



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, October 16, 2018 – 7:00 p.m. – Town Hall Conference Room

Members Present: Liz Cummings, Steve Gerrato, Ron Gross, Leonard Schwab

Members Absent: Lindsey Franck

Staff: Jim Marchese – Building Inspector

Chair Cummings 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. Minutes will be available in accordance with the RSA 91-A, and will also be available on the Town's website. Chair Cummings further explained that one member was absent but the meeting would continue. If two members were absent, the applicant could decide whether to continue or postpone to the next meeting. Three positive votes would be needed in either case.

1. 19 Cushman Way: R10, 26E – Residential Zone

Request for a Variance

Owner/Applicant: Ellen Bennett

The owner/applicant is seeking a Variance for an 8' x 12' shed located approximately 3' from the side property line. Greenland Zoning Ordinance Article XXVI – Conservation Subdivision Development, Section 26.4.2 – Setbacks and Other Dimensions, Subsection D5: the minimum rear yard setback is 10' from the property line. Relief is also sought from Greenland Zoning Ordinance Article XVIII – Wetlands Protection, Section 18.8.2 – Required Wetland Buffers: a 75' set back from surface waters is required; the shed is to be placed in an existing rear yard area.

Ellen Bennett addressed the Board; also present was Dave Beyer. Chair Cummings, responding to E. Bennett's question, stated that she had looked at the property from the road. She noted for the record that one neighbor's property was higher and the other was lower.

E. Bennett stated that the grade of the land was changed significantly when she purchased the property; lots were built up to accommodate the septic. Their lot has hills and a grade they didn't plan on, and there are very few spots to consider for a shed. There is a two car garage and a garden, and the yard is fairly narrow. Post Woodworking Sheds told E. Bennett that the more of a slope there is, the more difficult it will be to accommodate a shed. Due to the size of the yard, they prefer not to come in any further than the 10'. There is also the added appeal of hiding the brush as well as a noise barrier from the highway. The shed will be placed on cinder blocks and crushed stone and not directly on the ground. Drainage should not be affected; nothing will be going beneath the grade. The septic tank and leach field are in the front yard. The front of the shed will run parallel to the back of the raised garden.

J. Marchese explained that before the meeting started, there was a question about the setbacks for the pond and whether it was manmade or natural. He referred to the Cushman Way subdivision plan approved by the Planning Board; they recognized it as an open water pond that requires at 75' setback. He showed aerial photos of the pond with tree cover. Chair Cummings noted Cushman Way was originally a conservation subdivision. The pond is the length of 2 ½ properties. The 75' setback starts at the edge of the wetland associated with the pond. The shed will be within the 75' setback; the garden overlaps the setback slightly.

S. Gerrato stated that Cushman Way was approved as a conservation subdivision and the lots are small. This is a house with a double car garage on a tiny lot. He asked the Board how much non-conformance is going to be allowed. The builder or realtor should tell potential buyers this is all you're going to have. Chair Cummings felt there were other places on the lot it could be placed so it wouldn't be in the wetland setbacks. E. Bennett responded they were concerned it would be an eyesore if it was moved to one side; the other side would require a foundation due to the grade.

J. Marchese suggested the Board look at the approved subdivision plan. It's an open space subdivision; 18.49 acres of land were put in conservation. He noted they are not non-conforming lots; they are conforming based on the Open Space Ordinance.

The property boundary was discussed. E. Bennett stated two of the three trees (arborvitae) shown on the picture were the property line; she may have planted one of the trees on the neighbor's property. She walked the property with the shed company. He said that other than putting it right outside the neighbor's kitchen window, there was no other place that would work. Using the plan provided, E. Bennett pointed out the location of the arborvitae and proposed shed to Board members. An electric lawn mower, snow blower and gasoline containers will be stored in the shed.

Chair Cummings opened the meeting to public comments. Tom Nicholson, a friend of Carol Tobey's (17 Cushman Way), addressed the Board. He stated that C. Tobey is the direct abutter who will be most affected; she opposes the Variance. C. Tobey pointed out the location of her house, the property line and proximity of the shed to her property, and showed pictures to the Board noting the wetlands at the back of C. Tobey's property. He stated that the shed would block her view of the pond. He also stated that the garden is a permanent structure; a picture was available. The garden is 5' from C. Tobey's property, and he reiterated it was a permanent structure. T. Nicholson suggested that the Board look at the application, which was grossly inadequate; it didn't respond to any of the requirements to get relief.

J. Marchese read the definition of a structure (Article II – Definitions). T. Nicholson noted that the garden was higher than 4' and affixed to the ground. He also stated there was no brush in the yard. Based on an earlier comment from E. Bennett, T. Nicholson stated that it was going to be an 8x12 shed that was possibly 9' high. If the shed were put in the proposed location, it will be over the property line onto C. Tobey's lot. He continued that the only other structure on the lot was the garden structure. C. Tobey bought a house and wants privacy and freedom from her neighbors and to be able to enjoy her yard. C. Tobey will be the only person impacted. T. Nicholson stated it was about money; under the rules, money is not a consideration when granting the Variance. It's not about the inconvenience to C. Tobey and the problems she may have and that she'll have to look at the shed; it's about the fact it may cost E. Bennett more money. T. Nicholson stated that most importantly, looking at the application, nowhere is there any evidence that there is a reason for a Variance in the 75' setback. It was part of the open space subdivision when it was approved, part of the subdivision when they purchased, C. Tobey's relied upon it, and she should be able to continue to rely upon it.

He suggested to the Board that the application is unreasonable, unnecessary. The only person who would be burdened would be C. Tobey. She doesn't want the shed or need the shed; she shouldn't have to look at the shed out her back door. T. Nicholson asked the Board to deny the application.

There was a discussion between Board members regarding verification for T. Nicholson speaking on behalf of C. Tobey. It was determined that he was not her legal representative and verification was not needed. He also didn't sign the application.

Christine Peters, 21 Cushman Way: Asked if raised bed gardens were considered structures. They must bring in soil because it's so poor in that area and have a raised bed garden. Chair Cummings responded that based on the definition written by the Planning Board and approved by the Town of Greenland, the definition of a structure would indicate "yes". C. Peters asked if it was based on height; Chair Cummings stated that was determined by the Building Inspector. The definition indicates that almost everything on or attached to the ground would be a structure.

D. Beyer stated that the trees on the property may grow huge and would block C. Tobey's view. He asked if she had a right to view the pond across their property. Chair Cummings responded that was not before the Board; whether or not she has that right is not up to the Board to decide. There may be a covenant within the homeowners association that states something can't be blocked. Neighbors do install things that block the view; they have that right if it's on their property. If the tree grows over onto C. Tobey's property, she may cut it back. Chair Cummings clarified that it was not before the Board and she was not making a definitive decision.

E. Bennett showed the Board a photo of the garden, the trees and C. Tobey's house to give the Board a better perspective of the slope. T. Nicholson showed the Board a picture of the garden structure and wetlands as well as the proposed corner of the shed to show proximity.

L. Schwab asked if it was possible to put the shed outside the 75' setback, 10' back from the line and not come to the Board. E. Bennett responded that the garden was there. There was a brief discussion about the well radius. L. Schwab noted that the shed could be put in the location of the garden and she would not have to come to the Board; there were alternatives. E. Bennett's deck is two stories off the ground. She acknowledged an option was to put the mower under the deck. J. Marchese noted that the Board was looking at a proposed septic system design; it's not exactly how it's constructed.

Chair Cummings closed the public hearing, explaining to those present that information and discussion from the public was no longer allowed. She returned to the Board for discussion. She asked for two separate motions: the Variance for the shed being located within 3' of the property line where 10' is required and a motion to allow the shed to be within 65' of the wetland setback where 75' is required.

MOTION: S. Gerrato moved to deny the Variance for an 8x12 shed approximately 3' from the side property line. Second – R. Gross

Discussion: S. Gerrato stated if the Boards started to let this happen, it was going to happen every place. R. Gross stated there are other locations; S. Gerrato commented there was no hardship. R. Gross added it could be moved to where the garden is; he's very concerned about the wetlands. Chair Cummings stated part of what the Board does when looking at things is not only the location or impact on the wetlands, but also if the applicant has met their burden of proof. There are five requirements that must be met to be granted a Variance, which is a difficult standard for anyone. It was her opinion that the documentation and burden of proof on the application failed to meet that standard. Chair

Cummings explained that it's difficult because the Variance stays with the property forever. One of the requirements for hardship was that there is "no reasonable way" to accomplish it any other way. In the RSA's, the attorney's decided that money wasn't a consideration. The impact on neighbors and the applicant have an effect, but not money. Chair Cummings clarified that they did not meet their burden of proof to allow the shed, therefore, it would not be allowed.

Chair Cummings reviewed three requirements: (1) Granting the Variance would not be contrary to the public interest. A neighbor has indicated very vehemently that it would affect their aspect of life. (2) If the Variance were granted, the spirit of the Ordinance would be observed. Chair Cummings didn't think it would be in a conservation subdivision. Putting things closer than an already narrowed side setback meets those two requirements. (3) The hardship requirement wasn't met.

Chair Cummings clarified for the Board that voting "aye" was a vote to deny the request for a Variance.

MOTION: S. Gerrato moved to deny the Variance for an 8x12 shed approximately 3' from the side property line. Second – R. Gross; all in favor. MOTION CARRIED

Chair Cummings explained to the applicant that the shed could not be put closer than 3' to the property line. It must be 10' away.

MOTION: S. Gerrato moved to deny setting the shed within the 75' wetland setback. Second – R. Gross

Discussion: R. Gross stated wetlands are very important and this was a shed that the applicant said will be used for a big mower and chemicals. The purpose of the wetland buffers was to protect the wetlands. S. Gerrato stated that Greenland is heading towards clean water. The State has mandated there be clean drinking water in wells, and the Town doesn't have that. That's why nothing should be allowed in the wetlands or buffers. Chair Cummings noted that the Ordinance was established to protect the wetlands and the aquatic life. It also flows into the Bay and there is a serious problem with that water.

Chair Cummings explained that if the Board voted in favor of this motion, the Board would be voting to deny the applicant's request to put the shed within the 75' wetland setback.

MOTION: S. Gerrato moved to deny setting the shed within the 75' wetland setback. Second – R. Gross; three in favor, one against (L. Cummings). MOTION CARRIED

Chair Cummings explained why she voted "no". Although the Planning Board said it's a pond, she felt it was a manmade structure originally. A manmade structure doesn't have the same requirements; until that's clarified in her mind, she couldn't say yes. There is wetlands delineation, which brings it to a 50' buffer. The applicant will have to make other decisions, and she appreciated everything everyone has done for the meeting.

R. Gross asked if this brought up an issue with the other structures (raised gardens). J. Marchese responded that it did. Chair Cummings stated there are three sheds on the opposite side of Cushman Way and didn't think they were facing wetland restrictions; they may be within the 10' setback. J. Marchese referred to the manmade pond question: there is a wetland, a manmade pond and a natural brook. If five gallons of gas were to go into the wetlands, it would flow into the manmade pond which becomes part of the brook.

2. ZBA Guidelines

Chair Cummings requested the ZBA Guidelines be implemented. They can be changed at any time without a public hearing. Responding to a question from L. Schwab, Chair Cummings stated the RSA's established that a Variance stayed with the property forever. R. Gross added that was the reason the Board had to look to the future when granting a Variance and how it would affect the rest of the Town. Chair Cummings added that this was where the Building Inspector was critical. In the ZBA's process, they had to be sure everyone was aware of the restrictions.

Guidelines were continued to the next meeting because some members hadn't reviewed them. They will be voted on at the next meeting.

3. Approval of Minutes

Approval of minutes was continued to the next meeting due to lack of a quorum.

4. Other Business

There was no other business to be discussed.

5. Adjournment

MOTION: R. Gross moved to adjourn at 8:10 p.m. Second – L. Schwab; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, November 20, 2018 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Secretary to the Boards

Approved: