



## **ZONING BOARD OF ADJUSTMENT**

**Town of Greenland • Greenland, NH 03840**

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### **MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING**

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Tuesday, August 18, 2020 – 6:30 p.m. – Virtual via Zoom

*Members Present:* Lindsey Franck, Steve Gerrato, Ron Gross, David Sandmann, Leonard Schwab, Chip Hussey (Alternate)

*Members Absent:*

*Staff Absent:* Jack Shephard – Building Inspector

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Chair Gross opened the Board of Adjustment meeting at 6:38 p.m. and a roll call was taken. A checklist to ensure meetings are compliant with the Right-to-Know Law during the State of Emergency was read into the record by Chair Gross. He stated this was a Zoom meeting and was being recorded.

Roll call attendance: L. Franck – present, S. Gerrato – present, L. Schwab – present, D. Sandmann – present, C. Hussey – present, R. Gross – present.

**1. 188 Newington Road – Residential**

Special Exception

Owner/Applicant: Beatrice Family Revocable Trust

The owner/applicant is seeking a Special Exception from Article XVIII – Wetlands Protection Ordinance, Section 18.10 – Special Exceptions Granted by the ZBA for Residential Uses, in the wetlands buffer zone.

This case was continued from the meeting on Tuesday, July 21, 2020. Chair Gross reiterated with members that a Special Exception was different from a Variance. The NH statutes state: if the conditions for a Special Exception are not met, the Board cannot allow it; however, if the conditions are met, the Board must grant the Special Exception. Chair Gross further explained that as long as the applicant meets the conditions in the Zoning Ordinance, they are granted the Special Exception. There are no gray areas in a Special Exception.

Steve Haight, Civilworks New England and representing the owner/applicant, addressed the Board. This is a 9.3-acre residential lot of record since 1994. The septic system has been approved by the State. The Board had received an updated plan based on discussion in the July meeting. Snow storage and erosion control were added to the plan. There are no wetland fills requested; there are impacts to the wetland buffers for the gravel driveway that currently exists and the fill around the septic system and a small amount at the back of the house.

S. Gerrato noted that a Special Exception is an allowed use for an existing lot of record. S. Haight clarified that the lot was a building lot of record. A septic system had been designed and approved for the lot years ago and it expired. S. Gerrato continued that the Special Exception shows the grading and paving of the existing gravel driveway and grading for the leach field and house. There will be a raised

system with 4 ft. to 5 ft. of fill. S. Haight stated that test pits were done. S. Gerrato stated there was a rule in Greenland that there needs to be 45,000 sq. ft. of contiguous wetlands soil. He continued that if the system was raised, it was done over non-wetland soil and did not have the 45,000 sq. ft. that was needed. S. Haight assured him that they did; when the septic system was done, the Building Inspector witnessed the test pits and they met the requirements of the Town. The Building Inspector and State have signed off on the septic system. S. Haight stated they have the required uplands and test pit information as well as an approved septic system. S. Gerrato insisted they did not have the 45,000 sq. ft. contiguous non-wetland soil. S. Haight responded they did, stating the parcel is 9.3 acres of contiguous land area going back to the road. The soil around the house is upland (good soil); S. Haight described the soil. Chair Gross stated that was not relevant; it met the Zoning requirements as uplands.

C. Hussey commented that the Board of Adjustment could only look at what was in front of them. The Planning Board goes in without blinders and looks at the entire project. Chair Gross was aware and agreed.

Chair Gross noted there are 48,600 sq. ft. of uplands. L. Schwab questioned the snow storage areas; Chair Gross stated that was not within the Zoning Board's purview. He explained that the Board was voting on a Special Exception and if the applicant met the criteria. The Special Exception criteria, only, can be discussed and nothing outside of that.

There will be a garage under the house to minimize the footprint. They have also 'shrunk up' the size of the house and there will be fill around the house. All the work is outside the house; septic system in its entirety is outside the wetland buffer. In the Special Exception they are asking for a driveway to the house, and the grading around the house and a small section around the septic system. There are no wetland impacts; there will be wetland buffer impacts for grading and a driveway. A small portion of the driveway off the road will be shared, then it veers off to the existing house on the left.

Chair Gross reiterated that the Board should be referring to Section 18.10 in the Zoning Ordinance. There are six criteria that need to be met for the Special Exception.

L. Franck questioned driveway paving being included in the Special Exception and if gravel would be better for the environment. Chair Gross responded that the Board could not define whether the applicant used gravel or paved. She asked to remove 'paving' and the Board allow the applicant to have a gravel driveway. C. Hussey commented that there was little difference with paving and gravel pervious and impervious surfaces. The driveway was for residential use. The ordinance was written to allow the use if it was reasonable and there was no other way for the property to be developed. C. Hussey continued that the paving would not make that much of a difference. S. Haight added that the way the Special Exception is wording, the applicant defines what they are looking for; the same plan will go to the Planning Board. A residential house typically has a paved driveway. Chair Gross noted it was a narrow driveway; a certain percentage is allowed to be pervious and impervious surfaces.

Chair Gross read the six criteria in 18.10 to the Board. The driveway, as it exists now, is in the buffer. Chair Gross asked if the driveway could feasibly be located anywhere else. L. Schwab stated that if a driveway was put in the wetlands the first time, theoretically a second driveway could be put in right next to it; yes, it could be done. There was further discussion on the driveway location. S. Haight stated that when the lot was approved, there was a gravel driveway to where the proposed house will be located. C. Hussey noted that the Board could not go back to something done prior to the ordinance. Chair Gross stated the driveway could not be located anywhere else that would not create more issues. It is a residential lot and the applicant is allowed to have a driveway and septic.

L. Schwab was also struggling with page one, item two of the Special Exception and the word “neighborhood”. There was no residential neighborhood; there is one house and he did not feel that was a neighborhood. He felt it was pushing the envelope. Other items that concerned L. Schwab were ones that were not within the purview of the Zoning Board.

S. Haight explained the reason for the Special Exception: This has been a lot of record since the early 1990’s. The applicant has a right to build a house on the lot; the driveway was previously installed. There is no wetlands fill. There is a Special Exception so a house can be built on a house lot. They are following the rules of Greenland’s zoning and have met the criteria of the Special Exception. A house is being built on a lot of record.

Chair Gross noted the application for a Special Exception has different criteria than Section 18.10 of the Zoning Ordinance. C. Hussey stated the criteria in the Zoning Ordinance was a compromise between the Planning Board and Conservation Commission. S. Haight added it was a 9.39-acre lot with 409,000 sq. ft.; the driveway and house use approximately 24,000 sq. ft. or 5% of the total lot area.

Chair Gross noted that according to the ZBA handbook created by the State, if the conditions of the Special Exception as listed in the ordinance are met, the Board cannot legally refuse to grant the Special Exception even though the Board may not feel the standards are adequate to protect the neighborhood.

Chair Gross opened the hearing to public comments. There being none, he returned to the Board for further discussion. A roll call vote was taken for each of the six criteria in the Section 18.10.1.

***A. The lot upon which an exception is sought is an official lot of record, as recorded at the Rockingham County Registry of Deeds.***

Roll call vote: L. Franck – yes, S. Gerrato – yes, L. Schwab – yes, D. Sandmann – yes, R. Gross – yes. (All: yes)

***B. The new structure or expansion is not otherwise prohibited under the Zoning Ordinance.***

Roll call vote: L. Franck – yes, S. Gerrato – no, L. Schwab – yes, D. Sandmann – yes, R. Gross – yes. (Four: yes, one: no)

S. Gerrato: They are encroaching on the wetland buffer.

***C. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Jurisdictional Wetland Area, wetland buffer or wetland setback.***

Roll call vote: L. Franck – yes, S. Gerrato – yes, L. Schwab – yes, D. Sandmann – yes, R. Gross – yes. (All: yes)

***D. Due to the provisions of the Wetlands Protection Ordinance, no reasonable and economically viable use of the lot can be made without exception.***

Roll call vote: L. Franck – yes, S. Gerrato – no, L. Schwab – no, D. Sandmann – yes, R. Gross – yes. (Three: yes, two: no)

S. Gerrato: The land can be farmed and is economically viable; it is also viable to leave as wetlands.

***E. For disturbances greater than 3,000 sq. ft., an erosion control/stormwater management with drainage computations meeting the requirements of the Greenland Stormwater Management Regulations be submitted.***

Roll call vote: L. Franck – yes, S. Gerrato – yes, L. Schwab – yes, D. Sandmann – yes, R. Gross – yes. (All: yes)

J. Shephard stated all information has been submitted. When the applicant builds, they will submit a supplement to the building permit for stormwater management.

***F. The design and construction of the proposed use will, to the (maximum) extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of this ordinance.***

Roll call vote: L. Franck – yes, S. Gerrato – no, L. Schwab – no, D. Sandmann – yes, R. Gross – yes. (Three: yes, two: no)

S. Gerrato: Encroaching in the buffer; L. Schwab – encroaching in the buffer.

Chair Gross stated that there are six criteria and each was voted in favorable condition to be granted. The Special Exception for 188 Newington Road will be considered to be granted.

MOTION: D. Sandmann moved to grant the Special Exception for 188 Newington Road for residential uses in the wetland buffer zone. Second – L. Franck; roll call vote: L. Franck – yes, S. Gerrato – no, L. Schwab – no, D. Sandmann – yes, R. Gross – yes. Three in favor, two against (S. Gerrato, L. Schwab); MOTION CARRIED.

## **2. Approval of Minutes**

The following amendments were made to the minutes of Tuesday, July 21, 2020:

- 368 Breakfast Hill Road, Page One: 3 ft. to 30 ft.
- 368 Breakfast Hill Road, Page Two: All present (motion) to All in favor.
- 188 Newington Road, Page Five: All in favor (motion) to Two in favor, two against (S. Gerrato, L. Schwab).
- Approval of Minutes, Page 5: August 20, 2020 to August 20, 2019.

MOTION: D. Sandman moved to approve the minutes of Tuesday, July 21, 2020 as amended. Second – L. Schwab; roll call vote: L. Franck – abstain, S. Gerrato – yes, L. Schwab – yes, D. Sandmann – yes, R. Gross – yes. Four in favor, one abstain (L. Franck); MOTION CARRIED.

MOTION: D. Sandman moved to approve the minutes of Tuesday, August 04, 2020 as amended. Second – L. Schwab; roll call vote: L. Franck – yes, S. Gerrato – yes, L. Schwab – yes, D. Sandmann – yes, R. Gross – yes. All in favor; MOTION CARRIED.

## **3. Other Business**

There was no other business to discuss.

4. Adjournment

MOTION: L. Schwab moved to adjourn at 7:37 p.m. Second – D. Sandmann; roll call vote: L. Franck – yes, S. Gerrato – yes, L. Schwab – yes, D. Sandmann – yes, R. Gross – yes. All in favor; MOTION CARRIED.

NEXT MEETING
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Tuesday, September 15, 2020 – 6:30 p.m., Virtual via Zoom

Submitted By: Charlotte Hussey, Administrative Assistant