



# ZONING BOARD OF ADJUSTMENT

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## MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

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

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

Members Absent: George Baryames

Staff: Jim Marchese – Building Inspector

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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.

L. Cummings asked if HB86 had been approved. She explained that HB86, once approved, will require each criteria for a Variance to be voted on separately. The hardest criteria to prove is hardship. By requiring each to be voted on is saying all the criteria are very important: all but one criteria could be approved and the applicant would not receive the Variance even if hardship was proved, because each was voted on separately. The five criteria will no longer be looked at as a whole; each will be looked at separately. Three members must approve each requirement in order for a Variance to be granted. In addition, the hearings may take a little longer. *Update: The Governor has vetoed HB86.*

1. 1 Fairway Drive: U8, 9 – Residential Zone

Request for a Variance

Owners/Applicants: Don and Dolores Delisle

The owners/applicants are seeking a Variance for a 6' x 16.6' porch with roof on the front of their residence. Greenland Zoning Ordinance Article IV – Dimensional Requirements, Section 4.2 – Subsection (d) requires a 30' front yard setback where the proposed will allow for 28'.

Don and Dolores Delisle, property owners and applicants, addressed the Board. Their property is located on a cul-de-sac with no outlet. They have requested the Variance based on the fact that the street will never be any wider. The house was built in 1967.

The Building Inspector measured from the center line of the road to the base of the existing structure. He added that it did not conclude that the road was built where it should have been; he used the road as the monument—it was the only physical evidence he could find of any type of property line. The center line was determined by the two edges of pavement, divided in half, and the measurement was taken from that point (59'). The Building Inspector added that he assumed it was a 50' right-of-way; the 1955 subdivision plan doesn't indicate the right-of-way width. Scaled, it's a 50' right-of-way. Adding 6' to the structure, there is a possibility of it being 2' into the 30' setback. No monumentation was found. L. Cummings noted that had there been monumentation, it would be easier to determine. However, when the development was built it may not have been a requirement.

Don Delisle told the Board they had originally planned for an 8'x16.6' porch; when they realized it would be within the setbacks, they reduced it to 6'x16.6'. The deck itself will measure 6', and not include the roof overhang, trim, or fascia board, which will be minimal but enough to keep the snow off the porch. The footings will be three large sonotubes. The porch will be off the front door. The stairs are considered part of the structure. Originally, there were four stairs and a landing into the front door; those have been removed due to deterioration. The Building Inspector recommended the Board grant the owners an 8'x16.6' deck to allow for the stairs. Don Delisle responded there will be three steps to the landing; the tread width will be the required 10" and a 6.5" step down. The roof will be pitched 90° to match the existing roof line.

Chair Samonas opened the public hearing to comments. There being none, he closed the public hearing and returned to the Board for discussion. S. Gerrato stated this is the type of application he supports: they have sacrificed 2' on their deck; they were very close to the dimensions and should not be penalized. L. Cummings stated that the Board should grant more width to allow for the steps. She added that because there are no monuments, and there is only measured 59', the edge of pavement is not actually known. That makes the property unique because the lot lines are difficult to determine. Chair Samonas added it was not a typical through road and there were only a few houses.

L. Cummings reviewed the five criteria for a Variance:

- 1) **Contrary to Public Interest:** Granting the Variance would not be contrary to public interest. The purpose of the Zoning Ordinance is to maintain separation and distance from the property line to the house, the appurtenances, and the porch to allow open space. 2' or 3' wouldn't significantly impact any of the houses or set a precedent in the future that every house could have 28'. In addition, the idea of granting the Variance is seen in the application: the development is older and would meet the requirements of being within the public interest. It changes nothing in terms of the road, etc.
- 2) **Spirit of the Ordinance:** The spirit of the Ordinance is to maintain distance between units to ensure there is an open end area environment that allows some space between them.
- 3) **Substantial Justice:** L. Cummings stated she never understood how granting a Variance would affect substantial justice. This is the reason Variances are available; sometimes not every requirement of the Ordinance fits the houses that were built years ago.
- 4) **Surrounding Properties would not be Diminished:** Building a nice, new deck would not diminish property values in the vicinity. If it's similar to what the Board was shown, it would not diminish anything.
- 5) **Unnecessary Hardship:** There was no other place on the property to build a front porch except opposite the front door. The property owners have compromised on the width of the deck from 8' to 6'; this indicates their willingness to cooperate. The use is reasonable; there were steps before.

In conclusion, L. Cummings stated that the applicant met all the requirements that were outlined. Further, it was the Board's understanding that the new RSA has not been passed; therefore, the Board was not required to vote the individual criteria separately. *Update: The Governor has vetoed HB86.*

Chair Samonas noted that the Variance request was for 28' and would be adjusted by the Board.

**MOTION:** L. Cummings moved to grant the Variance from the 30' front yard setback to allow 25' where 30' is required to allow for the construction of a 6'x16.6' front porch, with roof, at 01 Fairway Drive, Map U8, Lot 9. Further, the porch is to remain 6'x16.6'; the additional footage is to allow for steps. Second – S. Gerrato; all in favor. **MOTION CARRIED**

2. 179 Post Road: U2, 8  
Owner/Applicant: Ben Pecora  
Update: Approvals Received in July 2015 and August 2015

L. Cummings explained why, at the meeting on Tuesday, June 20, 2017, the applicant was asked to return to the Board at its next meeting. The original motion in July 2015 was made by Chair Samonas; he was not present at the June 2017 meeting. The applicant had installed a shed within the setback without a permit. The shed also had power and plumbing installed without permits. The Board had tried to alleviate a violation of the Ordinance; the purpose of the setback was to buffer one property from another. The Board was very specific on the number of arborvitae that were to be planted with the intention of buffering.

Ben Pecora addressed the Board. He stated that at the end of the June 2015 meeting, Chair Samonas required 12 arborvitae but wasn't sure if that was the correct number. At the July 2015 meeting, B. Pecora returned and asked to plant three arborvitae; the Board told him to "do something" and they would look at it again.

Chair Samonas stated that, in his opinion, it was obvious that three arborvitae were not enough. B. Pecora responded that he planted four 6' arborvitae within weeks (or months) of the meetings in 2015; the pictures given to the Board were of two year old arborvitae. Chair Samonas commented that "they didn't look that great". B. Pecora agreed, adding that there were three very large well-established trees that provide a lot of cover, covering almost the entire shed. The arborvitae doing the worst is covered by the branches. Trying to be proactive, he planted five arborvitae bushes that will be 4'x4' when fully grown; he also planted 18 smaller ones at the end of the road.

Chair Samonas reiterated that this was more because the shed was built without permission and was really the issue. The Board had to have a stance as they did in 2015. They tried to appease B. Pecora by stating he didn't have to move the shed, which would have been more costly. L. Cummings added that B. Pecora was back to see if what he'd done was to the satisfaction of the Board.

B. Pecora explained how the arborvitae were planted. An arborist felt the plants didn't do well because the area was too crowded. Chair Samonas reminded him that he was still bound to replace a dead arborvitae by the Variance that was granted. L. Cummings stated that at the last meeting there was a discussion about cutting back the trees to make more light for the arborvitae; she disagreed. An existing healthy tree should not be cut to make room for arborvitae. L. Cummings stated that if the branches of the deciduous tree were trimmed, it might help the arborvitae grow; however, if the arborvitae didn't grow, the tree would continue to be trimmed. Chair Samonas stated he had seen many examples of arborvitae becoming walls; he planted 150 on a property in Town years ago, and they are now a wall.

B. Pecora suggested it may be better to plant smaller arborvitae and let them grow, rather than planting a larger one and hoping it takes root. Nutrients in the soil and sunlight may be the problem; the bushes are doing better because they are smaller. He offered to plant 3' arborvitae; they may have a more established root system as they grow. L. Schwab stated that if you want a wall, they are planted about 40" apart. B. Pecora did plant them 40" apart, but they didn't adapt. S. Gerrato commented that he was trying to plant them near a rock wall.

The Building Inspector showed pictures of the shed in the winter. L. Cummings stated more fence could be seen than shed; S. Gerrato commented that excuses were being made for someone who did

something illegal. The Board was trying to help. It was his feeling that the shed should have to be moved or torn down. L. Cummings responded “no”. Chair Samonas stated that he was not satisfied with the two year process of buffering the view of the shed and the Board was allowing the applicant to appease a bad situation. She adamantly reminded the Board that the Variance was granted to have the shed there and told the applicant to plant the plants, which he has done. The Board could make him do more, but they couldn’t start over again. The Variance was granted for the shed and it didn’t have to be moved; it was with the land now. What isn’t with the land are the 12 arborvitae; make him trim back the deciduous trees, but don’t make him move the shed. Not only was it not logical, it didn’t meet the intent of a Variance.

Chair Samonas stated that some members of the Board were not satisfied that enough had been done for buffering. And, they were not satisfied with proposals that B. Pecora was making. B. Pecora suggested that he could build a 6’ fence to buffer; S. Gerrato commented the fence would deteriorate over time. L. Cummings added that the arborvitae could grow, make a wall, and then die. L. Schwab stated that if the fix had become problematic, it was probably time to bring in a professional; someone who knows what to do on a piece of land that had rocks and trees overhead. Chair Samonas felt that was a good assessment, and added B. Pecora should get proposals from three professional landscapers regarding the buffering. As a cumulative Board, what they were seeing was not what they wanted; they wanted more than what was done.

S. Gerrato explained how the arborvitae should be planted. L. Cummings didn’t have a problem with the buffering that had been done. She didn’t want him to take the covered area in the summer and cut it back to make arborvitae in the winter. S. Gerrato stated the shed should be moved or torn down. L. Schwab stated that what was proposed as a solution two years ago was 12 arborvitae. If they were planted with 40” spacing, either straight or off-set, good quality plants and tended to properly, they would provide a screen. Chair Samonas stated he preferred a live screen to a fence. He continued that arborvitae grow in the shade; they are very hardy.

Chair Samonas stated that what had been done was unacceptable to the Board and was not what they wanted. If B. Pecora could not appease the Board with live screening, the other alternatives were to remove the shed or put up a fence. Chair Samonas stated there are other trees that may grow faster and do better; L. Cummings stated that the Board took away his options when they told him to plant arborvitae. In this particular case, the Board has overstepped their bounds in the decision making process; at some point it has to end.

There was further discussion regarding buffering the shed. Chair Samonas stated the Variance that was granted had contingencies and those had not been met. The Board requested that B. Pecora return with proposals from three professional landscapers.

### 3. Approval of Minutes: Tuesday, April 18, 2017 and Tuesday, June 20, 2017

MOTION: L. Cummings moved to approve the minutes of Tuesday, April 18, 2017. Second – S. Gerrato; all in favor. MOTION CARRIED

MOTION: L. Cummings moved to approve the minutes of Tuesday, June 20, 2017. Second – S. Gerrato; three in favor, one abstain (Chair Samonas). MOTION CARRIED

4. Other Business

Zoning Ordinance Changes: The Planning Board will be reviewing the list of proposed Zoning Ordinance changes at its meeting on Thursday, July 20, 2017. L. Cummings suggested a change be made to the title of Article XXVI – Conservation Subdivisions; the requirements for Conservation Subdivisions no longer exists. She would also like the Zoning Ordinance to be better organized.

5. Adjournment

MOTION: L. Cummings moved to adjourned at 7:52 p.m. Second – S. Gerrato; all in favor. MOTION CARRIED

NEXT MEETING
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Tuesday, August 15, 2017 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Secretary to the Boards

Approved: Tuesday, September 19, 2017