himself from this discussion.

S. Davis asked if there was any discussion.

S. Nix asked if the board could take a 10 minute recess, so that he could write down the motion. S. Davis stated that he didn't see why not, so a 10 minute recess occurred.

The meeting reconvened at 8:32 p.m.

Motion

Motion made by S. Nix, seconded by B. Knightly

To conditional approve the request from Gilford Route 11 Realty Trust Application # 2012000103 for a Special Exception request from Article 15, Section 15.4.2 (a) for expansion of an existing retail facility as described on the application because:

- 1) The use is essential to the productive use of the land.
- 2) Is constructed as to minimize any detrimental impact of such uses upon the wetland and the ZBA makes affirmative findings that:
 - a) The use shall not cause pollution of surface and ground water and
 - b) Will not have detrimental affect on ecology and
 - c) Will be consistent with the public welfare, health, convenience and safety and
 - d) Will not increase the likely hood of flooding in the area or elsewhere.

Conditional upon:

- 1) The applicants engineer shall make amendments to the plan in conformance with the Town Engineers recommendations with a receipt of a compliance letter from the Town Engineer.
- 2) That the applicant develop a "Storm water Maintenance and operators manual" that includes provision for qualified 3rd party inspection and reporting to the town. After the final development the manual the applicant shall submit it to the ZBA for a compliance hearing.

For discussion:

S. Nix stated that B. Stack did a great job in explaining the storms.

He believes that this condition is necessary for the project and B. Stack won't have to come back with an engineer. S. Davis asked if they would have to come to a meeting or would we just review it ourselves. S. Nix stated that it would be one more step for them to come back for a compliance hearing.

Any other discussion on the motion, is the applicant acceptable to this asked S. Davis. Yes, the applicant stated that they accept the approval with the conditions as stated. Any further discussion, hearing none we will now vote.

S. Hart polled the members.

Bill - yes

Steve - yes

Ellen - yes

Scott - abstained to do a vote in the affirmative

Motion carried with all in favor.

OTHER BUSINESS

1) B. Knightly asked about the plans that are presented, with regard to the plans that were submitted to them. D. Andrade stated that they were missing measurements on plans that they had submitted with the building application, so he decided to copy them to the board.

A. Howe read the application and what was requested on it for submittal to the board. S. Davis stated that they key thing is that a plan needs to be drawn to scale with dimensions.

S. Nix asked stated that we need to have someone review RSA 310 A.

S. Davis asked if this information in the application is a Gilford Zoning Board of Adjustment requirement or is it a statutory requirement.

Discussion ensued.

S. Davis asked if we could ask the Town Attorney for their opinion as to what we should be requiring of the applicant for the purpose of granting a variance. D. Andrade stated that it will be good to get the attorney's opinion on this. S. Nix asked if they could reference RSA 310 A and any other law that may apply.

Is there any other business asked A. Howe.

2) D. Andrade stated that we should discuss the delays in regard with receiving information. S. Nix stated that he doesn't like getting these kinds of plans placed in front of him at the meeting. It's a procedural problem, but if everyone knew upfront then we could see it ahead of time.

S. Nix asked if maybe something when there is only one application or none that we could further discuss these issues so that we aren't here late. A. Howe stated that we could do that, sure.

3) A. Howe stated that S. Nix brought up a pertinent issue this evening with regard to Special Exceptions and that we are required to go over the 5 items. D. Andrade stated that it is Article 11, Special Exception and also Article 15 for Wetlands Special Exception. A. Howe stated that we are required to address all 5 criteria, and the goal is to make the decision on those.

S. Davis stated that with this appeal tonight, if the information on motion with the criteria weren't in the minutes and it goes to Superior Court the judge will read the minutes and would say that it's not in there.

A. Howe stated that it's all laid to for us, so it is very important that every time we make a motion we need to address all of the points that apply.

MINUTES

Motion made by E. Mulligan, seconded by B. Knightly to approve the minutes from May 22, 2012 meeting. Motion carried with all in favor.

ADJOURNMENT

Motion made by S. Davis, seconded by S. Nix, to adjourn the Zoning Board of Adjustment meeting at 9:00 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary