



## **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, July 16, 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

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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 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.

**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 addressed the Board. He came to the Zoning Board in May of 2018 for a Variance; the pool permit was denied by the Building Inspector. The setbacks in the Ordinance were incorrect; T. Natario was allowed to withdraw his application without prejudice. It was suggested the he try to move the pool out of the setbacks. After moving the pool, the Building Inspector approved his pool permit.

The pool was built outside the buffer zone. T. Natario did not realize that a pool filter was considered a structure, and the pavers "creeped over a little bit". He explained there was a lot going on when the pool was installed. It was possible the pavers were a little longer than planned to accommodate the safety cover pins that go through the pavers and into the ground. T. Natario stated that the filter was clearly in the buffer; that was not the proposed location. They tried to keep the filter inside the fenced area for safety and security. If the Variance was not granted, he would have to move the filter and cut pavers. Seeding has been done; erosion is negligent.

T. Natario gave the Board pictures of his property before it was purchased and was a farm. The buffer zone in question was along the fence line. The land was cleared prior to him purchasing the house. He has planted grass and sloped in accordance with his submittal. There are no erosion issues in the back; the wetland looks very healthy.

As a result of the inspections by the Building Inspector, it wasn't thought to be an issue because the filter wasn't in place. The filter is not on a poured pad; it's sitting on a fiberglass pad. T. Natario felt the runoff was negligent. He did not understand the definition of a structure and did not consider it an issue.

L. Franck questioned if water was pumped out of the filter towards the wetlands. T. Natario responded that it goes into the backyard, beyond the buffer, when flushed. L. Schwab questioned how close to the well; T. Natario wasn't sure it was an issue—he watered the lawn with that water. Responding to a question from L. Franck, T. Natario explained he used pervious pavers and not cement. Chair Gross felt there were more pavers in the buffer. His concern was the location of the pool on the as-built; T. Natario stated it was 3' from the coping. J. Marchese stated he was over the buffer zone when he submitted his permit. Chair Gross questioned if it had enough detail; putting the pool in should have included the pavers as well. T. Natario was under the impression that pervious pavers weren't an issue in the buffer zone; water does go through.

S. Gerrato stated that the notes indicated a 75' setback throughout the plan. Chair Gross stated that was the issue last year and has since been corrected to 50'. T. Natario explained that he reapplied after taking the pool out of the buffer; the pavers and filter are in the buffer. The fence is 5', as required by the Ordinance.

S. Gerrato asked about putting the filter in the basement. T. Natario stated that J. Marchese was going to check the definition of "structure"; the structure issue may not be the filter but the electrical panel. Chair Gross noted it would also include the piping. J. Marchese stated a structure was anything that required it to be connected to something in the ground. S. Gerrato asked if T. Natario would be willing to put the filter in the basement year round. T. Natario explained that he could not put the filter in the basement because of the piping. S. Gerrato was concerned about leaking into the wetlands. L. Franck asked what it would take to move the filter system; response from T. Natario: just money. The pavers would have to be removed, re-trench, disturb the buffer again, etc. It was clarified that L. Franck meant the filter system only, or the "structure". Chair Gross noted that the pipes are considered part of the structure.

Chair Gross asked J. Marchese for his opinion. J. Marchese stated that from his perspective, the Board has always been in agreement that it is a structure similar to an underground propane tank connected to the house with piping. It was a Board decision if they wanted to give lenience during construction or whether they wanted to hold firm on the 50' wetland buffer to protect the wetlands. S. Gerrato stated that everyone knows they're on a campaign to protect the wetlands.

L. Franck suggested separating the two, giving leniency to the pavers and moving the filter/structure. L. Schwab was in agreement; S. Gerrato stated it would be a good compromise. T. Natario stated that when J. Marchese inspected the site, the pipes were in for the filter, and nothing was said. It could have very easily been moved at that point if T. Natario had known it would be considered a structure. He continued that the ditch was dug and pipes were coming out of the ground, adding J. Marchese was not sure it fit the definition of a structure during his second visit.

Chair Gross stated that T. Natario knew last year that this would be a tough situation. The permit was resubmitted and approved; when it was built, it wasn't okay. He went the Building Inspector twice and the ZBA once. The new plans showed everything out of the 50' and everything was okay. When it was built, not everything was out of the 50' buffer. T. Natario responded that the submitted plan indicated approximate location and filter. Chair Gross noted that the edge of the pool was close to the buffer; there was no way he would be able to put the pavers out of the 50'.

Chair Gross opened the hearing to public comments. Laura Byergo, Caswell Drive, questioned if the fence was in the buffer. T. Natario responded the fence was in the buffer, but is allowed. L. Byergo stated the buffers are important because they protect the wetlands and allow a wildlife corridor. If fences are in the buffer, its role is affected. The buffer is incredibly important for the animals that live in the wetlands; they need the upland. If obstacles are the buffer, the functions of the buffer will start to erode. J. Marchese noted that fences under 6' are not considered a structure. Chair Gross stated the Planning Board would have to change that requirement.

Chair Gross closed the public hearing and returned to the Board. L. Schwab stated that L. Franck had a good point separating the pavers from the filter. Chair Gross was concerned about setting a precedent; however, was in agreement to separate the two.

MOTION: L. Franck moved to separate the two items: the existing pool filter and all its associated equipment to be one item; the 164 sq. ft. of pervious pavers to be a separate item. Second – S. Gerrato; all in favor. MOTION CARRIED

MOTION: S. Gerrato moved to grant a Variance for the pavers around the pool that are in the wetland buffer. Second – L. Schwab; all in favor. MOTION CARRIED

MOTION: L. Schwab moved to deny the Request for a Variance relative to the pool filter and its associated equipment, including any underground apparatus. Second – L. Franck; all in favor. MOTION CARRIED

Discussion: Should moving the filter be included in the motion? Members didn't feel that was necessary; denying the Variance meant he couldn't have it in its current location.

Chair Gross addressed the Variance criteria. The wetland buffers are very crucial in Greenland. The aquifer and wildlife corridor need to be protected. It is a delineated wetland buffer zone by a wetland scientist. Moving the filter will not create a hardship. What needed to be done was known; the applicant was before the Board multiple times.

J. Marchese informed the applicant that he would be getting a letter in the mail from the Building Inspector's Office stating that he was non-compliant. The Building Inspector's Office would give the applicant a suitable amount of time to make the change. If the change was not made within that timeframe, the pool would need to be shut down. J. Marchese noted that the pool is fully operational. T. Natario stated there are no safety issues with the pool, but would need time to locate a contractor and would have it done as soon as possible. He asked J. Marchese to have an on-site discussion regarding the location of the pool filter. J. Marchese will give T. Natario 30 days to become compliant; T. Natario requested 90 days and felt 30 days was unreasonable. J. Marchese responded that was the standard time allowed; he was operating a non-compliant pool. He continued that T. Natario had not received a Certificate of Completion and the pool should not be open.

## 2. Approval of Minutes

Approval of minutes was continued to the next meeting.

3. Other Business

Referring to a previous case that may be coming back before the Board, there was a very brief discussion on man-made wetlands vs. residual wetlands. J. Marchese reminded members that could not be discussed without the applicant present.

Live streaming of ZBA meetings was discussed. S. Gerrato felt live streaming may keep people from speaking/commenting. Chair Gross noted that meetings are recorded and saved; the audio is not posted on line. L. Franck pointed out that meetings that were live streamed could be watched at any time. Chair Gross stated that live streaming might be a way to get people involved. L. Schwab stated it had merits, but it may also discourage people from wanting to be on the ZBA. J. Marchese added that he has been involved with situations where there had been an actual camera man pointing a camera at the person speaking. He agreed with S. Gerrato; when that is occurring, it is intimidating. With the cameras in the Conference Room, people would be unaware. Chair Gross thought it was a great idea; L. Franck and L. Schwab had mixed feelings and wanted to think about it; S. Gerrato didn't care either way. L. Byergo questioned if it would change the actions of people attending the meeting. J. Marchese stated it may improve participation if people could watch from home and see what the ZBA is about and what they're doing. Further discussion was continued to the next meeting.

S. Gerrato asked if there was any movement on the bill regarding membership on two boards. The office will research and hopefully have an answer at the next meeting.

Square footage of lots will be discussed at the Planning Board's August work session.

S. Gerrato stated that when only three Board members are present, which is a quorum, applicants should decide if they want to proceed before their case is heard. They should not wait until an unfavorable decision may be made by the Board and then ask to withdraw their application without prejudice.

4. Adjournment

MOTION: S. Gerrato moved to adjourn at 7:51 p.m. Second – L. Schwab; all in favor. MOTION CARRIED

NEXT MEETING
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Tuesday, August 20, 2019 – 7 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Administrative Assistant

Approved: \_\_\_\_\_