



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, June 20, 2017 – 7:00 p.m. – Town Hall Conference Room

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

Members Absent: John Samonas - Chairman

Staff: Jim Marchese – Building Inspector

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

1. 27 Vernita Drive: U6, 16 – Residential Zone, Aquifer Protection Zone
Request for a Variance, Equitable Waiver of Dimensional Requirements
Owner/Applicant: Craig Weeden
The owner/applicant is seeking a Variance and/or Equitable Waiver of Dimensional Requirements for an 8' x 24' replacement shed located approximately 7' from the rear property line. Greenland Zoning Ordinance Article IV – Dimensional Requirements, Section 4.2, Subsection 'e': the minimum rear yard setback is 20' from the property line.

Craig Weeden addressed the Board. Also present was his fiancé, Kelly Tingle. They were seeking an Equitable Waiver of Dimensional Requirements or a Variance for a shed. There was a shed on the property when they moved in at the end of October. The shed was falling apart when they moved in, and further dilapidated over the winter; they felt the shed was unsafe to use. They don't have a huge yard on the right side; there is a decent amount of land on the left side, but is very wet every season. That portion of the property is unsuitable to build on, and the reason they chose to build the new shed on the same footprint as the original location. There is also a catch basin and drainage running across the left side of the property. The drain starts at the edge of the street adjacent to their property, and the piping goes under their lot causing it to be wet.

The shed is in the same location and is slightly larger than the original shed. Vice Chair Cummings stated that the applicant would need to decide if they were requesting a Variance or Waiver. Responding to a question from G. Baryames, J. Marchese stated there was not a Variance for the original shed in the property file.

Bob Bourcier, 41 Tuttle Lane: Commented that the 20' setback was established after the original shed was built. He is a direct abutter, and stated the new shed doesn't affect him and it's an improvement.

There will not be power or plumbing in the shed. Stone was put down for drainage; the shed is on cinder blocks. Moving the shed further away from the property line will put it in the driveway. There is empty space behind the shed.

S. Gerrato stated that while the Board will take comments from abutters, they don't impact the decision because abutters may move. He added that he wouldn't be in favor of the shed; however, there was an existing shed and the new shed would be in the same location.

Vice Chair Cummings opened the hearing to public comments. Frank Steinman, 26 Vernita Drive: Spoke in favor of the new shed, stating the whole area is non-conforming. Sarah Rowe, 31 Vernita Drive: Spoke in favor of the new shed. F. Steinman, 26 Vernita Drive: Added that C. Weeden couldn't move the shed to the other side of the property; it's known as Lake Vernita approximately four times per year.

G. Baryames noted that if the shed was 8'x8', it would only need to be 10' from the side property line according to the Zoning Ordinance. Under normal circumstances, that's what the Board would recommend to the homeowner in order to be compliant. Based on the fact the shed has been there for a period of time, and the new shed was in the same location and meets current building codes, he didn't have a problem.

J. Marchese added he noticed the shed under construction when driving by the residence. The property owner was unaware that a building permit was needed. When the owner came in for a permit, J. Marchese realized the shed was in the setbacks. The Building Inspector recommended they apply for a Variance and Waiver. Granting a Waiver would depend on how the Board looked at the requirements for an Equitable Waiver: for structures that are discovered to be in violation. J. Marchese noted the shed was removed in its entirety and was non-conforming; this was an opportunity to make it conforming. Applying for both would provide clarification without having to return to the Board with a different application.

Vice Chair Cummings closed the public hearing and returned to the Board for discussion. The Board would need to decide which to grant. One of two criteria that must be met for an Equitable Waiver is that it's not "an outcome of ignorance of the law or bad faith, but was instead caused by a good faith error in measurement or calculation". The second criteria: it was not "discovered until after the structure was substantially completed" and that applies. What somewhat applies is that it was transferred to someone else. Vice Chair Cummings biggest concern was that there was a grandfathered, non-conforming use of the old shed. When the shed was removed in its entirety, the grandfathering went away. The Board would need to decide if the new structure was built because the applicant didn't know about it, didn't care about it, or put it up and would deal with the consequences later. Vice Chair Cummings continued that a waiver wasn't appropriate.

L. Schwab questioned whether a Variance would be a stronger type of relief and carry into the future. The response was that both would carry over, with one being more difficult to prove. Vice Chair Cummings stated that the Board should go through the process since a Variance and Waiver were requested. Replying to a question by L. Schwab, Vice Chair Cummings explained that if a Waiver were granted, the Board was acknowledging the non-conforming shed was there and they were going to let the new shed remain in the same location. If the Board denied the Waiver, they would need a Variance.

MOTION: L. Schwab moved that the Equitable Waiver of Dimensional Requirements for an 8' x 24' replacement shed located at 27 Vernita Drive be granted. Second – S. Gerrato

Discussion: G. Baryames questioned if the Waiver or Variance would be better for the home owner. Vice Chair Cummings explained that the Variance would stay with the land; with the Waiver, if the shed came down, the home owner would have to return to the Board: the Waiver doesn't necessarily stay with the land. Both requests fit; however, they haven't met all the requirements for a Variance.

Although the land is unique, it doesn't mean the shed has to be in the current location; it could be moved to another portion of the lot away from the property line. The Waiver, unlike the Variance, doesn't require a review of each item.

MOTION: L. Schwab moved that the Equitable Waiver of Dimensional Requirements for an 8' x 24' replacement shed located at 27 Vernita Drive be granted. Second – S. Gerrato; three in favor, one against (L. Cummings). MOTION CARRIED

Vice Chair Cummings very carefully explained to the home owner that a building permit is required whenever anything is done that touches the ground. The Building Inspector makes sure that building codes are met and that the places they're built are correct.

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

Vice Chair Cummings reminded Board members that a Variance was granted requiring arborvitaes to be planted as a buffer.

Ben Pecora addressed the Board, briefly explaining the process in 2015. Chair Samonas had originally stated he wanted 12 arborvitaes planted; B. Pecora researched the placement and felt three would be appropriate. He returned to the Board with that request in August 2015. The Board asked him to do some plantings and return to them with pictures that were taken over the fall and winter. Vice Chair Cummings added that the Board's biggest concern was there needed to be a buffer with the abutter; she had been present at the first meeting and had no problem with the work that had been done. S. Gerrato reminded the Board that all work had been done without permits.

Vice Chair Cummings stated that the pictures indicated the arborvitaes weren't doing very well. B. Pecora explained that currently there are three large deciduous trees with substantial branch coverage. It was his opinion that the deciduous trees were more attractive and he didn't want to do anything that would interfere with their coverage. The first two arborvitaes are within the branch line, and he felt that was acceptable; the second two are outside the branch line.

B. Pecora told the Board he planted four arborvitaes which should grow 3' x 4' wide. He also planted five arborvitae bushes under the branches which will eventually create a buffer. Four 6' arborvitaes were also planted. He planted an additional 18 at street level. Plantings were done according to directions; a soaker hose and fertilizer were used. Some are not doing great; he has spoken to his arborist friends. There is not a lot of room due to the deciduous trees. B. Pecora will try to maintain the four arborvitaes. His personal opinion was that he would plant smaller ones that could grow at their own rate. S. Gerrato stated that he needed to dam up the arborvitaes near the rock wall and give them plenty of water or they wouldn't survive. The deciduous trees aren't trimmed unless it's requested by the abutter. Pictures of the trees were reviewed.

In response to a question from L. Schwab, Vice Chair Cummings stated that J. Samonas wanted the trees because there wasn't a buffer, adding that the fence on the other side was approved as a result of the Variance. B. Pecora stated that the visible portion of the shed was 12' x 5', or 60', which would be allowed in that area because of the approved fence; Vice Chair Cummings felt otherwise. The shed is 12' x 12', and the fence is 5.5'.

Vice Chair Cummings reminded members that B. Pecora was asked to return with pictures to show the Board what he had done. She felt it was as good as it was going to get. G. Baryames stated that rather than arborvitaes, something similar to a Christmas tree that would tend to grow wider may be better. Vice Chair Cummings clarified the Board's intent was to screen the neighbor; the trees screen better than the arborvitaes.

L. Schwab stated that when you buy a \$20 plant, you dig a \$40 hole. He felt J. Samonas' intent was doable; the plants don't need to die. J. Marchese received permission to be on the property and showed the Board pictures that were taken in the fall.

B. Pecora stated that he thought J. Samonas' intent was for him to "do something", and he felt like he did. Vice Chair Cummings stated he has met the requirements of the Variance as granted. S. Gerrato told B. Pecora the plants were sick, he didn't spend enough money and didn't dig a deep enough hole; he didn't do it right. He added that where there is a rock wall, there will be rocks under the arborvitaes. B. Pecora responded that he did everything according to the directions.

Vice Chair Cummings suggested a decision be continued until the next Board meeting when J. Samonas was present because the Board appeared to be split. J. Samonas made the actual motion and should be present when the decision was made. B. Pecora was willing to return to the next meeting. He offered to build a fence; however, Vice Chair Cummings recommended he wait until the Board made a decision. Building a fence may negate the requirement for the arborvitae because it was part of the Board's decision. There are other things that may need to be done, and J. Samonas needs to be part of that decision.

MOTION: L. Cummings moved to table 179 Post Road's discussion regarding B. Pecora's compliance with the Variance. Second – L. Schwab; all in favor. MOTION CARRIED

3. Approval of Minutes: Tuesday, April 18, 2017

MOTION: S. Gerrato moved to table the approval of minutes until the next meeting. Second – L. Schwab; all in favor. MOTION CARRIED

S. Gerrato has asked that everyone receive a copy of the minutes in their packets.

4. Other Business

The Board was informed that House Bill 86, which affects the way a Variance is granted, was recently passed. After checking with the Office of Energy and Planning, HB86 will not become effective until 60 days after it is signed into law.

Under HB86, each criteria must be voted separately. Three members must approve each requirement in order for a Variance to be granted. Vice Chair Cummings added that it was not mandated for Boards to inform applicants that "as a result of these votes, this is what happened". She continued that the RSA hasn't changed: if one aspect of the Request for A Variance is not approved, the Variance is not approved. Vice Chair Cummings suggested the intent may have been to even out the criteria so they're all important rather than just the hardship. 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. In addition, the hearings may take a little longer.

5. Adjournment

MOTION: Vice Chair Cummings moved to adjourn at 7:50 p.m. Second – G. Baryames; all in favor.
MOTION CARRIED

NEXT MEETING

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

Respectfully Submitted – Charlotte Hussey, Secretary to the Boards

Approved: Tuesday, July 18, 2017