



## **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, June 18, 2019 – 7:00 p.m. – Town Hall Conference Room**

*Members Present:* Steve Gerrato, Ron Gross, Leonard Schwab

*Members Absent:* Liz Cummings, Lindsey Frank

*Staff:* Jim Marchese – Building Inspector

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Chair Gross opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Chair explained there was a quorum 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 Gross stated that only three of the five Board members were present. An affirmative vote would require all members to vote the same. If one member was not in the affirmative, the request would be denied; the applicant would be unable to reapply. Individuals could decide if they wanted to be heard at this meeting or continue to Tuesday, July 16, 2019.

**1. 9 Falls Way: R9, 14 – Residential Zone, Aquifer Protection Zone**

Request for a Variance

Owner/Applicant: Thomas Natario

The owner/applicant is seeking a Variance from Article XVIII – Wetlands Protection Ordinance, Section 18.7.2 – Structure Setback Requirements, Subsection – Inland Jurisdictional Wetland Areas, of the Greenland Zoning Ordinance, which requires a minimum structural setback of 50'; an existing pool filter and 164 sq. ft. of pervious pavers are in the buffer.

Thomas Natario opted to wait for a full Board.

**MOTION:** Chair Gross moved to continue the Request for a Variance for 9 Falls Way to the meeting on Tuesday, July 16, 2019. Second – S. Gerrato; all in favor. **MOTION CARRIED**

**2. 667 Portsmouth Avenue: U6, 66 – Commercial A, Aquifer Protection Zone**

Request for a Variance, Special Exception

Owner: GAHVET Realty, LLC

Applicant: 667 Portsmouth Avenue, LLC

Article III – Establishment of Districts and Uses, Section 3.6 – Table of Uses, Subsection A.11 – Multi-Family, of the Greenland Zoning Ordinance requires a Special Exception for multi-family use in the Commercial A District for three residential units. Section IV – Dimensional Requirements, Section 4.2 – Table of Dimensional Requirements of the Greenland Zoning Ordinance requires a minimum lot size of 60,000 sq. ft. with 45,000 sq. ft. of contiguous upland; the existing lot is 48,630 sq. ft. Lot frontage is 198.8' where 200' is required.

Chair Gross explained they would need all votes in the affirmative in order to pass. Mike Brown, the applicant and Joshua Lanzetta, Attorney representing the applicant, understood and opted to proceed. Christian Smith, Engineer with Beals and Associates, was also present.

J. Marchese apologized to the Board and the applicant for requiring a Special Exception. He looked at the multi-family aspect. The proposal is for three units and two commercial; multi-family is five units. The application is for a mixed use development, which is permitted in the Commercial A District. The Special Exception is void; the Request for a Variance, referring to the lot size, is not void. Attorney Lanzetta stated they would withdraw the Special Exception.

MOTION: S. Gerrato moved to grant the withdrawal of the Special Exception by the applicant without prejudice. Second – L. Schwab; all in favor. MOTION CARRIED

J. Marchese stated the building is currently a single family unit above a commercial unit; the applicant would like to add two more residential units and another commercial. He clarified the proposal is for a mixed use development with three residential units and two commercial units; the building is not a duplex.

Attorney Lanzetta addressed the Board and thanked the Building Inspector and Administrative Assistant for their help with the process. Attorney Lanzetta briefly described the property and its location. There is currently a veterinary practice on the property as well as a two car garage. They are proposing a mixed use building where the garage is located that would include M. Brown's business and two residential units on the top floor. The proposed renovations to the garage will complement the buildings at the adjacent complex which includes Three Rivers Dental. Attorney Lanzetta noted that Article 1.2 of the Zoning Ordinance promotes morals and convenience. Those are the rationale for enacting the Zoning Ordinance. They oriented the gable and front façade of the proposed building to line up with the existing veterinary practice. The existing building has zero sight line impact from a public safety standpoint.

They would like to raze the two car garage; Attorney Lanzetta showed the Board a rendering for the proposed three unit mixed use building. Parking will be behind the existing structure. The depth of the building is similar to the existing structure. Attorney Lanzetta noted the level of screening between the two lots. He pointed out the hashed line at the bottom of the plans which indicates the aquifer protection district; the property is partially in that district. S. Gerrato questioned parking, which was briefly discussed. The proposed structure will not impact the aquifer protection district. M. Brown is proposing to add a new cutting edge building which will include sprinklers.

C. Smith pointed out the test pit locations as well as the existing leach field. They intend to handle the additional impervious with infiltration including drainage ditches around the building to capture roof run-off and possibly a bio-retention pond to deal with the extra parking. They will either expand the field or provide a secondary one. The rear of the property will be graded so the water runs away from the aquifer protection district; any stormwater treatment will be completely outside that zone.

The applicant has applied for Variance for the frontage requirement. 200' of frontage is required; they are short by 1.2' (the frontage is 198.8'). Attorney Lanzetta stated that the more complicated issue is the square footage of the lot. In Section 4.2 of the Zoning Ordinance, the lot area minimum is 60,000 sq. ft. with 45,000 sq. ft. of contiguous non-wetland soil; they are short 12,000 sq. ft.

They have designed their building to parallel an existing structure and to add esthetically to the area. They have received letters of support from the abutters. The use of the land with the building is very reasonable; mixed use is permitted in the zone and is currently happening on the lot. The lot is unique in that it's small and affected by the aquifer protection district. A reasonable expansion is being requested and a new state of the art building adds to Greenland. The area needs residential units.

S. Gerrato asked for clarification on the number of units in the garage: there will be two residential units and one commercial unit. In the existing building there will be one commercial and one residential unit. S. Gerrato commented it was quite crowded for a small lot. Attorney Lanzetta respectfully disagreed; they have accounted for plenty of parking. S. Gerrato asked if he was aware duplex lots were recently increased to 90,000 sq. ft. and apologized because they haven't considered something like this in the Zoning Ordinance.

L. Schwab noted that the proposed building is largely within the 50' setback; Attorney Lanzetta agreed, adding the wetlands are largely manmade. That was a result of the construction of the buildings on the adjacent lot. They weren't in the wetlands but in the buffers. Chair Gross noted the Wetland Scientist, Luke Hurley, who stamped the plan, delineated the jurisdictional wetlands. C. Smith stated L. Hurley had delineated the wetlands and did a soil survey; the flags were field located by a surveyor. The functioning value of the wetlands and habitat was discussed at length; those wetlands are devoid of functioning value as far as habitat. When soil and wetland scientists look at functioning values, they also look at drainage conveyance and detention. Moving into the buffer does not change its ability to hold rain water. A wetland permit for disturbance of that area will not be needed. J. Marchese did not refer to the wetlands on his denial; they are isolated wetland pockets. He did not see where they were in the 50' setback.

Attorney Lanzetta stated the design was created to account for the wetlands and after studying them, they are not functioning. The septic design is more than capable of handling the load regardless of the lot size. The property can handle what is proposed. They felt the septic would be approved very easily; they are not creating a water issue on the property. The grading and site work will substantially fix and improve the existing swale. Chair Gross stated that the Board relies on the wetland scientist's stamp and the Town's Zoning Ordinance; if it's not wetlands, it needs to be corrected.

Chair Gross opened the hearing to public comments. Owner of Me and Ollie's questioned the footprint and location of the garage. M. Brown responded the garage will be located in essentially the same place and moved over 2' towards the Three Rivers Dental building. The garage façade will remain at 30'.

Laura Byergo, Caswell Drive, spoke to the importance of wetlands. The wetlands are nibbled away by saying they're low functioning or non-functioning. The wetlands function to process water and to provide avenues for wildlife. She pointed out the wetlands that needed interconnecting corridors. The spaces left in the impervious parking lots are the way the wildlife moves back and forth. Greenland has an intense amount of invasive species. She felt it was right to say a wetland is a wetland. The buffers need to be protected.

Attorney Lanzetta stated that the Variance criteria needed to be looked at to understand how it applied. He agreed that wetlands are really important. He felt there was a slight mischaracterization identifying a functioning wetland that God created with a non-functioning wetland that's man-made due to development. They are not proposing to build in the wetlands. A non-functioning wetland is one of the many hardships they're dealing with at this site. There is no nexus in eliminating the ability by taking away the private property rights of M. Brown to build in that buffer zone. This is a commercial zone and

mixed use is permitted, and there are multiple hardships. The Ordinance is not a sword, it's a shield. Attorney Lanzetta felt there was a substantial hardship and it's unnecessary. They can build in the wetlands buffer and not affect the swale; the function of the isolated wetlands will be improved. The wetlands are not connected; they are designated, man-made wetlands. The Ordinance does include language referring to "man-made"; they are not treated as naturally occurring wetlands.

Chair Gross questioned how they knew those wetlands were man-made. C. Smith responded that it was L. Hurley's assessment; the swales were clearly constructed. Chair Gross requested documentation.

Attorney Lanzetta stated that abutters were not opposed. Mixed use is the way to develop areas and improve towns and cities. They have also spoken to the State about continuing the Cumberland Farms sidewalk to the proposed development to create a walkable corridor. M. Brown thanked the Board for taking the time to hear his application. Attorney Lanzetta asked the Board to evaluate the criteria using the reasonable standard, which is how it should be judged. It's a permitted use that's reasonable in this zone. It will improve the Town. The hardship is being put on the property by the Ordinance and is unnecessary.

Chair Gross closed the public hearing and returned to the Board. He suggested moving the building out of the buffer; it could be rearranged differently. Attorney Lanzetta responded they wanted to stay out of the aquifer protection district. They also need space for septic. Chair Gross suggested parking was more acceptable in wetlands if impervious surfaces were used. Attorney Lanzetta stated they haven't decided on the surface and it would be done at the Planning Board. Chair Gross felt there was enough room to turn the building and add a new septic system. Attorney Lanzetta noted the building has been redesigned and felt this was the best and reasonable use for the property. C. Smith added that they did consider rotating the building lengthwise across the property. If the existing septic system had to be removed, they would be shutting down the existing veterinary office for a period of time. They were trying to work with what is currently on the property, giving them options for the septic system (expanding on the current or add a separate system). The current septic system is 650 gallons per day; the tank is either 1,500 gallons or 2,000 gallons. For what is proposed, they would need 1,370 gallons per day. The height of the proposed building is 34'.

S. Gerrato stated he would not be a leader, but would do whatever he could to stop using wetlands. And, that would be how he was voting on this project. We have to start now and anyplace we can. In addition, it's a small lot and all of that could not be put on a small lot. His notes included small lot, parking, snow storage, a structure in the buffer, no sewer, wetlands, stormwater; all those things add up and there's a lot more. Wanting to be back in town doesn't really matter; you're going to overload this piece of land.

C. Smith responded that he understood S. Gerrato's position; he didn't think it was incorrect. However, he noted that the Ordinance did treat man-made wetlands differently than regular wetlands that happen by nature. He recommended that the Board read Article 18.2.3. Chair Gross requested documentation showing it's man-made and it could be discussed. Attorney Lanzetta discussed the possibility of a continuance with the Board. S. Gerrato stated the lot size was very important; Chair Gross noted there were other issues also. Attorney Lanzetta stated they would like to continue to next month.

**MOTION:** Chair Gross moved to continue the Request for a Variance for 667 Portsmouth Avenue to the next meeting. Second – L. Schwab; two in favor, one opposed (S. Gerrato)

Discussion: S. Gerrato stated if they took a vote at this meeting about the lot size, it would be all over anyway. Bringing back information to show the man-made wetland would not change his mind. L. Schwab stated when the two buildings were done, there was a lot of earth moving done; he wanted to see aerial photographs of the area (pre-satellite days, if necessary) before building took place. J. Marchese located information that indicated the structure was built in 1940. He stated it would be difficult to see anything other than a vegetated clump for the other building.

Attorney Lanzetta suggested they could bring the engineer who stamped the plans. He felt it would be a more expedited way to deal with an appeal. Chair Gross stated they rely on the soil scientist who stamped the plans and would like to discuss it with him. Chair Gross told S. Gerrato he was concerned the Board was not providing the proper forum. S. Gerrato asked if continuing would make the lot any bigger.

J. Marchese located an aerial photo from 1952, which was reviewed by the Board. Attorney Lanzetta stated that a continuance would be easier than an appeal. S. Gerrato stated there was no appeal if the Board said no. Attorney Lanzetta responded he really didn't want to file appeal. S. Gerrato stated it was his opinion and he could do whatever he wants. It was suggested the applicant withdraw; he agreed to withdraw without prejudice.

MOTION: Chair Gross moved to allow the applicant to withdraw his Request for a Variance without prejudice. Second – L. Schwab; all in favor. MOTION CARRIED

Chair Gross stated he wanted to give the applicant his opportunity to speak.

### 3. Approval of Minutes

MOTION: S. Gerrato moved to approve the minutes of Tuesday, May 21, 2019. Second – L. Schwab; all in favor. MOTION CARRIED

### 4. Other Business

S. Gerrato stated that the Planning Board should know that there has not been enough work on the lot size for multi-use (commercial and multi-family). A duplex requires 90,000 sq. ft.; there is no footage for multi-use. J. Marchese added that the Board needed to consider establishing a rule requiring 10,000 sq. ft. per unit. S. Gerrato will discuss it with the Planning Board.

### 5. Adjournment

MOTION: R. Gross moved to adjourn at 8:12 p.m. Second – L. Schwab; all in favor. MOTION CARRIED

NEXT MEETING
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Tuesday, July 16, 2019 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Administrative Assistant

Approved \_\_\_\_\_