



ZONING BOARD OF ADJUSTMENT

Town of Greenland • Greenland, NH 03840

575 Portsmouth Avenue • PO Box 100

Phone: 603.431.7111 • Fax: 603.430.3761

Website: greenland-nh.com

MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, July 21, 2015 – 7:00 p.m. – Town Hall Conference Room

Members Present: Chair John Samonas, George Baryames, Liz Cummings, Steve Gerrato, Brian Hutchinson

Staff: Myrick Bunker – 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: 90 Depot Road [Map R13, 8]

Owner: Lynn G. Marsh Trust

Applicant: Michael Marsh

Greenland Zoning Ordinance: Article IV, Section 4.2, Subsection R (b)

The owner and applicant are proposing to subdivide approximately 1.7 acres from the existing 6.6 acre lot without providing any frontage on a Class V or better highway. The Zoning Ordinance requires a lot to have a minimum of 200' of frontage on a Class V or better highway.

Michael Marsh, applicant, addressed the Board. He described his property location and proposal to subdivide approximately 1.7 acres. His neighbor, on the opposite side of the railroad tracks, would like to purchase the lot in order to retain his view of Great Bay and maintain the value of his house.

M. Marsh reviewed the criteria with the Board (copy on file). There will be no development on the lot; there is no road access. M. Marsh's neighbor is trying to protect his investment by purchasing the lot and retaining the view. The neighbor's property value should increase substantially if he purchased the lot. M. Marsh stated there would be no hardship if the Variance were not granted. He stated that the purpose of the subdivision requirements was to control building, which was not the case in this instance. The lot would remain an empty field and could not be developed. M. Marsh added there are several property owners with lots on both sides of the railroad tracks, and this would not be a unique situation.

There is a Purchase and Sale agreement with the neighbor, subject to the Variance being granted. M. Marsh has no frontage on his existing lot. He had to apply for a Variance when the land was purchased in order to build his house; there was an existing right of way on the property. The Variance allowed him to build one residence on the property. M. Marsh allows the neighbor access to the lot to maintain the trees twice a year. Responding to a question from G. Baryames, M. Marsh told the Board that he had discussed a view easement with the neighbor; however, it didn't offer the same value as owning frontage. The Conservation Commission suggested there be an easement placed on the land so it could not be further developed.

S. Gerrato stated the parcel would be landlocked and asked if M. Marsh would be opposed to a private driveway. The driveway would be 20' wide and run along the edge of the railroad tracks, continuing to the subdivided lot. It would create a backlot and give the lot more value; Chair Samonas pointed out that DES approval would be needed. L. Cummings stated that the Board had the authority to create a lot without frontage. S. Gerrato also suggested a paper driveway. L. Cummings stated that once there was a separate lot he would lose control of its purpose.

Chair Samonas opened the hearing to public comments. There being none, he closed the public hearing and returned to the Board for discussion. S. Gerrato stated that the Board could not landlock a piece of land. There could also be an issue in the future with the lot owner wanting to build. He added that he would feel more comfortable with the lot sharing a driveway with the main parcel. Chair Samonas clarified that if approved, there would be two lots created; one lot would be landlocked with no access and sold to the neighbor. G. Baryames asked if it could be sold again; response: yes. Chair Samonas added that if the railroad closed and the tracks became a road, it was possible for the lot to become a buildable with over 200' of frontage on the Bay.

Chair Samonas felt there was no hardship on the part of the applicant and that the Board could not approve the lot. There were other things that could be done with the lot without doing a subdivision, and suggested a deed restriction. Chair Samonas explained the process to obtain a deed restriction and view easement.

L. Cummings added that she was concerned about shoreland protection because the property is on the Bay. She agreed there was no hardship. She continued that the ZBA could not deal with the boat ramp and dock; that was the purview of DES. The application met the requirements of a Variance with the exception of hardship. The Board had to look beyond M. Marsh and his neighbor. Granting the Variance would create a non-conforming lot. L. Cummings stated that another option for the neighbor would be to get an easement from the Boston & Maine Railroad.

MOTION: *L. Cummings moved to deny the Request for a Variance at 90 Depot Road [Map R13, 8] because they have not met the requirements. Second – S. Gerrato*

DISCUSSION: L. Cummings felt that the applicant had met the requirements for a Variance, with the exception of hardship. The Board had the authority to take into consideration having a smaller amount of frontage if there's a reasonable idea (example: lot is shaped like a pie and the end is 100' rather than 200'). Establishing a lot without any is the reason for the Zoning Ordinance and building regulations. Creating a lot without frontage is a terrible scenario for precedent setting.

MOTION: *L. Cummings moved to deny the Request for a Variance at 90 Depot Road [Map R13, 8] because they have not met the requirements. Second – S. Gerrato; all in favor. MOTION CARRIED*

Chair Samonas stated the Variance was denied, adding that M. Marsh could do what he wanted through an easement and deed restrictions.

2. Application for a Special Exception: 17 Portsmouth Avenue [Map R21, 21]

Owner/Applicant: Robert Furino

Greenland Zoning Ordinance: Article XVIII, Sectional 18.10.1

The owner/applicant is proposing to replace and expand the existing deck and stairs. The existing deck and house are within the Inland Jurisdictional wetlands and requires a Special Exception be granted prior to any expansion.

Robert Furino addressed the Board; also present was Deb Furino. He described the current conditions and what was proposed. He would like to expand the back steps and landing into back steps and a deck. The wetlands were marked and flagged; front, rear and side setbacks were also shown.

The stairs are in the same location; the deck is bigger. The expansion is approximately 150 sq. ft.; the lot is 100' x 100'. Concrete footings will be used on the deck; there will be no electricity; decking material will be Azek. L. Cummings clarified that nothing will be built in the wetlands.

R. Furino stated that there was no hazard to expanding, no access to the public, and no detriment to property (it should increase values). There will be no increase in the stormwater runoff. There is grass in the area of the deck expansion. The applicant has no plans to store anything underneath the deck.

Chair Samonas opened the hearing to public comments. There being none, he closed the public hearing and returned to the Board for discussion. The Board had no further discussion.

MOTION: *L. Cummings moved to grant the Special Exception at 17 Portsmouth Avenue [Map R21, 21]. Second – B. Hutchinson; all in favor. MOTION CARRIED*

3. Request for a Variance: 17 Portsmouth Avenue [Map R21, 21]
Owner/Applicant: Robert Furino
Greenland Zoning Ordinance: Article IV, Section 4.2, Subsection R (f)
The owner/applicant is proposing to construct a 12'x16' shed approximately 12.5' from the property line. The Zoning Ordinance requires structures to be set back 20' from the property line.

R. Furino pointed out the location of the existing shed and the proposed shed, which would double in size. The existing shed is approximately 11' from the property line; the proposed shed would be 12.5' from the property line. The new shed will be 192 sq. ft. The existing shed, which is 96 sq. ft., is in poor repair and in violation of the 20' setback. There will not be a foundation under the proposed shed; timbers and gravel will be used.

S. Gerrato suggested the shed be moved outside the setback. The Building Inspector stated that although a Special Exception would be needed for the wetland setback, the shed would be allowed and a Variance would not be needed if it was moved out of the side setback. R. Furino stated that shed was in that location for winter access; he wanted it clear of the driveway for snow removal purposes. Moving it over further would allow them less open area on the property, which is a small lot. L. Cummings suggested the shed could be moved to the left and down, and still preserve their picnic area. It was also suggested that the shed could be moved to the left and turned 90° so the door is facing the driveway, bringing it out of the setback.

R. Furino reviewed the criteria for a Variance (copy on file). It was not contrary to public interest; the ability to use the land meets the spirit of the Ordinance; the lot is very small and there are not many alternatives. The applicant is willing to make an investment in the property and property values should increase. The proposed shed should be less of a disturbance to neighbors than the existing shed, which is falling apart. Abutting values would not be diminished, and it's a reasonable use of the applicant's property.

Chair Samonas opened the hearing to public comments. There being none, he closed the public hearing and returned to the Board for discussion. S. Gerrato commented that the lot was on a hill and drains down to wetlands. His concern was the items being stored in the shed and the possibility of leakage

into the wetlands. The wetlands are very important and they need to take a stand to keep them preserved. Chair Samonas reminded Board members that the applicant was requesting to replace the existing shed, and it might not leak. G. Baryames felt that doubling the size of the shed would make it drastically larger and he would be more comfortable if it was outside of the setback. Although the lot was small and there were some unique situations with the slope, L. Cummings felt there were other alternatives and locations. She suggested moving it over slightly and turning it; it would be outside the 20' setback. B. Hutchinson agreed it was a tough lot but they could do something different to make it conforming.

MOTION: *L. Cummings moved to deny the Variance for the shed at the location shown on the plan dated July 28, 2015, Job #15-114, for 17 Portsmouth Avenue [Map R21, 21]. Second – S. Gerrato*

DISCUSSION: L. Cummings felt the applicant met all the criteria for a Variance with the exception of hardship. The proposed shed is significantly larger. She felt the hardship may be self-induced and not the fault of the land. Therefore, it failed to meet the requirements for a Variance.

MOTION: *L. Cummings moved to deny the Variance for the shed at the location shown on the plan dated July 28, 2015, Job #15-114, for 17 Portsmouth Avenue [Map R21, 21]. Second – S. Gerrato; all in favor.*
MOTION CARRIED

4. Application for a Special Exception: 17 Portsmouth Avenue [Map R21, 21]
Owner/Applicant: Robert Furino
Greenland Zoning Ordinance: Article XVIII, Section 18.7.2, Subsection (Chart)
The owner/applicant is proposing to construct a 12'x16' shed within the 75' wetlands setback. The Zoning Ordinance requires structures to be set back 75' from Inland Jurisdictional wetlands when those wetlands are contiguous with surface waters.

R. Furino pointed out the wetland markers, stating that the entire buildable area on the lot was in the wetlands setback. The request for a Special Exception applies to the ability to construct a shed that would otherwise meet the Zoning Ordinance requirements. The existing shed will be removed and the proposed shed will be in conformance.

R. Furino reviewed the Special Exception criteria (copy on file). They believe property value would increase; there would be no impact to traffic because it's a private lot; no demand on municipal services; there would be no electricity or plumbing in the shed; there would be no increase in stormwater runoff.

Chair Samonas explained that the shed would not be in the side or rear setback, but would be within the 75' wetland setback. The wetlands are contiguous with Packer's Brook.

Chair Samonas opened the hearing to public comment. There being none, he closed the public hearing and returned to the Board for discussion.

MOTION: *L. Cummings moved to grant the Special Exception for the installation of a shed within the 75' wetland setback at 17 Portsmouth Avenue [Map R21, 21], subject to it being a minimum of 20' from the side yard setback and rear lot lines. Subject to the removal of the existing shed. Second – Chair Samonas*

DISCUSSION: L. Cummings stated that there is the possibility of stormwater runoff due to the road; she didn't feel there would be a significant increase. The foundation for the shed will help disburse the

runoff. The changes in the shed will not affect the drainage. She stated that the applicant had met the requirements of the Special Exception.

MOTION: *L. Cummings moved to grant the Special Exception for the installation of a shed within the 75' wetland setback at 17 Portsmouth Avenue [Map R21, 21], subject to it being a minimum of 20' from the side yard setback and rear lot lines. Subject to the removal of the existing shed. Second – Chair Samonas; all in favor. MOTION CARRIED*

5. Other Business

a. 179 Post Road – ZBA Decision of 07.21.2015

Ben Pecora, 179 Post Road, submitted a request to decrease the number of arborvitaes required in the ZBA decision of July 21, 2015, due to limited space. L. Cummings explained that this had been brought to her attention and felt the Board should decide how to handle the request. Chair Samonas reminded those present that a Variance had been granted in July with contingencies. Changing those contingencies would change the Variance. L. Cummings stated that the applicant was asking for a reduction in the number of plantings. Chair Samonas reiterated that he had to do the plantings or move the shed, and the applicant was asking to do less than the Board required. Chair Samonas was in agreement to review what B. Pecora was proposing.

B. Pecora distributed an informational packet to the Board (copy on file). There was an in-depth review and discussion of the packet. L. Cummings stated that when the presentation was finished, the Board would have to decide if B. Pecora needed to return for a variation of the Variance or a new Variance.

B. Pecora told the Board that planting arborvitaes in the area of the deciduous trees would look awkward and be unattractive. Chair Samonas responded that the Board was trying to create a buffer. B. Pecora felt three or four arborvitaes would be appropriate due to the limited space (the Board required 12). Chair Samonas reminded B. Pecora that most of the work had been done without a permit and wanted the shed moved, and the arborvitaes were a compromise.

L. Cummings stated that the area was well buffered now, but the Board had no idea what it would look like in the winter. If the Board decided he needed to return for a change in the Variance, it should be later in the year. They wanted to see photos from the winter when the buffered area changed. Chair Samonas agreed, stating he wanted pictures taken in the winter from the same angles. He pointed out how the arborvitaes could be planted. The Board wanted to see that he was making an effort to comply with the Variance contingencies. L. Cummings stated that B. Pecora should plant as many arborvitaes as humanly possible.

Chair Samonas stated that in order to change the Variance granted in July, B. Pecora would need to reapply for a new Variance in the spring. He added that a different type of planting could be used, but it must be good quality and survive the conditions in that area.

6. Approval of Minutes: Tuesday, July 21, 2015

MOTION: *L. Cummings moved to approve the minutes of Tuesday, July 21, 2015. Second – B. Hutchinson; all in favor. MOTION CARRIED*

7. Other Business

Zoning Changes: L. Cummings did not have a chance to completely review the Ordinance for possible revisions. However, the 75' wetland setback is noted in one place; within the same paragraph it states 50'. She added that it was not the buffer but the actual setback.

8. Adjournment

MOTION: L. Cummings moved to adjourn at 8:32 p.m. Second – S. Gerrato; all in favor. ***MOTION CARRIED***

NEXT MEETING

Tuesday, September 15, 2015 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: