

TOWN OF BEDFORD
July 17, 2018
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, July 17, 2018 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Kevin Duhaime (Acting Chairman), Sharon Stirling, Melissa Stevens, Len Green (Alternate), Dave Gilbert (Alternate), and Mark Connors (Assistant Planning Director)

Acting Chairman Duhaime called the meeting to order at 7:00 p.m. and introduced members of the Board. Chairman John Morin, Vice Chairman Gigi Georges, and Alternate Neal Casale were absent. Mr. Green and Mr. Gilbert were appointed to vote.

Approval of Minutes:

MOTION by Mr. Green to approve the minutes of the June 19, 2018 meeting of the Bedford Zoning Board of Adjustment as submitted. Mr. Gilbert duly seconded the motion. Vote taken; motion carried, with Ms. Stirling and Ms. Stevens abstained.

Acting Chairman Duhaime reviewed the rules of procedure and swore in members of the public.

Ms. Stirling asked Mr. Chairman, this is a request for a variance from a proceeding that we heard in May. I would like to say that I do not feel it is a substantial material change. We are talking about 5 feet and the Conservation Commission was against it. As a side note, I don't know whether people are aware of the history of the wetlands ordinance. When it was originally proposed, it was 100 foot. Myself and a handful of others banded together, raised money and began a campaign, which changed it from 100 to the 50 foot setback. We felt that that was safe enough to protect the wetlands but it didn't infringe upon the property owners to the extent of the 100 foot. We wouldn't even be having this discussion of that historical issue did not take place. I feel the more that we compromise the 50 feet, we are setting ourselves up for a re-visitation of that, which would then make it less generous than it already is, so I go on record being against having a rehearing of this issue for not a substantial material change to the original application. Thank you.

Mr. Green asked procedurally don't we first have to decide whether it is substantial or not, because if we decide it is not substantial, then that is the end of it and we don't take it up again, is my understanding. Acting Chairman Duhaime responded that is correct too. Mr. Connors stated you would have to decide if there is material change to the application before you would accept it. If you don't think there is a material change to the application, you shouldn't accept it and the earlier denial would stand. Mr. Green asked was that done by motion? Mr. Connors replied yes.

Acting Chairman Duhaime asked how do we bring it into discussion whether we should be discussing if it is a substantial change? Do we just continue the conversation as is and then we vote with a motion? Mr. Connors replied sure. I can show you the earlier iteration and then the current one. Mr. Green asked but does there have to be a motion on the floor for us to even have that initial discussion? That is what I am not clear on.

Ms. Stirling stated I think generally the way the meeting would open is if it is just a rehearing, we would decide whether there was substantial material change to go for a rehearing and then you would kind of go through the spiel that you went through if we agreed to hear it again, and because there are no other applications, that doesn't really matter. You would still open as you would in a general way but I think the issue that I am raising is I am against or want to deny rehearing it but I don't want to make a motion to that extent unless others are comfortable with that or want to make any additional comments.

Acting Chairman Duhaime asked for further comments from the Board. Mr. Green stated I am just not sure procedurally how it gets onto the floor for us to have a discussion. Usually don't you have to have a motion? Ms. Stirling replied not for rehearings. With rehearings we simply discuss do we feel we want to rehear this and if not, we vote; we make the motion not to hear it and that is it.

Mr. Green asked how many times has this come back to the Board? Ms. Stirling replied this is just the second time, but we tried to work with him extensively in May to try to reconfigure, lessen the size of the pool because it was large. Mr. Casale raised that over and over again because the size was ginormous and he said I have a big family but that is really not our issue. Our issue is the ordinance, not whether you have a big family; that doesn't play into our decision.

MOTION by Ms. Stirling that the Zoning Board of Adjustment deny the request from Thomas Hamel to revisit the variance from Article IV, Section 275-28 in order to construct an in-ground pool 41.8 feet from the edge of a wetland at its nearest point where 50 feet is required at 201 Campbell Road, Lot 16-8-7, Zoned R&A.

Mr. Connors stated just to clarify; it is not a rehearing. You are deciding whether or not you will accept the application; you are deciding if there is a material change from the earlier application that you denied. Ms. Stirling asked so it is denied based on the fact

that it is not a material change to the application we heard in May of 2018. Mr. Connors responded okay. Ms. Stirling amended her motion to read as follows:

MOTION by Ms. Stirling that the Zoning Board of Adjustment deny hearing the request for a variance submitted by Thomas Hamel from Article IV, Section 275-28 in order to construct an in-ground pool 41.8 feet from the edge of a wetland at its nearest point where 50 feet is required at 201 Campbell Road, Lot 16-8-7, Zoned R&A, as this application is not a material change to the variance application the Zoning Board of Adjustment heard in May of 2018. Mr. Green duly seconded the motion for discussion.

Mr. Green asked how many feet difference is this one from the last application? Ms. Stirling replied 5 feet. Acting Chairman Duhaime stated the pool is smaller too. Mr. Hamel asked can I say something? Ms. Stirling replied no; procedurally it is not allowed. It is not my choice. Mr. Connors posted the original plan on the screen. Ms. Stirling stated we had discussed two in May. One was even more of an infringement, but the last one that we talked about was the 36. Mr. Connors stated the motion at the May meeting was to deny the variance for the pool that was 38.8 feet from the edge of wetland. Ms. Stirling asked so 2 feet instead of 5 feet? Mr. Connors stated with the current application the position of the pool has changed so there is a little bit less of it within the setback but the distance hasn't changed very much. It is now 41.8 feet. Ms. Stirling asked can you do the math on that because you have it in front of you? Mr. Connors replied yes; it is a 3 foot difference. Having said that, there is, as I mentioned, a little bit less of the pool within the setback from the previous application. Ms. Stevens asked so square footage-wise there is less pool in the setback? Mr. Connors replied yes, because the positioning, kind of the shape of the pool is different. Ms. Stirling asked and all he could save was 3 feet? Mr. Connors replied and 3 feet is the distance that changed. Mr. Green stated 3 feet doesn't seem like a huge difference. Mr. Gilbert responded well I think it does when you have a constraint towards the deck and the house. He doesn't have a lot of room to go in, and I think what he has done is changed the pool shape and tried to fit it in as best as possible not knowing all of the ins and outs of that.

Mr. Gilbert stated I have a question and maybe I missed it, but the jurisdictional wetlands determination. How is that made, when is it made, and does it fluctuate? Do any of you know that? How did this wetlands border get defined and does it fluctuate over time? Mr. Connors replied it can fluctuate. A wetland scientist would have flagged the wetland. Ms. Stirling stated right, and the other thing about that is in the Conservation Commission's concern, which as Chairman Morin stated in all of the years he sat here, and I have sat here even longer than him, we have never gone against their recommendation, so we rely on them and their sensitivity around this particular wetlands because of the brook that runs in the back of that property or in the vicinity of that wetlands. Again, they were against it, and typically this Board is not bound by them but we use them as our expert witness, if you will.

Ms. Stevens asked was this reheard at the Conservation Commission? Ms. Stirling replied no, because I don't see how. We are talking about 3 feet and that couldn't have changed their minds, I don't think, because if you read those minutes from the Conservation Commission, you will see all of the machinations around that issue. Ms. Stevens responded right. I had read their first report; I was just looking through the notes trying to find out. I thought that they had discussed this again but they didn't. Ms. Stirling stated I am assuming it would be in our packet and it would be awfully quick because we heard it in May, and if they were going back to the Conservation Commission, I am not sure how their meetings work, but it probably would have been a tight timeframe. Ms. Stevens stated it would have had to have happened in June. Ms. Stirling responded right, and we have no evidence of that, and yet June's minutes are available, so their minutes would have been available to us if they had gone. Mr. Connors stated Ms. Elmer mentioned that to me and she said that based on the first hearing it was evident that the Commission wouldn't support any kind of encroachment into the setback, so she didn't feel like it was necessary to bring it back to the Conservation Commission. Ms. Stirling responded that makes sense because they went through that in pretty good detail with that concern about the brook as to being the rationale why it looked like they were going to be pretty firm in their requirements for the 50 feet.

Acting Chairman Duhaime asked for further comments from the Board. Mr. Gilbert stated I have a question. I am just asking here; do you think that the wetlands delineation border is looked at? When is that looked at? Is it in X amount of years? Can someone request to have that looked at again? Mr. Connors replied it is based on whatever the certified wetland scientist flagged the lot. Looking at the submitted plans, it looks like this was done this year. Mr. Gilbert responded okay. Thank you for telling me.

Ms. Stevens stated I would say if the new proposal had been just touching and really trying to squeeze in to fit into the space where it should be, then it would be an immaterial change but it looks like they are still trying to figure out sort of how far they can go here. It doesn't seem like a huge change has really been made.

Mr. Gilbert stated the other question I had is, there were the five criteria that he had to meet, and as I recall, I think he met three of them at the last meeting. Mr. Connors stated I could go back and check that. I would say to stay away from that for now. Ms. Stirling stated I don't think that is something you ever want to get into revisiting. That would be very dangerous territory to go into. It was denied, and that is a combination of everything. It is absolutely no issue to this Board at this point in time to be relooking at those fine points. Mr. Connors stated the issue currently is whether or not there has been a material change to the application or there has been a material change of circumstance.

Ms. Stirling further amended her motion to add the following language after the last sentence:

‘, with only a 3-foot change.’ Mr. Green seconded this change to the motion.

Acting Chairman Duhaime called for a vote on the motion as amended. With all members voting in the affirmative, the amended motion carried.

Applications:

- 1. Thomas Hamel (Owner) – Request for a variance from Article IV, Section 275-28 in order to construct an in-ground pool 41.8 feet from the edge of a wetland at its nearest point where 50 feet is required at 201 Campbell Road., Lot 16-8-7. Zoned R&A.**

The Zoning Board of Adjustment denied hearing this application.

Old Business: None

New Business: None

Adjournment:

Motion by Ms. Stirling to adjourn the meeting at 7:18 p.m. Mr. Green duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons