

# Town of Newington, NH

## ZONING BOARD OF ADJUSTMENT

Meeting Minutes, June 25, 2020

- Call to Order:** Vice-Chair Ralph Estes called the June 25, 2020 meeting at 4:02 p.m. that was held outside under a tent.
- Present:** Vice -Chair Ralph Estes; John Frink; Meredith Hoyt; Edna Mosher; Alternate Board members, Kathy Latchaw and Will Gilbert; Town Planner, John Krebs, and Jane Kendall, Recorder
- Absent:** Chair Matt Morton
- Public Guests:** Abigail and Katherine Hood; Russ and Maggie Cooke; Chris Cross; Dennis Hebert; Gail Klanchesser; Addison Mueller; Tom and Marie Cowgill

Town Planner, John Krebs announced that Chair Matt Morton was not able to attend the meeting, and that Vice-Chair Ralph Estes would be running the meeting.

**Minutes:** *John Frink moved to approve the Minutes for the May 26, 2020 meeting with corrections as noted. Edna Mosher seconded, and all were in favor.*

I) **Public Hearing:** Request by **Katherine and Abigail Hood** for a variance from Article VIII to allow an above ground swimming pool, entirely within the 100-foot wetland buffer setback on property located at **12 and 14 Coleman Drive, Tax Map 12, Lot 8.**

Board member, John Frink noted that the agenda and public notice incorrectly listed the applicant was requesting a variance from Article IX, but the 2020 Zoning Ordinance had updated it to Article VIII.

Mr. Frink asked if the Watsons siblings had been sent a notice regarding their abutting property. Abigail Hood said that she had submitted an abutters list. Town Planner, John Krebs confirmed that they had an address for Randy Watson who had been sent a notice.

The applicant, Katherine Hood stated that their entire backyard was in the wetlands buffer setback, and that was the reason they were asking for a variance to put an above ground pool next to deck off the house that was within the setback.

Vice-Chair Estes asked if they went to building inspector, and Ms. K. Hood said she had.

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Mr. Krebs stated that the former property owners, Jane and Michael Mazeau were granted a variance in 2008 that allowed them to triple the size of the non-conforming house lot with the entire backyard in the wetlands buffer.

Board member, Edna Mosher wondered why the above ground pool was considered a structure even though they could empty and remove it. Mr. Krebs noted that the applicant intended to leave it up. Ms. K. Hood responded that her parents had removed their above ground pool, and reseeded the area, so it was possible to restore the area.

Ms. Mosher stated that she had done a site walk with Abby and Katy, and that the yard was high and dry except for the back part of property, and that they were putting the pool right off the deck.

Ms. Mosher congratulated the Hoods for their application, and not putting it up first. She said they vastly improved property.

Mr. Frink said he was told there was a letter from abutters, David and Kelly Mueller delivered by their son, Addison Mueller, stating that they had no objections.

Chris Cross of Nimble Hill Road said he was not speaking for or against the pool, but speaking for the wetlands setback ordinance that voters implemented to protect runoff into streams. Mr. Cross asked that the Zoning Board of Adjustment (ZBA) identify the uniqueness of the property that supported any decision to approve the application, and what steps would be taken to protect the wetlands flowing to Great Bay from chemicals and cleaning products.

Mr. Cross suggested they consider landscaping to protect the stream running behind the property. Vice-Chair Estes asked if that would be required when the applicant requested a building permit, and Mr. Cross replied that it would be up to the approving ZBA to make that decision as a condition.

Ms. A. Hood said she had talked to the pool company, and it was not unusual treat pools with a chlorine neutralizer to return the water to a proper pH when releasing water before releasing the water onto the property.

Alternate Board member Will Gilbert added as a former pool owner, that chlorine would be dissipated if no chemicals were added before being released. Mr. Cross suggested that might be, but that treatment of the water before releasing should be a condition as well.

Mr. Frink read from Article VIII in the Wetlands Overlay District, and stated that the crux of the ordinance was in the purpose and intent to prevent structures from releasing toxins, so he agreed that a condition should be made that no toxic substances or sedimentation would be released.

Mr. Frink noted that anything attached to the ground was considered a structure, but detachable stairs were allowed, and he thought the Planning Board should address whether an above ground pool was a structure or not.

Mr. Frink added that there were play structures on the mowed lawn in the back yard, that there would be no dredging or filling, and he didn't think the pool would make any additional impact.

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Board member, Meredith Hoyt stated that she worked works in wastewater treatment and agreed that dichlorination worked perfectly, and they were able to release the treated water into Oyster River.

*(Gail Klanchesser arrived at this point in the meeting 4:24 p.m.)*

Ms. Klanchesser stated that she was a direct abutter, and that she was in support of the pool.

Maggie Cooke of Hannah Lane commented that she was concerned that the town had voted in favor of the ordinance restricting structures near the wetlands. Mr. Krebs pointed out that the entire yard, and structure would be in the wetlands setback, and not in the wetlands itself.

Ms. Cooke said her concern was that approving the request would suggest that some could put structures in the setbacks, and others could not. Planning Board Chair, Denis Hebert of Gundalow Landing replied that it had been noted that an above ground pool was temporary recreation structure that could be removed, and not a permanent structure.

Mr. Hebert asked that the uniqueness of the property still needed to identified in the five criteria for approval so that it was clear that the Board was granting relief from the ordinance for this request only.

Mr. Frink responded that the uniqueness was that they were asking to place a temporary structure on their property where the entire backyard was encumbered by a 100-foot wetlands setback.

Ms. Mosher added that the ZBA rulebook stated that they reviewed each application on a case by case basis, and the uniqueness was that it was a nonconforming lot, and there was nowhere else to put a pool to enjoy their property. Mr. Frink agreed that anyone with a more conforming lot would want to do the same.

Ms. Cooke responded that she didn't understand how the Board could deny others from placing structures in the wetlands if they approved this application. Vice-Chair Estes responded that the ZBA bylaws stated that their decisions were on a case by case basis, and didn't apply to anyone else no matter what the Board approved. Ms. Mosher added that no two lots were the same, and that was the reason zoning boards reviewed requests on a case by case basis.

Mr. Hebert commented that said he understood both sides, but the intent of relief was to consider the uniqueness of a property so that it couldn't be applied to other properties.

Mr. Hebert added that he supported approval with the conditions as discussed.

Ms. A. Hood stated that the removable pool structure wouldn't go past the side of house, or further into the wetlands setback.

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Mr. Krebs said it was also of note that the value of the wetlands buffer had been compromised by the non-conforming lot that was created before the Town's Ordinance was created, so he wasn't sure how effective the buffer would be as it was.

Mr. Frink reviewed the criteria for approval, stating that granting the request would not be contrary to the public interest. Vice-Chair Estes and Ms. Mosher agreed, noting that no abutters were opposed.

Mr. Frink stated that the intent of the ordinance was to prevent damage and destruction to the natural wetlands by restricting permanent structures that would cause runoff into the wetlands from being built in the wetlands buffers. Mr. Frink went on to say that agreeing to the condition that no toxic chemical pollutants would be released into the buffer wetlands, and wildlife habitat behind the property would not be contrary to the spirit of the ordinance.

Mr. Frink said re substantial justice. Vice-Chair Estes stated that substantial justice would be served because the family could get better use of their property. Ms. Mosher added that it would also benefit the family in physical distancing from the public during the Covid-19 pandemic, and that the proposed use was reasonable.

*Ms. Mosher moved to grant the request by Katherine and Abigail Hood for a variance from Article VIII to allow an above ground swimming pool, entirely within the 100-foot wetland buffer setback on property located at 12 and 14 Coleman Drive, Tax Map 12, Lot 8 with the condition that the pool chemicals be neutralized before being released into the wetlands buffer. John Frink seconded the motion, and the motion passed 5-0 with all in favor.*

### **II) Other Business:**

Mr. Krebs informed the Board that Tom and Marie Cowgill, owners of the cider mill past Motts Pond had applied for a variance in March 2020 to convert the mill to an artist studio and living quarters. Mr. Krebs said that there was a ten-person limit for meetings at the time, but that limit might be changed to 25 people, and now they were having meetings outside.

Mr. Krebs said Mr. Cowgill had been patient understanding the restrictions with Covid-19. Tom Cowgill said it was important that everyone safe.

Mr. Cowgill asked if the Board had any idea when they could hear their application. Ms. Mosher said Chair Morton was not present and the Board couldn't say. Vice-Chair Estes said there was no reason not to schedule a meeting so long as Chair Morton approved, however.

Mr. Frink asked if the outdoor tent adequate for outdoor meeting. Mr. Krebs said the Board of Selectmen closed the Town Hall, but he heard there was a meeting being held there the next day. Ms. Mosher said she thought the State mandated that people

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couldn't go inside until July 1, 2020. Mr. Frink added that he thought meetings sizes were being increased to 25 people.

Mr. Krebs said he didn't know how many people would attend the meeting, but he would talk with Chair Morton and the Board of Selectmen and schedule a meeting. Vice-Chair Estes said he thought that the applicant should get his meeting as soon as possible, though he understood that the public might feel more comfortable outside. Mr. Krebs said they could also have people come in to speak and leave when they were done.]

**Adjournment:** *Kathy Latchaw moved to adjourn. Edna Mosher seconded the motion and the meeting adjourned at 4:53 p.m.*

**Next Meeting:** TBD

**Respectfully  
Submitted by:** Jane K. Kendall, Recording Secretary

*These Minutes were approved and adopted at the September 17, 2020 Zoning Board of Adjustment meeting.*