



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, April 17, 2018 – 7:00 p.m. – Town Hall Conference Room

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

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 RSA 91-A, and will be available on the Town's website.

Chair Cummings stated that one member of the Board wasn't feeling well and may leave. If he were to leave, the Board would continue the meeting with four members. Any decision would be made by a majority of the Board, which is three members.

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| <p>1. 179 Post Road: U2, 8
Owner/Applicant: Ben Pecora
Update: Approvals Received in July 2015 and August 2015</p> |
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Ben Pecora returned to the ZBA to update them on his progress since the meeting on Tuesday, November 21, 2017, and briefly recapped the history of his case. He planted four 6' arborvitae and five arborvitae bushes. At the November meeting, the Board instructed him to contact three landscaping companies for their suggestions on what would grow in the area where the arborvitae were planted. All three companies said that with the tree coverage, competing roots and shade, nothing would grow and thrive. In summary, they felt nothing would grow in that location and recommended building a fence. Copies of the emails are on file.

Spring and summer slides were reviewed; B. Pecora explained the arborvitae plantings to the Board. He noted where he would build a brown vinyl lattice fence that wouldn't be obtrusive but act as a barrier. He added that the neighbor didn't have a problem with the location of the shed; he spoke to her before any work was done. The arborvitae planted last year are not doing well. The deterioration has continued over the summer and winter. The arborvitae that the deer have left alone are doing okay; the ones they have eaten are not.

B. Pecora stated he would be happy to do whatever was necessary to be in compliance. There was a discussion about the existing fence around a portion of the shed. The visible section of the shed is approximately 4 ½ ft. x 12 ft. The fence goes to the rear corner of the shed and cuts the shed in half in the front. There are two doors on the shed; one is behind the front portion of the fence and the other is outside the fence. R. Gross questioned bringing the fence up to the front and adding a gate for access rather than another screen. Chair Cummings stated that the shed could only be seen during the winter and the leaves are gone. There was a discussion about extending the fence from the rear to the front. A fence closer to the shed would require removing the existing tree; extending it at an angle from the rear

to the front would require removing smaller trees. B. Pecora stated there was no purpose in connecting the fence; it was purely a cosmetic barrier. The fence was done correctly and a Variance was granted. The fence ranges in height from 6' to 10'. J. Marchese stated that according to the definition of "Structure" in the Ordinance, a fence 6' or higher is considered a structure and should be 20' from the property line. An after the fact Variance was granted for the fence and shed. He was told he had to put up a barrier so it was not a nuisance to a potential neighbor. There isn't much room between the shed and the tree to put a fence; there is a branch that almost touches the shed. Chair Cummings stated the approval could be amended to remove the arborvitaes and substitute something else. S. Gerrato asked if there was a list of acceptable screening, which there is not.

The shed has electricity and water; S. Gerrato was concerned that someone could live there. B. Pecora responded "no", it was used for hoses, etc. S. Gerrato was also concerned there may be a problem if the property was sold due to the shed. Chair Cummings stated that the Board asked B. Pecora to get opinions from three landscape companies, which he has done. If he has gone through all the hoops to get what he has legalized, there shouldn't be any problem.

The Board doesn't consider the neighbor, they also don't not consider them; his neighbor is fine. From Chair Cummings' standpoint as a member of the Board, the idea of the 20' is to provide a buffer between houses. She felt B. Pecora had done his due diligence to provide the buffer. The Board suggested 12 arborvitaes; because of the soil conditions, the wall, the shed, trees, etc., it wasn't appropriate. Chair Cummings continued that B. Pecora has been more than willing to provide what the Board requested. The Board needed to make a decision and end B. Pecora's pain. She added that she felt the Board overstepped their bounds; S. Gerrato disagreed.

S. Gerrato stated again that he wanted the shed torn down or moved. S. Gerrato continued that the Board has put a lot of time into this and has been very patient. Chair Cummings responded that the Board wants a screen; he can put up a screening fence. She asked why the Board thought plants were a better screen than a fence. R. Gross responded that from reading the notes, he felt the Board wanted a barrier, and the arborvitaes were a choice. There needs to be a barrier, and it should be significant. S. Gerrato stated B. Pecora didn't make a good effort to do it right. B. Pecora strongly disagreed as did the landscapers who looked at the site.

Chair Cummings stated the OEP Handbook stresses that the ZBA is not allowed to make Ordinance. By saying there needs to be a barrier and specifying what it needs to be, oversteps the bounds of the Zoning Board. Chair Cummings responded that making it acceptable or unacceptable, the Board is making Ordinance. R. Gross stated that part of the agreement with granting the Variance was to put up a barrier and it needed to be acceptable to the Board. B. Pecora offered to put up a fence, but didn't feel it would look good. A lattice fence would not be obtrusive but would still hide things. R. Gross noted that the Board could have made him move the shed.

Chair Cummings stated she didn't agree with any of this. After a brief discussion, R. Gross stated the decision wasn't properly made beforehand; now the Board was trying to band aid the situation. Chair Cummings agreed, in part. It was suggested that the fence be extended 3' beyond the corner of the shed so the door couldn't be seen. R. Gross stated he didn't want the shed seen at all. The Board wanted an acceptable barrier. L. Franck pointed out that the three landscapers recommended a fence. R. Gross reiterated that he didn't want to see the door on the shed; the Board didn't want to see the shed and the door is part of the shed.

Following a very lengthy discussion, the Board agreed to continue this case to the next meeting. The Board would like to see examples of fencing and the material to be used.

2. 57 McShane Avenue – Withdrawal of Application Requested

The applicant at 57 McShane Avenue has requested to withdraw their Request for a Variance previously submitted. She has also requested to continue the Administrative Appeal to the meeting on Tuesday, May 15, 2018. The Request for a Variance and Administrative Appeal were continued from the March meeting to the April meeting.

MOTION: L. Schwab moved to approve the withdrawal of the Request for a Variance for 57 McShane Avenue, application dated February 16, 2018. Second – S. Gerrato; all in favor. MOTION CARRIED

MOTION: L. Schwab moved to approve the continuance of the Administrative Appeal for 57 McShane Avenue to the meeting on Tuesday, May 15, 2018. Second – S. Gerrato; all in favor. MOTION CARRIED

3. 9 Falls Way: R7, 25B – Residential Zone with Aquifer Protection Overlay

Request for a Variance

Owner/Applicant: Tom Natario

The owner/applicant is seeking a Variance for a proposed pool within the 50' setback (478 sq. ft.) from the inland wetland. Article 18.7.2 of the Greenland Zoning Ordinance does not allow structures within the 50' inland jurisdictional wetland areas.

Tom Natario, home owner, addressed the Board. Also present were Karen Natario and Christian Smith, Beals Associates. T. Natario explained his house was new; the pool location was due to no egress on the north or east side of the house. For the purposes of aesthetics and safety, a corner of the deck and pool was located in a portion of the wetland buffer; the total area of impact is 478 sq. ft. L. Schwab asked for an updated plan with the 82 and 84 contours. T. Natario stated he hasn't gone forward with a pool proposal and elevation setting. He had planned to do what was necessary to meet the Board requirements. C. Smith stated the 84 contour should tie into the retaining wall next to the brick walkway. The 82 would probably sneak around to the westerly side of the pool; he didn't think the 80' contour would be touched. R. Gross suggested turning the pool slightly for the least amount of impact. T. Natario assured the Board he would do his best to get a lesser impact in the 50' buffer.

There will be 7' of deck as well as a retaining wall due to the contours. Turning the pool slightly would move the pool out of the buffer; the 4' fence would be in the buffer. Under the pool deck will be an impervious surface. L. Schwab asked the actual impact of the pool in the buffer without the deck; the response was 44 sq. ft. to 45 sq. ft. The wetlands are poorly drained soil; they're not a marsh at that location but may be attached to one.

J. Marchese apologized to the applicant for not recognizing a problem with the setbacks sooner. The wetland area being discussed is labeled as "poorly drained Jurisdictional Wetlands". The Wetlands Ordinance specifically states Jurisdictional Wetlands carry a 75' setback, not 50'. That change occurred in 2016. Based on that interpretation, the total impact is approximately 1,900 sq. ft. Chair Cummings explained that the Jurisdictional Wetlands Contiguous with Surface Water was taken away and that was 50'; now it's all 75'.

Chair Cummings suggested to the applicant he might want to consider moving the pool, referring him to Section 18.7.2 of the Ordinance. She explained it wasn't a Tidal Wetland or Surface Water; surface waters are defined as more "marshy". Inland Jurisdictional Wetlands are defined as similar to Tidal Wetlands except not tidal. A Wetlands Scientist makes the determination on the wetlands; the Board requires a Wetland Scientist stamp on plans for that reason.

Chair Cummings stated that the Board could allow the applicant to withdraw his application without prejudice. She suggested that in addition to Section 18.7.2, he also look at Section 18.10.

MOTION: S. Gerrato moved to allow 9 Falls Way to withdraw his Request for a Variance without prejudice because he was unaware of the Jurisdictional Wetlands 75' setback. Second – L. Schwab

Discussion: Chair Cummings stated that the applicant has spent not only money on his application and design based on erroneous information from the Town. If the applicant returns to the Board with a new location, his fees should be prorated. R. Gross stated that the application was brought to the Board knowing there were wetland buffers. He questioned if it was on the applicant to ensure the type of wetland buffer. Even though it wasn't pointed out by the Building Inspector, they knew it was in the wetland buffer; the documentation is there. Chair Cummings responded that the denial stated 50', the Town is also responsible. R. Gross felt it was the applicant and the engineer's job to follow the Ordinance. It was not always the Town's job to point out what they're doing wrong. L. Schwab added the engineer's plan clearly spelled out "jurisdictional". R. Gross added the Ordinance states 75'; his point, for the record, was that it was known.

AMENDED MOTION: S. Gerrato moved to allow 9 Falls Way to withdraw his Request for a Variance without prejudice because he was unaware of the Jurisdictional Wetlands 75' setback. If the applicant returns to the Board with a new location, his fees will be prorated. Second – L. Schwab; all in favor. MOTION CARRIED

4. 43 Boxwood Path: U7, 10C - Residential Zone with Aquifer Protection Overlay
Equitable Waiver of Dimensional Requirements
Owner/Applicant: Dorado Investments
The owner/applicant is requesting an Equitable Waiver of Dimensional Requirements for a structure built 33.76' from the neighboring unit. Section 19.3, Item 'O' of the Greenland Zoning Ordinance requires a minimum distance of 35' between units.

Stephen Ells, Attorney and representing Dorado Investments, addressed the Board. Also present were John O'Neill, Michael Green and Jennifer Green, Green and Company; Joe Coronati, Jones and Beach; and Laura Soussan, prospective buyer. When Bramber Green is completed, there will be a total of 73 free-standing residential condominium units; all are age restricted. The unit in question is labeled 'AP'.

A portion of Unit 'AP' was constructed closer to the abutting unit ('AN') than the required 35'. The separation between the two units exceeds 35' at the street elevation; the rear of the two units is separated by 33.7'. The encroachment into the set-off is slight and not in compliance with the Ordinance. The plan shows the triangular portion of the unit that is encroaching is 16 sq. ft.

Attorney Ells explained that there are five elements with a Variance; there are four with the Equitable Waiver. (1) The non-conformity wasn't discovered until after the unit was completed. The Building Inspector discovered the problem while doing the final inspection before issuing the Certificate of Occupancy. (2) The mistake was not caused by bad faith. There was no intent to deceive or ignorance of the law; the developers knew the set-off was 35'. It was a good faith error. Nothing has been gained by this mistake; only a loss. They didn't try to sneak in another unit or gain more frontage--it was an error. (3) The slight non-conformity cannot be seen as a nuisance and won't affect how the unit or abutting units will be used. It will not diminish the value of the unit or surrounding units. Attorney Ells added that with the naked eye, it couldn't be said there was a problem; it's a slight error. (4) It would be very costly to correct the encroachment: the foundation would have to be cut and the interior possibly

reworked. The expense would be fairly substantial, and the resulting benefit would be virtually unnoticed.

Attorney Ells stated certainly a mistake was made. The Equitable Waiver seems like precise tool for correcting these types of mistakes. He felt the applicant had satisfied the four elements that are required to give the Board the authority to grant the Equitable Waiver.

R. Gross stated whether it was 33' or 35', it wasn't that big a deal. S. Gerrato was in agreement. J. Marchese stated it was the as-built plan provided by the surveyor, and he verified it with the tape. The owners of the abutting units were notified of the meeting.

Chair Cummings noted that with a Variance the Board is required to review the five different criteria. An Equitable Waiver of Dimensional Requirements has four elements. Based on the written documents and presentation by Attorney Ells, all four requirements were met.

MOTION: S. Gerrato moved to grant the Equitable Waiver of Dimensional Requirements from 35' to 33.7'. Second – R. Gross; all in favor. MOTION CARRIED

The engineer and developer will review the plans for all 73 homes in Bramber to ensure there are no other issues. Chair Cummings agreed they should be checked; if there is not 35' between units and one goes up for sale, it would be better to do an Equitable Waiver now rather than then.

5. Other Business

Chair Cummings asked that members review the ZBA Guidelines that were included in their packets for the next meeting. She would like to tighten up the application deadlines. The RSA states an application must be heard within 30 days; the OEP handbook states it's at the call of the Chair. This will be added to the next agenda.

L. Franck registered for the OEP Conference as well as a Planning Board member. The conference is sold out and there is a waiting list.

6. Approval of Minutes

MOTION: S. Gerrato moved to approve the minutes of Tuesday, March 20, 2018. Second – R. Gross; all in favor. MOTION CARRIED

7. Adjournment

MOTION: S. Gerrato moved to adjourn at 8:33 p.m. Second – Chair Cummings; all in favor. MOTION CARRIED

NEXT MEETING

Tuesday, May 15, 2018 – 7: 00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: Tuesday, May 15, 2018