



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, April 18, 2017 – 7:00 p.m. – Town Hall Conference Room

Members Present: George Baryames, Liz Cummings, Steve Gerrato, John Samonas, Leonard Schwab

Staff: Jim Marchese – Building Inspector

Chair Samonas opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Chair explained the procedures of the Zoning Board of Adjustment, stating that a quorum was present and the meeting was being recorded.

1. Request for a Variance, Equitable Waiver of Dimensional Requirements

57 McShane Avenue (Map U9, 33) - Residential

Owner/Applicant: Jenifer Campbell

The owner/applicant is seeking a Variance for an addition within the tidal wetland setback. Greenland Zoning Ordinance Article XVIII, Subsection 18.7.2, requires a minimum structural setback of 100'. The owner/applicant is also seeking an Equitable Waiver of Dimensional Requirements from Articles 18.7.2 and 18.10.1 of the Greenland Zoning Ordinance, relative to 650 sq. ft. and 20' x 20' building additions in the inland wetland and tidal buffers.

Derek Durbin, Attorney and representing the owner/applicant, addressed the Board. Also present was Luke Hurley, Certified Wetland Scientist, Bruce Scamman, Emanuel Engineering, and Dean Katiniotis, contractor. This was an after-the-fact application; there are two structures that have been partially built on the property that are encroaching on the wetland setbacks. An Equitable Waiver of Dimensional Requirements is being sought for those structures. In addition, Variances have been requested for five different structures on the property; there has been no building on three of those structures. The remaining two would become a moot issue if the Equitable Waiver Dimensional Requirement were granted.

In March 2016, the contractor applied for a building permit for two of the structures. B. Scamman stated that when they surveyed the wetlands delineation, there was a single family residence, two decks (one was a deck being removed), a concrete foundation with stairs into a basement, and a retaining wall (there was earth behind that retaining wall). B. Scamman indicated on the color plan the location of the residence, the driveway and wetlands; lot lines were also pointed out. The lot is 1.46 acres. The wetlands extend up from the water and are tidal until Pickering Brook. L. Hurley flagged the wetlands on February 02, 2016. J. Samonas clarified that a large portion of the existing residence was within the 100' setback prior to construction.

Attorney Durbin noted that during the building permit phase, the contractor met with two different Building Inspectors and had some on-site meetings. The building permit was approved for two structures: 20'x20' addition and 650 sq. ft. addition. All additions are within the setbacks; there is a 100'

tidal setback and a 75' freshwater setback. The entire 20'x20' addition is within the 75' inland waterway setback. A portion of the 650 sq. ft. addition is within the 100' tidal setback.

After the building permit was issued for both additions by the interim Building Inspector, the current Building Inspector did a site inspection. He found the site to be in violation of the Zoning Ordinance, particularly the wetland setbacks. A stop work order was issued and all construction halted. The property is unique due to different classifications of wetlands/waterways, creating a number of delineations. This puts almost the entire property within a setback.

The Equitable Waiver request was made because the building permit was approved and meetings were held; this was not a haphazard attempt to circumvent the Zoning Ordinance. In addition, it was a well discussed plan for the property. The applicant was given the approval and acted in good faith. The current Building Inspector found it to be a violation.

Attorney Durbin read the narrative for the Equitable Waiver of Dimensional Requirements (copy on file). L. Cummings clarified that the addition was not complete, it was a foundation only. It was their position that a municipal official inadvertently made an error when issuing the permit. Attorney Durbin was in agreement that the current Building Inspector's assessment of the violation was correct. They were in violation of the Wetlands Ordinance (wetland setbacks); the purpose is to protect the viability of the wetlands. The 400 sq. ft. addition is replacing a deck; the 650 sq. ft. addition is placed within the line of the existing retaining wall that extends further to the water and partially over the driveway area. There will be less structure close to the water once construction is complete. L. Hurley applied for and received relief through DES for the 650 sq. ft. addition. DES approval was granted after the permits were issued.

Pictures of the construction were reviewed. The basement is a walkout and will not be finished or a living space. Access to the new basement will be from the outside. That addition will be one floor with a steeper roof line. A two car garage with a concrete deck above and finished first floor space is also planned. The 650 sq. ft. addition will have 400 sq. ft. or less of living space; approximately half is garage. With the addition of decks, the footprint will be larger and will be addressed through Variance requests. The portion of the retaining wall at the front of the proposed garage will be removed. The soil around the retaining wall was removed to build the foundation.

B. Scamman stated that in February 2016 the Building Inspector asked for a layout. He was hired to layout the wetlands and prepare a plan. Gove Environmental was then hired for the wetland layout. A sketch was prepared with existing conditions; this occurred before the building permit was issued. A building plan was given to the interim Building Inspector; however, a site plan wasn't included because it wasn't requested by the interim Building Inspector. B. Scamman added that the plans the Board was reviewing were new and had been created since that time. After an initial plan was created, in May 2016 when he had the stop work order, plans were created for DES. L. Hurley also worked on those and obtained DES permitting. The plans the Board received were created to show what's existing now and what was proposed. D. Katiniotis stated that all stipulations required by DES have been corrected.

Prior to February 2016, it was a two story building with approximately 1,000 sq. ft. per floor. Because the building is on a slope, the foundation is 500 sq. ft. with a two car garage. There are four bedrooms. The Building Inspector stated that the assessment records indicate the structure was built in 1962 and has 2,000 sq. ft. of living area. It's a two bedroom home with 2 units; the Town recognizes one as an apartment. When asked about septic on the property, B. Scamman responded they located a cover; the plan provided noted "system unknown". When the wetlands were delineated, they found no evidence

of a leach field or dry wells. D. Katiniotis stated that they hired Morgridge to clean the septic; they gave him the “green light” that it functioned as designed. He added that the tank is 1,000 gallons.

When construction is completed, it will be a four bedroom two family house; D. Katiniotis stated it has always been a four bedroom two family house. The square footage of the house will increase from 2,000 to 3,800.

There were no septic plans on file. S. Gerrato stated that in 1962 many of the leach fields were pitched and not level, which raised concerns that the septic could be draining into the wetlands and Bay. Attorney Durbin responded that what may or may not be happening with the subsurface system is departing from the merits of the application. They were not proposing an increase in bedrooms in the existing structure. Further, there has been no determination from the Town they were in violation of an Ordinance related to the subsurface system. S. Gerrato responded the Town was always concerned about septic systems. Attorney Durbin felt it was outside of the realm in this instance for this Board. L. Cummings responded that once major changes were made the entire area needed to be in compliance with the Ordinance. A septic tank within that area is not according to the Ordinance. Attorney Durbin stated again that no determination had been made by the Town nor have any proposed changes been made to the Town that would implicate the subsurface. L. Cummings continued that one of the things that might be affected, according to the Town, would be assessing which indicates two bedrooms. There was a brief discussion about the assessing records. The Building Inspector noted Building Regulations, Section 3 – Standards for Septic Systems; he added that the Town does have to abide by the rules imposed by the State as referenced in the codes. There is no DES approval on file for the current system; in 1962 approval wasn’t needed. Attorney Durbin noted that the Building Inspector had the ability to perform a final inspection to determine if the subsurface system is not in compliance and require it be brought into compliance per the Building Code.

L. Cummings commented that her understanding of granting a waiver was stating the “what’s there can stay there”; Attorney Durbin agreed. There was a discussion between L. Cummings and Attorney Durbin regarding “is the construction or investment past the point that it can’t be ripped out”. The public benefit would be not having the runoff from the roofs in the wetlands. The site is already in non-conformance and they’re asking to add more onto that non-conformance. There was a discussion about the environmental impact of the proposed additions.

L. Hurley addressed perceived impacts. The site is disturbed in such a manner that it’s “a mess”. There are not piles of rubble or broken down cars, it’s well vegetated with lawn. There is a long driveway, a long path in the back over a stone culvert that crosses Pickering Brook. Any runoff from the roof is infiltrating into the ground; there is plenty of space between the wetlands and the existing structures. There is no pollutant loading from the roof; there may be a minimal amount from the driveway. He didn’t see how the proposed additions would have any environmental impact because it is so well vegetated. B. Scamman added the existing impervious coverage is 12% for the lot and it will increase to 12.5%. The Ordinance allows coverage to 20%. J. Samonas questioned the .5% increase with the additions. B. Scamman responded it was due to all the additional impervious area that is already in place and many of the structures were already in several locations.

L. Schwab questioned the note on the plan that the wetlands delineation was done on February 02, 2016; the building permit was dated March 08, 2016. The applicant didn’t note any wetland setbacks or the Shoreland Protection District on the building permit application. Attorney Durbin responded that the applicant spoke with the interim Building Inspector and he didn’t indicate any additional information was needed. L. Hurley stated that they did receive Wetland and Shoreland Permits from DES. L. Schwab commented there are a lot of obligations when near water, and they needed to be aware of those

obligations; it's very important that information is known up front. The new building is 37' high between the ground and the top.

L. Cummings stated she had a problem voting for all five Variance requests; three of them were not properly noticed. The narrative that was provided is the only place the requested Variances are mentioned: 15'x15' deck, 5'x10' greenhouse and a 15'x20' shed. Attorney Durbin responded that the application was properly submitted; they were not made aware it was not properly noticed. L. Cummings stated it was not the applicant's fault; however, didn't feel those could be heard. G. Baryames questioned if a building permit was submitted for those items, which there was not. Attorney Durbin responded they were told to ask for the relief first. He noted it's done differently in different towns, and the statute does not require the building permit be applied for first.

The Building Inspector distributed a copy of the original survey that was done and available February 05, 2016; all setbacks were color-coded. He also provided Google Earth photos of the site showing the difference in the impact from March 2013 and March 2016. The time line was clarified by the Building Inspector: minor building permit approved on March 08, 2016; May 10, 2016 a stop work notice was issued; when he went back on the same day to take measurements on the site, he requested that the owners provide a survey because he couldn't make a determination of the wetland limits in relationship to the addition and was given a copy of the plot/sketch plan. The Town didn't actually receive a copy of the site plan until May 10, 2016. A letter of explanation was written by the Building Inspector two days later; he met on site on May 12, 2016 with Eben Lewis, NHDES, to review the limits of the wetlands and his interpretation of how things were fitting and if they were correct as shown on the plan. On August 17, 2016, the Conservation Commission submitted a letter to NHDES in response to their questions about their DES application. An after-the-fact approval was granted by DES in December 2016.

Chair Samonas opened the hearing to public comments. Their being none, he closed the public hearing and returned to the Board for discussion. Chair Samonas clarified that the 650 sq. ft. addition had an existing staircase that was part of the existing structure and encompasses a 23'x18' two car garage. Above that garage is a concrete deck; the rear portion of that area is going to be a first floor addition to what's existing. Above that will be the slope of the 12-pitch roof which is the final 1,000 sq. ft. of the third floor. The footprint includes the slope, overhang, etc. The line that's shown does not mean the slope of the roof will go an additional 3'. The perimeter they're asking for is everything. Item #1 pertains to the area within the 100' tidal wetlands setback.

Item #2 is relative to the 75' inland wetlands setback. The 20'x20' addition replaces the 20'x16' deck. There is a basement storage area and an appendage staircase that goes down in back to access that; above that is a first floor addition to the existing structure. There is living space above the first floor; the roof has the same slope but will be a different height.

L. Cummings noted the Board needed to make four findings (copy on file). (A) The Building Inspector made a monumental incorrect issuing of a permit; Chair Samonas added that he had no information. (B) They received a permit when building within the tidal wetlands; the foundation was built within the 75' wetlands. The new Building Inspector noticed the problem; the Town's other agents didn't understand or weren't aware. It's a significant area in the tidal wetland area; that's the vast majority of that particular part. The small portion on the edge was already there; it might be grandfathered if the rules were stretched. (C) If the foundation is allowed to remain, they don't have a building permit for what's above; work was stopped. Building on that foundation isn't permissible. That would be an adverse effect on what is a permissible use of the property to build the addition. The Building Inspector should have done more due diligence. (D) It's not substantially complete; there is only the foundation. To be substantially complete, they would be done. The building permit should never have been approved

without complete paperwork, which was not provided. How can the property be built on when you don't know where the location of the wetlands? Would the watershed be better off if not built on? The "technical man" said it would be no different. There will be more runoff from the proposed roof than the existing nearly 2,000 sq. ft. flat roof.

L. Schwab noted that the 400 sq. ft. is less egregious and in the inland wetland setback. It's also farther from Pickering Brook. The addition to the north is very close to the brook. The "bump out" on the 650 sq. ft. addition is 18'. The proposed driveway to the new garage will be paved and was not shown. Chair Samonas questioned if there were any other impermeable surfaces that weren't shown on the plan; B. Scamman was unaware of any. The Building Inspector was asked whose mistake he felt it was; he responded that he was not at liberty to say and was presenting the facts to the Board. It was their decision and he would not comment. The timeline was reviewed again. D. Katiniotis stated that the interim Building Inspector never requested a site plan and he gave it to the current Building Inspector when requested.

MOTION: L. Cummings moved to grant the Equitable Waiver of Dimensional Requirements, Subsection 1, for the 650 sq. ft. building addition at 57 McShane Avenue, Map U9, Lot 33, subject to any further construction receiving a building permit from the Building Inspector. Second – G. Baryames; three in favor, two against. MOTION CARRIED

MOTION: L. Cummings moved to grant the Equitable Waiver of Dimensional Requirements, Subsection 2, for the 20'x20' building addition on the easterly side of 57 McShane Avenue, Map U9, Lot 33, subject to any further construction receiving a building permit from the Building Inspector. Second – G. Baryames; one in favor, four against. MOTION DENIED

Chair Samonas opened the public hearing. Attorney Durbin requested all Variance requests be heard based on the fact that they presented them correctly. The waiver for the 650 sq. ft. addition was granted; only four variances needed to be heard. However, B. Scamman noted only the foundation was approved, and the Variance would need to be granted to obtain a building permit for the 650 sq. ft. addition. Variances were reviewed (copy on file).

L. Cummings clarified the setbacks: 75' inland wetland, the 100' shoreline and the 50' wetlands. Attorney Durbin requested the Board vote on all Variance requests. L. Cummings stated that B. Scamman was correct about how the waiver was granted for the 650 sq. ft. addition; the Building Inspector could say no to building on the foundation because it was within the 100' setback. The Building Inspector clarified that the intent of the motion was that any further building would require a building permit; L. Cummings agreed that was the intent on that foundation. Relief was granted that they didn't have to remove the foundation.

There was discussion about the location of the shed. The proposed shed was 15x20 and encroached within the 20' setback. They felt there was less impact on the wetlands in that location and the abutting property owner didn't have a problem. No water will be run to the shed; there will be power. Peter Ostromecky, abutter, addressed the Board stating that the proposed location was the best place because of the existing woods and wouldn't be seen. The shed will be on a slab.

Laura Byergo, Conservation Commission: When they reviewed the application, the greenhouse was not on the plan. The issue of fertilizer is a problem. B. Scamman stated that the greenhouse would not be on the ground but cantilevered off the foundation. The greenhouse will be 5'x10'. L. Byergo stated the shed was discussed and there may have been a dock also. The Conservation Commission felt the dock would be a potential disturbance to the wetlands and felt it should not be granted. Attorney Durbin

clarified that the presentation to the Conservation Commission would only have been what was being submitted to DES, which would have been primarily the 650 sq. ft. addition. L. Hurley added there had been a proposal for a dock; because it was an after-the-fact application, it could not be included in that application. It was part of the original proposal but not on the final plan sent to DES.

The Building Inspector questioned the 15'x15' deck and stated there were no permits on file. He provided aerial photos showing that in 2013 the deck was not there but is there now as shown in the current photo. S. Gerrato stated that if the Board voted to allow the 15'x15' deck, they were condoning the unpermitted deck. L. Cummings disagreed, stating that they have a 15x15 deck where none existed and it's no different than the greenhouse or the shed. J. Campbell stated that the greenhouse was actually a sunroom. It would not house plants or fertilizer but would be more of a sunroom.

There being no further comments, Chair Samonas closed the public hearing and returned to the Board for discussion. L. Cummings stated each Variance must be considered and voted separately, noting that three were not properly noticed by the Town although they were included in the narrative; the Board should not be voting on them.

MOTION: S. Gerrato moved to not approve the Request for A Variance on the 15'x15' deck (Item 3). Second – G. Baryames; two in favor, two against, one abstain (L. Cummings). MOTION DENIED

MOTION: L. Cummings moved to grant the Variance for a 15'x15' deck addition (Item 3) at 57 McShane Avenue subject to approval by the Building Inspector because there is no building permit. Second – L. Schwab

Discussion: L. Cummings reviewed the criteria. (A) Public Interest/Spirit of the Ordinance: The applicant outlined that granting of the Variance would not be contrary to the public interest. The property owner can use the property the way he wants. It's the Board's job to decide if a Variance would be in the best interest of the property owner to operate on his property; this would do that if the Variance was granted. (B) The spirit of the Ordinance was not met regarding items in the wetlands is very clear and has been for a very long time. The property is unique and L. Cummings was not convinced that the property is so unique that it's different from the others in the area with the same wetlands property. (C) Substantial Justice: If members vote in favor of this request, they are saying that it's okay that a non-conforming deck is expanded if it wasn't there before. The previous deck appeared to be okay; the drawing indicates it will be bigger. (D) Surrounding Property Values Diminished: When a change is being made like the proposed, the surrounding values will not be diminished. (E) Unnecessary Hardship: Most residents along the Bay or waterbody want a deck so they can see the water. L. Cummings didn't feel that the property was unique vs. the other property in the surrounding area. When the property was purchased in 2012, the property owner probably knew the wetlands were a problem. It's not so unique in its function that granting the Variance was appropriate.

Chair Samonas added that with approval of the 650 sq. ft. addition, the applicant was getting 414 sq. ft. of deck, which was big. They are asking for more deck within the wetland area; the Variance is not a hardship. D. Katiniotis stated it would ruin the design of the house. The deck will not be enclosed or covered.

MOTION: L. Cummings moved to grant the Variance for a 15'x15' deck addition (Item 3) at 57 McShane Avenue subject to approval by the Building Inspector because there is not building permit. Second – L. Schwab; three in favor, two against. MOTION CARRIED

MOTION: Chair Samonas moved to not allow the 5x10 greenhouse (Item 4) at 57 McShane Avenue. Second – S. Gerrato

Discussion: (A) Chair Samonas stated that it would be detrimental to the surrounding property value and it couldn't be policed. He was concerned that other residents would request additional greenhouses in the wetlands. What has been granted is adequate for today's lifestyle as compared to what was existing, and that a greenhouse is not necessary for today's lifestyle as compared to a garage or a deck. L. Cummings added that based on the fact that it's cantilevered and has no foundation or support on the ground is no different than having a drip edge. (B) L. Cummings continued that the Variance would not be contrary to public interest: it may be okay because it would serve a use on the south side of the building in this era where people are trying to grow clean, fresh produce if it was a real greenhouse. An atrium/sunroom is just another room as stated by Chair Samonas; L. Cummings stated the use is okay. If it's a protrusion into the wetlands, it is contrary to the public interest. If strict adherence to the wetlands requirements is followed, it's also contrary to the Ordinance. (C) Substantial Justice: The applicant met that requirement. (D) Surrounding property values would not be diminished. The use is reasonable; however, based on what the general public wants for protection of their wetlands and that particular use of the building, it's not met.

The Building Inspector suggested the Board review the definition of Building Coverage in Article II of the Zoning Ordinance. If it's projecting more than 30" from the building, it's part of the lot coverage.

MOTION: Chair Samonas moved to not allow the 5x10 greenhouse (Item 4) at 57 McShane Avenue. Second – S. Gerrato; four in favor, one abstain (L. Cummings). MOTION CARRIED

MOTION: S. Gerrato moved to deny the 300 sq. ft. shed (Item 5) at 57 McShane Avenue. Second – L. Schwab

Discussion: The shed is 300 sq. ft. and will encroach 7' into the 20' buffer. The shed will be on a concrete slab with no water but will have power. It will be one story and no decks. It will be in the 75' inland wetland setback. S. Gerrato stated that sheds in the wetlands are not a good idea, and have been denied by the ZBA in the past. L. Cummings stated that the Board will take abutters into consideration and thanked P. Ostromecky for attending the meeting. However, they don't always have to listen to them. It's important that the Board focus on the Ordinance and its intent. It's already in the wetlands, why double their requirements by putting it in the setbacks. There would be no problem granting the Variance for the shed if it was somewhere outside the 20' setback. It was noted that the shed would be within the 75' inland wetland setback as well as the 20' property setback. The setback for an 8'x8' shed would be 10'; however, it would still be within the setback and still need a Variance.

(A) Contrary to Public Interest: Granting the Variance would be contrary. The 20' side setback was established long ago. Putting the shed in the proposed location doesn't meet that requirement. Moving it would put it in the 75' inland wetland setback. A shed, with the possibility of storage of lawn equipment and supplies that may flow into the wetlands, is not something that the Ordinance would allow. (B) Public Interest: Previously discussed. (C) Spirit of the Ordinance: Denying it would be in the spirit of the Ordinance because space is wanted between properties as well as buffer zones and protection of the wetlands. (D) Unnecessary Hardship: There are places on the lot that the shed could be located and still be acceptable. (E) Surrounding property values would not be affected.

MOTION: S. Gerrato moved to deny the 300 sq. ft. shed (Item 5) at 57 McShane Avenue. Second – L. Schwab; four in favor, one abstain (L. Cummings). MOTION CARRIED

L. Cummings explained that she put the caveat on the Equitable Waiver of Dimensional Requirements for the 650 sq. ft. addition because the interim Building Inspector made mistakes in allowing the building permit to be issued. She has the utmost confidence in the current Building Inspector and he needs to be able to review the addition with a free eye in relation to the Ordinance not as erroneously approved by the interim Building Inspector. Chair Samonas noted that 450 sq. ft. is deck and the remainder, including the existing staircase, is expansion of the first floor; the second floor is the eve of the roof. L. Cummings wants the Building Inspector to make sure it conforms with building and fire codes. The building permit that was issued allowed the applicant to build the entire project. Chair Samonas felt that whatever is built over the existing foundation that was granted relief must abide by the Town's building code.

MOTION: Chair Samonas moved to grant the Variance for the 650 sq. ft. addition (Item 1) in compliance with the Equitable Waiver of Dimensional Requirements. Further, the applicant must abide by BOCA code, national code and Town of Greenland code, whichever is strictest, for what is built over the existing foundation. Second – S. Gerrato

Discussion: L. Schwab noted that was the addition within the 100' wetland setback and is the most intrusive. He felt the applicant could move it over so it would be outside of the setbacks. L. Cummings stated it would still be in the 75' setback, and noted that the grade would be inappropriate to slide it over. Chair Samonas stated the entire front portion was garage. (A) Granting the Variance would not be contrary to the public interest because the vast majority of the residence will look strange. However, L. Cummings was personally concerned about it being in the 100' tidal wetland setback. (B) Spirit of the Ordinance: L. Cummings didn't feel it met the spirit of the Ordinance. However, it was their job to look at all aspects of the project. (C) Substantial Justice: It would allow the homeowner to use her land to the best effect and provide a beautiful residence. (D) Surrounding property values would not be diminished. (E) Unnecessary hardship: There is no fair and substantial relationship between what they want to do and what the Ordinance states because of the topography of the area and the wetlands involved. There is no other location, it's unique and the use is reasonable.

MOTION: Chair Samonas moved to grant the Variance for the 650 sq. ft. addition (Item 1) in compliance with the Equitable Waiver of Dimensional Requirements. Further, the applicant must abide by BOCA code, national code and Town of Greenland code, whichever is strictest, for what is built over the existing foundation. Second – S. Gerrato; three in favor, two against. MOTION CARRIED

The Equitable Waiver of Dimensional Requirements for the 20'x20' addition on the easterly side of the building was denied.

MOTION: L. Cummings moved to grant the Variance for the 20'x20' building addition on the existing foundation (Item 2) subject to the applicant meeting the BOCA code, national code and Town of Greenland code, whichever is strictest. Second – L. Schwab

(A) Granting the Variance would not be contrary to the public interest. It would be appropriate to allow the homeowner use. The whole large area where the basement is a storage area. The intrusion of the concrete into the wetlands is minimal. (B) Spirit of the Ordinance: The homeowner would be allowed to use their property as appropriate. (C) Substantial Justice and Unnecessary Hardship: The homeowner, because of the uniqueness of the property, has no other choice. It's a reasonable use, with storage and some aspect of construction above it.

L. Cummings continued that of all the pieces reviewed this would be the most reasonable for granting. L. Schwab asked for clarification: having denied the Equitable Waiver, if the vote passes does the

building addition conform to the existing 12'x16' deck that was removed. Without dimensional relief, they should have to comply with a 12'x16' footprint. Chair Samonas noted the Variance was for a 20'x20' addition. B. Scamman added that this supersedes the waiver which was denied. The Variance doesn't have anything to do with the waiver. Denying the waiver leaves it in limbo; granting the Variance is a harder standard. The applicant has to show why this has an affect and the Board has to follow through. L. Cummings read a statement from the Office of Energy and Planning (copy on file) regarding Equitable Waivers, adding it was a stop-gap when errors were made.

MOTION: L. Cummings moved to grant the Variance for the 20'x20' building addition on the existing foundation (Item 2) subject to the applicant meeting the BOCA code, national code and Town of Greenland code, whichever is strictest. Second – L. Schwab; four in favor, one against. MOTION CARRIED

2. Equitable Waiver of Dimensional Requirements

01 Vardon Lane [Map R5, 24] – Residential

Owner/Applicant: Kevin Bowersox

The owner/applicant is seeking an Equitable Waiver of Dimensional Requirements from Greenland Zoning Ordinance Article IV, Section 4.2. A small portion of the front porch was built in the front setback, leaving a setback of 28.3' where 30' is required.

Kevin Bowersox, owner and applicant, addressed the Board. In June of 2016, K. Bowersox and his wife purchased the property at 01 Vardon Lane. The property is approximately 3.8 acres with a very small buildable footprint due to power lines, easements and wetlands. The house was substantially complete and they applied for an Occupancy Permit on March 17, 2017. Three sonotubes on the deck encroach on the front setback. K. Bowersox reviewed the survey with the Board. A temporary Occupancy Permit was granted by the Building Inspector with the stipulation that they go to the ZBA for relief or do a structure alteration. K. Bowersox stated that the encroachment was done in error. He added that part of the confusion was due to the distance to the pavement, which is roughly 45'. The distance to the property line is 28.3'; the Town owns beyond the pavement. There was no change to the house during construction.

K. Bowersox reviewed the criteria (copy on file). The non-conformance was discovered after completion and no further exterior work has been done. Work has continued on the interior. The error was not an outcome of ignorance or bad faith; it was the result of a legitimate mistake. K. Bowersox felt it had to do with the proximity of the pavement vs. the line. The columns on the front porch are structural. It does not constitute a nuisance: it was a vacant lot at one time. The cost of correction would be very detailed: the sonotubes and carrying beam would have to be moved back. It would also be questionable as useable space in the form of a railing preventing use. Grading and a stoop still need to be done.

The bank handling the construction loan hired an independent surveyor to survey the property for code compliance. The surveyor sent the results to the Building Inspector who discussed the problem with the builder. The contractor was extremely apologetic and felt it was due to the proximity to the road and suggested it wasn't an exact science; there was a little play in terms of the size of the hole and positioning of the forms in the hole. Chair Samonas stated there was no form under the deck; they probably measured from the front face of the wall. The overhang on the porch is less than 30". L. Schwab commented that the sonotubes are very close to the front of the porch. If they were moved back 1' to 2', there would be better loading performance. A Variance would still be required. There was a discussion on the grading.

Chair Samonas opened the hearing to public comments. The Building Inspector stated that the configuration of the right-of-way in the subdivision was odd. There is a bubble in the right-of-way in front of 01 Vardon Lane. The Building Inspector protracted the right-of-way based on where the physical pavement is, and it's beyond that. If it was just a 50' right-of-way actual road location, the applicant wouldn't be before the Board. He pointed out the existing right-of-way. If the Variance is granted, the Town would still have ample room to maintain the right-of-way.

MOTION: L. Cummings moved to grant the Equitable Waiver of Dimensional Requirements for 01 Vardon Lane (Map R5, Lot 24) to allow the front porch to encroach on the 30' setback by approximately 1' 7". Second – S. Gerrato; four in favor, one abstain (L. Schwab). MOTION CARRIED

3. Approval of Minutes: Tuesday, September 20, 2016

MOTION: L. Cummings moved to approve the minutes of Tuesday, September 20, 2016. Second – L. Schwab; all in favor. MOTION CARRIED

4. Reorganization of the Board

MOTION: L. Cummings moved to appoint J. Samonas as Chairman. Second – L. Schwab; all in favor. MOTION CARRIED

MOTION: S. Gerrato moved to appoint L. Cummings as Vice Chairman. Second – J. Samonas; all in favor. MOTION CARRIED

5. Other Business

There was no other business to discuss.

6. Adjournment

MOTION: L. Schwab moved to adjourn at 10:10 p.m. Second – S. Gerrato; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, May 16, 2017 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: Tuesday, July 18, 2017