



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, May 21, 2019 – 7:00 p.m. – Town Hall Conference Room

Members Present: Lindsey Franck, Steve Gerrato, Ron Gross, Leonard Schwab

Members Absent: Liz Cummings

Staff: Jim Marchese – Building Inspector

Vice Chair Gross opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. He stated that a quorum was present, and the meeting was being recorded.

1. 21 Eagle Court: R9, 14 – Residential Zone

Appeal from an Administrative Decision

Owners/Applicants: John and Jenna Pelech

The owners/applicants are seeking an Appeal from an Administrative Decision from the Building Regulations, Article 4 – Swimming Pools, Item B1: a fence 4' in height where 5' is required for a swimming pool enclosure.

Bernie Pelech, attorney with Bosen and Associates, addressed the Board. Also present was John Pelech, applicant. They were appealing the decision of the Building Inspector regarding the Building Code requirement of a 5' fence around a swimming pool. The existing fence is 4' high on one side and 6' high on the Bramber Valley development side; the proposed 4' fence would be on two sides of the property (indicated on the plan).

Attorney Pelech stated that national regulations require a 4' fence, as do most of the surrounding towns. Greenland required a 5' fence when the Town enacted its pool regulations. He added that the Building Inspector has been trying to get that changed. That change would need to be voted on at Town Meeting in March. Alternatives were suggested by J. Marchese: go the ZBA or put up a temporary fence until the regulations were changed; they opted to go to the ZBA. Attorney Pelech hoped the regulation would be changed at Town Meeting to a 4' fence, which is required by most towns and is the national pool requirement.

The pool is under construction and doesn't have any water. Requiring a 5' fence would mean adding to the neighbor's fence, putting up a 5' fence next to the neighbor's 4' fence, or putting up a temporary fence on the other side. Attorney Pelech stated they were not seeking a Variance; it was not a Zoning Ordinance. It was part of the Building Regulations; the ZBA acts as the Board of Appeals for the Building Regulations. The ZBA has the authority to overrule the Building Inspector's decision.

Pictures of the existing fence and proposed fence were distributed to Board members. S. Gerrato stated that the applicant had been citing the fence that went around the property, not the fence around the pool. Attorney Pelech responded that, according to the regulations, it would suffice to enclose the pool.

J. Marchese stated that if a person has a 5 acre parcel and they build a 5' barrier fence around the perimeter of their property to control people entering their pool, that's fine. They don't have to build a fence directly associated with the pool. The purpose of the fence is to keep unwanted guests from going into the pool. It doesn't matter where it is on the property.

J. Pelech stated they considered a temporary fence. They have young children and didn't want to put in a temporary fence; it may meet code, but not his father safety code. It wasn't an option for them. A snow fence is used as a temporary fence. Vice Chair Gross stated a real 5' fence could be built. J. Marchese added that the building code stated a barrier had to be provided. In his opinion, a snow fence would not be something a child could climb over to get into a pool; it would have to be of substantial size. J. Pelech stated that his pool contractor puts up snow fence to meet code for a temporary fence. L. Schwab asked if it was a Town of Greenland requirement or an RSA; it is a Town of Greenland regulation.

J. Marchese explained to the Board that they homeowner came in for a building permit for the pool. He told them at that time they would need a 5' barrier around the pool; no plans were provided for the fence. They received a building permit and were well aware that a 5' perimeter fence was required for him to issue a Certificate of Completion. Vice Chair Gross noted it would be a dangerous situation right now because it was an open pit; J. Marchese hoped it was protected by some type of fencing.

Vice Chair Gross opened the hearing to public comments. Anthony Raizes, 41 Boxwood Path, stated he has been a property owner in Greenland for 35 years, a former Selectman in Greenland and a former Selectmen's Rep to the Planning Board. He stated this was a safety issue and was adopted by the Town of Greenland in the 1970's as a safety concern. It was his feeling that the Town accepted this in the 1970's as a 5' fence. If the ZBA makes one provision for someone, the Board is locked in for the rest of entity. Len Couture, 27 Eagle Court, is a direct abutter; he stated that the fence was built by the previous owners of his house. It is secure and he didn't see an issue with anyone coming in or out of it; it's not something people will jump over. As far as he was concerned, it was safety enough for that pool area.

There being no further comments, Vice Chair Gross closed the public hearing and returned to the Board for discussion. Responding to a question from L. Franck, Vice Chair Gross explained the process to change the Building Regulation. It must be submitted to the Planning Board for discussion and public hearings. The Planning Board forwarded any Zoning Ordinance amendments to Town Meeting.

L. Franck stated the applicants were aware they would need a 5' fence; it wasn't a surprise. L. Schwab noted there was nothing in the regulations indicating how close the fence needed to be to the pool. There was a discussion about deer jumping a 4' fence. J. Marchese commented that the building code stated that the purpose of the barrier is so that a child cannot easily climb into the pool. The goal is to create a barrier for the safety of children in the neighborhood, not wildlife. S. Gerrato was in favor of a 5' fence; he didn't think the people in Greenland would change the 5' requirement to 4'. Vice Chair Gross stated that one of the ZBA's jobs was to grant a Variance based on safety; for him, this was a safety issue. The Board couldn't change building code ordinances. The Town voted to do this. S. Gerrato added that the worst thing that could happen was to change the requirement to 4' and a child drowns; he wouldn't be able to live himself. Vice Chair Gross noted that L. Cummings reminded Board members that an ordinance that is stricter than any national or State level is held in check.

MOTION: S. Gerrato moved to uphold the Building Inspector's decision requiring a 5' fence around a pool as stated in the Building Regulations. Second – L. Schwab; all in favor. MOTION CARRIED

Discussion: S. Gerrato stated he wouldn't pass the proposed fence. It would be an easy fence to get over for a little toddler.

2. Reorganization of the Board

L. Cummings notified the Board by email that she would prefer not to be Chair or Vice Chair.

MOTION: S. Gerrato moved to nominate R. Gross as Chairman. Second – L. Schwab; all in favor. MOTION CARRIED

MOTION: R. Gross moved to nominate S. Gerrato as Vice Chairman. Second – L. Franck; all in favor. MOTION CARRIED

3. Approval of Minutes

MOTION: S. Gerrato moved to approve the minutes of Tuesday, January 15, 2019. Second – R. Gross; three in favor, one abstain (L. Schwab). MOTION CARRIED

4. Other Business

J. Marchese, returning to the fence application for 21 Eagle Court, stated that the national standard was developed based on studies, etc. It was their belief that if a child has the capacity to climb over a 4' fence, that child has the capacity to swim. 100% of the population understands that you should teach your child to swim as soon as possible. R. Gross added that Greenland's ordinance states a 5' fence; the Board doesn't want to go against that. J. Marchese added that it hasn't been enforced very well.

L. Franck voiced a concern about the lack of alternates on the ZBA. S. Gerrato stated he tried to convince a Planning Board alternate to start as an alternate on the ZBA; the individual preferred to stay on the Planning Board.

S. Gerrato discussed a Planning Board case with members regarding the conversion of a duplex to a condominium on 38-40 Bramber Valley Drive. J. Marchese explained the difference between a duplex and a condominium. For a better understanding, he suggested members read Article 3.7.12 (Duplexes) as well as Article 3.7.11 (Accessory Dwelling Unit) of the Zoning Ordinance.

L. Schwab questioned the changes at 1088 Portsmouth Avenue. J. Marchese stated that the terms of the Variance are still in effect and he has been working on it constantly since the new owners took over. They are in violation of current use and have been made aware. The Town is working diligently to make sure they know their limitations. Their goal is to lower the site to make it less objectionable to the neighboring residents. What they'd like to do makes sense, but needs to be permitted through the Town.

Lowe's was also discussed; J. Marchese and the Fire Chief did a life/safety inspection earlier in the day. Chair Gross was concerned about snow removal and storage. J. Marchese assured him that had been watched closely over the past winter.

5. Adjournment

MOTION: S. Gerrato moved to adjourn at 7:47 p.m. Second – L. Franck; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, June 18, 2019 – Town Hall Conference Room

Respectfully Submitted – Charlotte Hussey, Administrative Assistant

Approved: 