GILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

September 27, 2022

CONFERENCE ROOM A

7:00 PM

The Gilford Zoning Board of Adjustment met on Tuesday, September 27, 2022, at 7:00 PM. The public, applicants, and the board members were present in person.

William Knightly chaired the meeting and welcomed everyone. He led the Pledge of Allegiance.

Present were Chairman Bill Knightly, Vice-Chairman Larry Routhier, Member Adrianna Antonopoulos; Alternate Members Kevin Hayes and Richard Grenier.

Absent Members were Scott Davis and Andrew Howe.

Alternate Members Kevin Hayes and Richard Grenier were appointed to fill in for absent members.

Also present were Sandra Hart, Technical Assistant; and George Lane, Building Inspector.

**1. Applications**

# 1.1. Cutler Family Real Properties, LLC / Application #2022000320

Applicant is seeking a variance from Article 4, Section 4.2.9, Dormitory, to allow a dormitory use in a 2,000 square foot detached accessory building to house up to ten (10) seasonal employees from May through September. The dormitory use is not a permitted use in the SFR Zone. The property is located at 158 Weirs Road on Tax Map & Lot #223-612.100 in the Single Family Residential (SFR) Zone. *Tabled from the August 23, 2022 meeting*.

L. Routhier moved to remove application #2022000320, Cutler Family Real Properties, LLC, off the table. Second by K. Hayes. The motion passed by unanimous vote.

It was noted that this application would be tabled, per the applicant’s request.

L. Routhier moved to table application #2022000320, Cutler Family Real Properties, LLC. Second by K. Hayes. The motion passed by unanimous vote.

# 1.2 Robert Luntz / Application #2022000326

Applicant is seeking (1) a variance from Article 5, Section 5.1.3(a) to allow construction of a brise soleil (louvers projecting horizontally from the house to overhang the driveway) to have a front setback of 6 feet 10 inches where the standard minimum front setback required is 35 feet and where the New Hampshire Housing Appeals Board allowed a minimum front setback of 12 feet; and (2) a variance from Article 7, Section 7.1.1.2, to allow parking within 15 feet of the front property line where a minimum setback of 15 feet is required. The property is located at 98 Belknap Point Road on Tax Map & Lot #242-215.000 in the Single Family Residential Zone and the Island and Shore Frontage District. *Tabled from the August 23, 2022 meeting*.

L. Routhier moved to remove application #2022000326, Robert Lutz, off the table. Second by K. Hayes. The motion passed by unanimous vote.

There was no discussion.

L. Routhier moved to table application #2022000326, Robert Lutz. Second by K. Hayes. The motion passed by unanimous vote.

# 1.3 EMI 63 Gilford East Drive, LLC, Application #2022000547

Applicant is seeking variances from Article 19, Section 19.4.4, Prohibited Uses in the Aquifer Protection District, Article 19, Section 19.4.5 to allow redevelopment of an existing Fuel Dispensing Station use on an expanded parcel of land, and from Article 7, Section 7.5.3, Parking for Commercial Uses, to allow 39 parking spaces where 45 spaces are required. The property is located at 63 Gilford East Drive on Tax Map & Lot #212-025.000 in the Commercial District (C) Zone, Aquifer Protection District, Airport District, and Community Character Protection District.

There are two parcels of property, which mirror each other, and these will be discussed together but voted on separately. The applications, once approved, will go to the Planning Board next. John Cronin, Esq., spoke for the application and discussed some of the traffic issues at this location. He explained that the lots will be consolidated. The gas pumps will be moved, and there will be a twolane configuration for the drive-thru. A traffic report and trip generation model were submitted for review and there was an analysis of the pass-by trips on Route 11. The access ways will also be improved near the gas pumps, air machines (for tires), and access to the store. These improvements are still non-conforming but will improve access and traffic.

Granting the variance would not be contrary to the public interest because it does not unduly conflict with the basic objectives of the relevant zoning ordinance and is not sufficient to deny a variance under this element and a aboard cannot deny a variance for the very reason that it was sought. To determine whether a variance unduly conflicts with the basic objectives of the zoning ordinance, a board may, among other means, look to see whether the variance alters the essential character of the area of threatens the public health, safety, or welfare.

The uses proposed are allowed by the Table of Uses and are consistent with the purpose of the Commercial Zoning District which contemplates major commercial development. The proposal will not alter the essential character of the neighborhood. The convenience store, coffee shop with drive through service and fueling station all currently exist. The applicant acquired adjacent land to improve traffic circulation in the area and eliminate the spillover from the self-service line. The parking spaces will increase and the number of vehicles in the cues will increase substantially.

The grant of the variances will also not threaten the public health, safety, or welfare. As observed above, the grant of the variances will compliment an existing business within the area. The public welfare is thus served by allowing an existing business to service the community while remaining in essentially the same location.

The spirit of the ordinance element is related to the public interest element and implicates the same considerations. As such, for the reasons set forth above, the grant of the variance will not violate the spirit of the ordinance. The spirit of the ordinance is to honor existing uses and serve the public. The tax base and ad valorem tax revenue will increase with new development.

The loss to the Applicant, in the event that a variance is denied, outweighs any gain to the general public. Accordingly, substantial justice would be done by targeting the requested variances. The relief requested is to allow an existing business to be redeveloped as a means to improve traffic management while serving public demand for fuel, convenience goods, and coffee. The denial of the variance will negatively impact the applicant as it will not be able to redevelop the Property or make the highest and best use of the adjoining property that was acquired to allow for meaningful redevelopment. In many cases, the benchmark for the standard is erroneously applied to the current undeveloped state of the lot, which his vacant. When considering this standard, the Applicant considered the existing uses.

The relief requested will improve an existing situation. The current use with spillover traffic is a concern to surrounding property owners and the community. The re-development will avoid the spillover and create a new facility with state of the art safety precautions. The uses are consistent with the allowed used in the Commercial Zoning District.

The lots are situated on a commercially zoned strip of NH Route 11, where businesses that cater to local interests are deemed appropriate. The property is unique for several reasons. It is improved with a non-confirming use, it has frontage on three sides, it is adjacent to a wetland draining ditch that serves as a snowmobile trail in the winter and it is the only fuel dispensing station on Route 11 south of the bypass highway until Alton Center. Town vehicles fuel up directly across the street, and the airport, dispensing large amounts of fuel, co-exists in the same neighborhood without detrimental impacts to the community.

In light of these specific circumstances, the applicant is proposing a use which serves to allow a permitted use in the area to grow and maintain its presence in the area. That use is also consistent with businesses providing services which may be enjoyed by local residents and are predominately accessed via automobile. The Applicant has employed best efforts to design the redevelopment to address traffic management and safety issues. The goals of the APD will not be thwarted by granting the relief requested. The fuel dispensing station has been in place for decades, causing no known harms to the aquifer. The fuel business has improved markedly over the years with double wall tanks and pipes, as well as monitoring and alarm systems. The station will utilize the best of modern technology, including scored concrete pads, separators and break away dispensers. Fuel dispensing stations are heavily regulated for safety and impacts. In sum, owing to the special consideration of the existing non-conforming use, there is no fair and substantial relationship between the general purposes of the relevant zoning provisions and their specific application to the property.

The proposal to redevelop the existing uses is reasonable. The proposed use is intended to allow an existing business in the area to improve its function in its current location.

Heather Monticup of Greenman-Pederson, Inc., spoke about the traffic studies and noted that the studies included a recent study from 2022, as well as older studies for the board’s consideration. A study was also done during the July 4th holiday weekend, and she noted that there was a slight increase in the number of vehicles.

Chris Tymila, P.E. of GPI spoke about the placement of the gas tanks and the relocation of the building. The gas tanks will likely be 24-hours. There will be no changes made to the snowmobile trails. The diesel tanks will be under a canopy.

A. Antonopoulos asked about access and felt that there wasn’t a significant improvement based on the plans presented. C. Tymila showed on the map where there is a two way access point and noted the other access points on the property. A. Antonopoulos spoke about the need to have backlit sign and the dimming of the lights. There was a discussion about the Dark Sky Initiative.

K. Hayes moved to approve the first variance, seeking use in the Aquifer Protection District. Second by L. Routhier. There was a roll call vote and the motion passed unanimously.

* Member Larry Routhier – in favor
* Member Ariana Antonopoulos – in favor
* Member, Kevin Hayes – in favor
* Member, Richard Grenier – in favor
* Chair William Knightly – in favor

K. Hayes moved to approve the second variance, Article 19, Section 19.4.5 to allow redevelopment of an existing fuel dispensing station use on an expanded parcel of land. . Second by L. Routhier. There was a roll call vote and the motion passed unanimously.

* Member Larry Routhier – in favor
* Member Ariana Antonopoulos – in favor
* Member, Kevin Hayes – in favor
* Member, Richard Grenier – in favor
* Chair William Knightly – in favor

K. Hayes moved to approve the third variance, from Article 7, Section 7.5.3, Parking for Commercial Uses to allow 39 parking spaces where 45 spaces are required. Second by L. Routhier. There was a roll call vote and the motion passed unanimously.

* Member Larry Routhier – in favor
* Member Ariana Antonopoulos – in favor
* Member, Kevin Hayes – in favor
* Member, Richard Grenier – in favor
* Chair William Knightly – in favor

## 1.4 ENI 55 Gilford East Drive, LLC, Application #2022000548

Applicant is seeking variances from Article 19, Section 19.4.4, Prohibited Uses in the Aquifer Protection District, Article 19, Section 19.4.5 to allow redevelopment of an existing Fuel Dispensing Station use on an expanded parcel of land, and from Article 7, Section 7.5.3, Parking for Commercial Uses, to allow 39 parking spaces where 45 spaces are required. The property is located at 55 Gilford East Drive on Tax Map & Lot #213-026.000 in the Commercial (C) District Zone, Aquifer Protection District, Airport District, and Community Character Protection District.

[Recorder’s note: The discussion for this application was part of the previous application, #2022000547.]

K. Hayes moved to approve the first variance, seeking use in the Aquifer Protection District. Second by L. Routhier. There was a roll call vote and the motion passed unanimously.

* Member Larry Routhier – in favor
* Member Ariana Antonopoulos – in favor
* Member, Kevin Hayes – in favor
* Member, Richard Grenier – in favor
* Chair William Knightly – in favor

K. Hayes moved to approve the second variance, Article 19, Section 19.4.5 to allowed redevelopment of an existing fuel dispensing station use on an expanded parcel of land, Second by L. Routhier. There was a roll call vote and the motion passed unanimously.

* Member Larry Routhier – in favor
* Member Ariana Antonopoulos – in favor
* Member, Kevin Hayes – in favor
* Member, Richard Grenier – in favor
* Chair William Knightly – in favor

K. Hayes moved to approve the third variance, and from Article 7, Section 7.5.3, parking for Commercial Uses to allow 39 parking spaces where 45 spaces are required. Second by L. Routhier. There was a roll call vote and the motion passed unanimously.

* Member Larry Routhier – in favor
* Member Ariana Antonopoulos – in favor
* Member, Kevin Hayes – in favor
* Member, Richard Grenier – in favor
* Chair William Knightly – in favor

## 1.5 Janet and Ray York, Application #2022000549

Applicant is seeking a variance from Article 5, Section 5.1.3, Front Setback Area;

Section 5.1.4, Side Setback Area; Table 2, Dimensional Regulations; and Section 9.3.3(a), Additions (to a non-conforming structure), to allow (1) a 16 foot by 24 foot addition at the front (south end) of the existing nonconforming home which will have a front setback of 33 feet where a minimum of 35 feet is required, and a left side setback of 18 feet and a right side setback of 13 feet where a minimum of 25 feet is required on both sides; and (2) replacing the existing nonconforming 7 foot by 18 foot deck on the right (northeast) side of the home with a new 10 foot by 25 foot deck which will have a setback of three (3) feet from the right side property line where a minimum of 25 feet is required. The property is located at 18 Chanticleer Shores on Tax Map & Lot #242-313.000 in the Single Family Residential (SFR) Zone and the Island and Shore Frontage District.

Rick Ellis, Wayne Percy and Larry Greely spoke for the application. The application was reviewed.

Granting the variance would not be contrary to the public interest, because the existing building is more non-conforming than the proposed addition. The addition will be more conforming. The variance will allow the property to more closely resemble the neighborhood home sizes. The Spirit of the Ordinance is observed, because the proposed addition does not adversely encroach neighbors or obstruct views, and is keeping with the history of the association. Substantial justice is done because the granting of the variance provides the owners with the same opportunity to modestly expand the family camp without altering otherwise and creating a view obstruction and general architectural discrepancies. The values of surrounding properties will not be diminished for the same aforementioned reasons. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship, because the existing building is non-conforming restricting the ability to expand and conform while maintaining the architectural integrity. No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property.

1. Hayes moved to approve the setbacks, per the plans submitted with the application. Second by
2. Routhier. There was a roll call vote and the motion passed unanimously.
   * Member Larry Routhier – in favor
   * Member Ariana Antonopoulos – in favor
   * Member, Kevin Hayes – in favor
   * Member, Richard Grenier – in favor
   * Chair William Knightly – in favor

L. Routhier moved to approve the request for a deck. Second by. R. Grenier. The motion passed with one dissenting vote.

* Member Larry Routhier – in favor
* Member Ariana Antonopoulos – in favor
* Member, Kevin Hayes – **not** in favor
* Member, Richard Grenier – in favor
* Chair William Knightly – in favor

2. **Other business**

There was no other business.

# Minutes

There were no meeting minutes.

4. Adjournment

K. Hayes moved to adjourn. Second by L. Routhier. The motion passed unanimously.

The meeting adjourned at approximately 7:50 PM.

Respectfully Submitted,

Krista Argiropolis

Recording Secretary