

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: MAY 15, 2013

CASE NO.: 3/20/2013-1 (CONTINUED)

APPLICANT: GC NOMINEE TRUST
JASON L. AND HEATHER S. PARENT, TRUSTEES
38 TANAGER WAY
LONDONDERRY, NH 03053

LOCATION: 38 TANAGER WAY; 5-10-19; AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
NEIL DUNN, CLERK

REQUEST: VARIANCE TO ALLOW AN IN-GROUND POOL AND A SHED WITHIN THE
CONSERVATION OVERLAY DISTRICT BUFFER WHERE OTHERWISE
PROHIBITED BY SECTION 2.6.3.

PRESENTATION: At the opening of the meeting, the Chair announced to all applicants on the evening's
agenda that with only four Board members in attendance, they have the opportunity to
request a continuance to the June 19, 2013 meeting when there could be an opportunity to
present to a five member Board.

Case No. 3/20/2013-1 was read into the record with no previous cases listed.

JAMES SMITH: Do you want to introduce yourself again for the record?

JASON PARENT: Sure. Good evening. My name is Jason Parent. My wife and I live at 38 Tanager Way.

JAMES SMITH: Okay.

JASON PARENT: As the Board may recall, in March I had a hearing to request a variance and was informed at
that time that I needed to meet with the Conservation Commission to receive their input relative to buffer
restrictions and conservation land. In April, I returned before the Board to consider my request. I addressed
the five variance criteria in that meeting with the support of two neighbors. I think you have a set of letters
from them. And at that meeting, it was difficult to ascertain exactly where the pool and decking and fencing
was going to go, so you had requested a drawing to scale for this May meeting. I met with a prospective pool
company, an environmental engineer to propose a sketch of the pool, decking, and fencing in relation to the
reference plan which is now drawn to scale. I believe you have that sketch before you, along with the

46 dimensions off of the middle of my foundation. We also, just a reminder, I have a twelve foot deck that runs
47 off the back of the house. As I mentioned at the last meeting, the buffer, wetlands, and conservation area
48 move diagonally, so running a clean straight line of fencing behind the pool area, I'm able to meet a
49 considerable portion of the Conservation Commission's request for natural vegetation to grow back behind it.
50 Again, I'm willing to use environmentally friendly pool cleaners and a cartridge filter system with no backwash.
51 The life safety concern would be met with this particular location. It would maintain privacy and maintain the
52 value of the property. I hope I satisfied the Board's concerns in obtaining a variance and I thank you for your
53 time.

54
55 JAMES SMITH: Okay, I'll open it up to the Board.

56
57 LARRY O'SULLIVAN: We had suggested a certain type and kind of filter that be used if we go ahead with this or
58 if we allow to go ahead with this variance in this location. Would you be able to change any of the chemicals
59 that are involved? Again, our concern is, like the rest of the town, the stewardship that you have because you
60 abut this conservation area...

61
62 JASON PARENT: Yes, sir.

63
64 LARRY O'SULLIVAN: ...is part of your property ownership requirement. You own it. You get to enjoy that
65 whole conservation area. Now, the cost that's associated with that may be expensive because you're going to
66 need to, if this is approved, sustain this filtering system, whatever you decide it is going to be...

67
68 JASON PARENT: Yes.

69
70 LARRY O'SULLIVAN: ...that Richard approves and in effect, that covers the mitigation with the planting and
71 what have you that the Conservation Commission suggested. Do I have that all right?

72
73 JAMES SMITH: Yeah. I believe so.

74
75 LARRY O'SULLIVAN: Okay. So this isn't just a simple variance. This is a complex variance. This is going to need
76 monitoring and an inspection.

77
78 JASON PARENT: Which I'm fully willing to do. I'm willing to meet, show proof.

79
80 LARRY O'SULLIVAN: And Richard, you can take care of the inspection part of that?

81
82 RICHARD CANUEL: Well, we'll take care of the inspection of the installation of the pool, sure.

83
84 NEIL DUNN: But in regards to the concern that it not have a backwash and it has a filter replacement system
85 as opposed to your standard backwash and chlorine chemicals, you could verify that or do you need more
86 guidance from us and Mr. Parent?

87
88 RICHARD CANUEL: No, I can certainly verify that upon installation.

89
90 NEIL DUNN: Okay.

91
92 JASON PARENT: Once it is installed, though, I'd have to use the cartridges and the filter system to maintain it.
93
94 RICHARD CANUEL: You would have no choice.
95
96 JASON PARENT: You wouldn't have a choice.
97
98 RICHARD CANUEL: Right.
99
100 NEIL DUNN: Right, but to verify that it meets the intent of what we were after, I guess, was...I wanted to make
101 sure Richard was comfortable with that or if we needed to put a brand, a name, and a model and a...
102
103 RICHARD CANUEL: No, that's not necessary.
104
105 LARRY O'SULLIVAN: The other thing...
106
107 RICHARD CANUEL: So essentially, the maintenance would be self-policing. It's not a matter of me revisiting
108 the property year after year to ensure that he's using the proper filtration, so...
109
110 LARRY O'SULLIVAN: We'd be expecting you'd go with swim trunks anyways. The other thing that we were
111 concerned about is where it fit on the lot. So is there a place on the lot that it would logically fit so
112 we...because we need you to consider the alternatives and may I ask if there's another place on the lot where
113 it would fit, where it wouldn't be intruding in the overlay district?
114
115 JASON PARENT: In that area that we looked at, to the right, and again, off of that foundation, that area is the
116 garage. So there is no line of sight in that area that would be off the buffer. And that's what brought me here
117 originally to obtain a variance. That would be the only way to kitty corner this so that I wouldn't need a
118 variance off the buffer.
119
120 LARRY O'SULLIVAN: So there is an alternative. There's an alternative where it would fit. That's what I'm going
121 to have trouble with. If there's an alternative, we need to make sure that it is...you know, the line of sight
122 issue, if that's the only issue...
123
124 JASON PARENT: Right, and I didn't do a drawing to scale off of that. I mean, if you look at where the scale is
125 now, if you were to take that and kitty corner it over to the...and there are lot line restrictions to the right of
126 my home, so when we initially looked at that and the pool company looked at that, he said 'You're cutting it
127 awful close to the lot line restrictions to the right of you if you were to put it there.' So then there are those
128 factors as well. It wasn't just a line of sight issue.
129
130 NEIL DUNN: Well I think I might have a more comfortable feeling that you're encroaching on a 15 foot side as
131 opposed to a wetland or a conservation setback...
132
133 JASON PARENT: I understand.
134

135 NEIL DUNN: ...is my only thought. So do you know what you would get if you could fit it over there and it may
136 be close, so it might be a couple feet, and so then your only concern is the line of sight? Is that...?
137
138 JASON PARENT: If I could squeeze it in that area, yes, but I don't think I would do that. And that was, you
139 know, in the last presentation, those were the two factors that...the line of sight for a life safety issue, but also
140 the lot line restrictions and just essentially, really trying to squeeze it in and force feed a pool where...
141
142 LARRY O'SULLIVAN: It's not logical.
143
144 JASON PARENT: ...you just can't do it. No.
145
146 NEIL DUNN: If I may, Jim? Could you help me address...I know the Conservation Committee was hoping for 25
147 feet and it was recommended your alternative chemicals or filtration system which you're complying with...
148
149 JASON PARENT: Yes, sir.
150
151 NEIL DUNN: ...but they were good with that 25 feet and now it looks like you only have 12 feet, half of what
152 they were comfortable with?
153
154 JASON PARENT: In the very corner on that end of the pool, because it runs at a diagonal, yes. That's correct.
155
156 JAY HOOLEY: They were looking for, if I may, Mr. Chairman, 25 feet to be restored throughout the 50 foot
157 buffer. If I'm looking at this correctly, you'd have to have the pool, fencing, et cetera, just about about the
158 deck...
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160 JASON PARENT: Correct.
161
162 JAY HOOLEY: ...in order to accomplish that in this location.
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164 JASON PARENT: That's correct.
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166 JAY HOOLEY: But you could certainly restore, as you go towards the left rear corner, some additional portion
167 in excess of 25 feet to compensate for the less than 25 feet where the pool is, looking at...and I know it's
168 dated, the Town website photo, it appears that the left is actually already wooded in much of that whole left
169 side of the lot.
170
171 JASON PARENT: Correct. I have pictures if it's helpful. I have a picture of that, an aerial view, and then
172 pictures of the backyard. I don't know if that's helpful to you or not.
173
174 LARRY O'SULLIVAN: Are they recent?
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176 JASON PARENT: Yes, sir.
177
178 LARRY O'SULLIVAN: Better than what we have. Ours is when your home was, I think, first built.
179

180 [Jason Parent submits photos to the Board].
181
182 JASON PARENT: And these are recent pictures of the lot. I can't say how recent this is. It was printed then,
183 but I don't know how...it's fairly recent, though. That's what it looks like, so that's all there.
184
185 JAMES SMITH: Anyone else have any questions? Comments? You know, in looking at your plan, you've got a
186 fair amount of space between the pool and that deck on your house. Why do you need that space?
187
188 JASON PARENT: The deck essentially is 12 by 12, so from the corner of the middle of the foundation, it's 20
189 feet to the beginning of the buffer. To have that space off of the deck, as I mentioned before, I really am...I
190 don't think this will happen, but I didn't want anything, the pool and fencing and decking near the deck, which
191 is at a second story so to speak, anyone trying to jump off the deck in towards the pool and I wanted it a
192 decent distance away.
193
194 JAY HOOLEY: Could you repeat those numbers, please? The distance from the foundation to the fence?
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196 JASON PARENT: To the fence as it's proposed. Yeah, I just to reference it. I think it's listed under yours, too.
197 From the foundation to the fence...
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199 JAMES SMITH: Yeah, there's a letter.
200
201 JASON PARENT: ...20...fence closest to the house, so it would be 26 feet from the foundation.
202
203 JAY HOOLEY: And the deck is what size?
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205 JASON PARENT: Is that right? The deck is 12 by 12.
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207 JAY HOOLEY: So that space from the deck to the fence, then is 14 feet?
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209 JASON PARENT: Yes, sir.
210
211 LARRY O'SULLIVAN: I think we're having a hard time trying to figure how the mitigation that the Conservation
212 Commission proposed and this meets the intent.
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214 JASON PARENT: Okay.
215
216 LARRY O'SULLIVAN: Right? Because it doesn't. This doesn't meet the intent of our COD, it doesn't meet the
217 variance criteria, is not in the public interest because the area is a conservation area...
218
219 JASON PARENT: Mm-hmm.
220
221 LARRY O'SULLIVAN: The whole town is concerned about that type of stuff. We need you to give us some
222 information, more information, on how you would mitigate where this is, how this is positioned on your lot,
223 and why it has to be where it is. Does anybody else...? I mean...
224

225 JAY HOOLEY: Well, I think...
226
227 JAMES SMITH: Yeah.
228
229 JAY HOOLEY: Go ahead, Jim. I'm sorry.
230
231 JAMES SMITH: You know, in looking at this, I know one of your stated concerns is if you rotate the pool or
232 bring it closer to that deck, that somebody may try to jump off it into the pool. There's no way of predicting
233 what anybody's going to do, obviously.
234
235 JASON PARENT: Sure.
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237 JAMES SMITH: I think there's other ways that you could possible prevent that, i.e. some sort of a fence along
238 the edge, the deck edge of the pool. Or a higher...raise the railing on the deck probably would be a simpler
239 way. So I think there's some other ways that you could get to that. Right now, you're showing approximately
240 12 feet from the edge of the wetland, which is the edge of the 50 foot buffer.
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242 LARRY O'SULLIVAN: No, it's in...everything is in the 50 foot buffer.
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244 JAMES SMITH: Yeah.
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246 LARRY O'SULLIVAN: Almost everything.
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248 JAMES SMITH: Yeah, most...
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250 LARRY O'SULLIVAN: Okay. Sorry.
251
252 JAMES SMITH: But I mean, what I'm referring to; the Conservation Commission asked you have 25 feet of that
253 revert back to natural vegetation. Even if you did with the 12 feet, now you're going to have trees and stuff
254 growing right up next to the pool which seems a little...
255
256 JASON PARENT: Which is why I had thought about having a vinyl fence to essentially shield...obviously, you
257 need the fence, but also to shield from the brush that would grow up and grow back. Correct.
258
259 JAMES SMITH: Yeah.
260
261 JASON PARENT: To move it closer towards the deck, to your point, an aluminum fence going across would
262 look kind of funny half on...you know, halfway through the yard, but if we use an aluminum fence to go around
263 the pool and I was able to put shrubs in towards the back to have some sort of...aesthetically look better, I
264 could do that as well and the Conservation Commission did acknowledge that that would be okay along with a
265 mowed strip of grass that was not chemically treated. Their initial concerns, to your point, Mr. Sullivan, with it
266 being a detriment, is that...you know, and it reads in the minutes for the Conservation Commission [March 26,
267 2013 minutes], "To put a hard surface in the COD is contrary to the public interest. To make matters worse,
268 this request would store hazardous pool chemicals in the COD further threatening the Town's waters [and the

269 water supply].” And that was the concern and I understand that, which is why I had addressed the
270 environmentally friendly pool cleaner...

271
272 LARRY O'SULLIVAN: That's not the only thing.

273
274 JASON PARENT: ...the water itself, and now it's just a permanent structure we would be looking at. So though
275 mitigation, they talked about being able to use 25 feet of the buffer with the other 25...

276
277 LARRY O'SULLIVAN: Right. We don't have that 25. We're down to 12 in some places. So you're not giving
278 what they...

279
280 JASON PARENT: Can I move...would I be able to do this? Could I move the permanent structures; the fencing,
281 the decking, the pool inside that 25 feet to allow the 25 feet? I just want to be clear what I would be doing
282 and then instead of having a vinyl fence go across the back, could I have a tree line where the fence would be
283 or shrubs where the fence would be? Which is what the Conservation Commission said I could do; “J. Parent
284 could add plantings...(shrubs) as offered previously.” Would I be able to do that? So that it's not an eye sore
285 of just brush growing back, that I'd have actual shrubs and have all of the permanent items that I'm
286 requesting, the fencing, the decking, and the pool, within. Would the Board consider that?

287
288 JAY HOOLEY: I think, and I don't mean to speak for everybody, but I believe what Larry was driving at is if you
289 got the pool, fence, and deck so that you met the 25, then that would...you would be meeting what the...

290
291 LARRY O'SULLIVAN: The standard is 50.

292
293 JASON PARENT: Mm-hmm. Yes.

294
295 LARRY O'SULLIVAN: They said, with the mitigation, 25. And you're not meeting the 25.

296
297 JASON PARENT: Okay.

298
299 LARRY O'SULLIVAN: So...

300
301 JAY HOOLEY: If you're...

302
303 LARRY O'SULLIVAN: If you're asking us what the Conservation Commission had in mind, that's not what they
304 had in mind. They would probably reduce that letter to nothing. They'd say 'No, we're not going to be able to
305 support it.' Because they came up with this themselves.

306
307 JASON PARENT: Okay.

308
309 LARRY O'SULLIVAN: It's rare that they'll do that, too, by the way.

310
311 JASON PARENT: Okay.

313 LARRY O'SULLIVAN: Usually it's cut and dry. Which we like much, much more than when they start playing,
314 you know, 'maybe we could do this or do that,' because this is something that potentially, not in your
315 instance, but others, could need constant monitoring and Richard, you know, how many times can you
316 constantly go out there or regularly go out to...? It can't be done. We can't monitor these things. We don't
317 have it, okay? So, the significance is more, in this instance, I think, that you're not meeting what the
318 Conservation Commission suggested. How would we justify overriding what they have already said would be
319 fair if it was mitigated? That's a tough one for us. Anyone here from Conservation? No?

320
321 JAMES SMITH: You were at the meeting when they discussed this, right?

322
323 JASON PARENT: Yes, sir.

324
325 JAMES SMITH: Okay. So you were aware of what they were suggesting?

326
327 JASON PARENT: Yes. I was aware and I couldn't...conceptually, it was hard to see exactly where they were
328 talking about until I went out and measured off the foundation to see where I thought the pool...where we
329 wanted the pool to go and then look where we were and...

330
331 JAMES SMITH: Again, it goes back to the fact that you probably should have had a more to-scale drawing at
332 the beginning rather than at this point. It would have helped everybody to see what was...

333
334 JASON PARENT: Right. I guess, and I'll...

335
336 JAMES SMITH: I'm just saying...

337
338 JASON PARENT: Laying guilt on that, I didn't have a lot of direction as far as...This has been a series of
339 meetings where I didn't even know I needed to go to the Conservation Commission. You know, I really began
340 planning this in February to go before the Board and now I'm in month four....

341
342 JAMES SMITH: Yeah.

343
344 JASON PARENT: ...coming before you...

345
346 JAMES SMITH: Okay, again, I think part of what we're having a problem with is it seemingly was a discussion
347 by the Conservation Commission, which you were a part of, they suggested that as a compromise, as long as
348 you could maintain 25 feet in natural vegetation, or allow it to return to that, they were comfortable with the
349 fact that you could use the remaining 25 feet of that 50 foot buffer zone to allow this swimming pool to be
350 installed. The drawing that you have present shows only about 12 feet, which isn't close to the 25 feet that
351 they were looking for. And I think that's where most everybody here is having a problem with. If you can
352 move that around or come up with some...slide it to one side or the other or come up with some other
353 mechanism to allow that first 25 feet to be returned to natural vegetation, then I think we could probably go
354 along with what the Conservation Commission suggested.

355
356 JAY HOOLEY: Or...

358 JAMES SMITH: Or what?
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360 JAY HOOLEY: I'm sorry. If you weren't quite able to get what you want and meet the 25, but you could restore
361 more than the 25 in another location such as off to the left...Because that 50 foot buffer runs from the street,
362 along the left side of your home, and then in behind the home.
363
364 JASON PARENT: Okay, sure. Sure.
365
366 JAY HOOLEY: You can probably restore more than the 25 feet in some other portion to the left side without
367 compromising what you're doing with the pool. And that may satisfy them as well.
368
369 JASON PARENT: If I'm able to bring in, to your point, to bring in the pool, the decking, the fencing, within the
370 25 feet, can I plant shrubs where the initial fence was? Would that be okay or not okay? I just want to be
371 clear. I mean, they acknowledged that I could, but I don't know if they're expecting literally 25 feet of brush to
372 grow back or if I could plant shrubs and trees and have a strip as they indicated in here, "along with a strip of
373 non-chemically treated mowed turf."
374
375 JAY HOOLEY: Just so I understand your question, you'd still have the fence?
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377 JASON PARENT: The fence would be within the 25 feet.
378
379 JAY HOOLEY: But further behind that, in the buffer...
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381 JASON PARENT: Correct. Can I...?
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383 JAY HOOLEY: In the restored buffer, could you do plantings? They indicated that you could and they were
384 available to consult with you about that.
385
386 JASON PARENT: Correct. So that would be fine as well. If I can move all the permanent structures, as I
387 mentioned before, within the 25 feet and plant shrubs where, you know, within the other 25 so that
388 aesthetically, it looks okay along with one strip of mowed turf, that would be fine as well.
389
390 JAY HOOLEY: I think that's...
391
392 LARRY O'SULLIVAN: That's accomplishing what they wanted.
393
394 JASON PARENT: Yeah. Okay. I didn't know if the full 25 feet that they were expecting was literally just brush
395 growing up and that's why I had a hard time making it work with the pool and being able to see it off the
396 house and...But if I'm able to put shrubs in and make it look alright and then whatever grows, obviously,
397 behind that is what grows, that's fine.
398
399 JAY HOOLEY: I assume that's what they intended by...
400
401 JAMES SMITH: Okay...
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403 LARRY O'SULLIVAN: Me too.
404
405 JAY HOOLEY: ...[indistinct] wrote.
406
407 JAMES SMITH: I would suggest whatever shrubs or whatever plantings that you put in, we would probably put
408 a restriction that you consult with the Conservation Commission as to the nature and particular plants that
409 you propose.
410
411 JASON PARENT: Sure.
412
413 JAMES SMITH: Because part of the problem that we have, and it's not just unique to Londonderry, is non-
414 native vegetation. It tends to take over and push out the natural and causes other problems.
415
416 JASON PARENT: Okay.
417
418 JAMES SMITH: So just planting plants won't be [indistinct]. It has to be something that fits the situation.
419
420 JASON PARENT: Okay.
421
422 JAMES SMITH: And I think the Conservation Commission is in a position where they could give you direction
423 to what is acceptable plantings and what wouldn't be.
424
425 JASON PARENT: Okay.
426
427 NEIL DUNN: Mr. Parent, I drove by there and it looked pretty dry to me. Could you tell me a little bit about
428 the brook or the conservation area? I know it's kind of...
429
430 JASON PARENT: Yeah, essentially...
431
432 NEIL DUNN: ...put there as a brook, but I...
433
434 JASON PARENT: Yeah, it's not a brook. It's not...the Conservation Commission mentioned that, too. They
435 called it a stream and a stream to me is running water. Essentially, it's wet in February, March, April, May and
436 by the summer, it's dry in that area that you're talking about. And it's only probably about eight or ten feet
437 wide and then you're right into regular conservation land. There is not a lot of wet area and it dries right out
438 in the summer.
439
440 NEIL DUNN: Richard, if I may, I don't know if you had the liberty of seeing the drawings. The drawings that we
441 have here on the...is this part of the GIS or your Adobe...?
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443 JAYE TROTTIER: That's GIS.
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445 NEIL DUNN: So the blue line that I guess is indicating a stream and the hash marks for supposedly wetland, I
446 guess...

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RICHARD CANUEL: Wetlands area, right.

NEIL DUNN: So that's been investigated. This...again, I drove by and I was like "Wow, where's the wetland?"

RICHARD CANUEL: Yeah.

NEIL DUNN: But I'm just trying to get a better idea is all.

RICHARD CANUEL: Yeah, even though it may appear dry as you drive by...

NEIL DUNN: I didn't see Cat o' nine tails, I didn't see any of the normal telltale wetland things.

RICHARD CANUEL: True. You know, the wetland area was delineated when the subdivision was done, based on soil types and the existing vegetation that was there. It was documented and certainly marked out as part of the subdivision approval, so it is, in fact, true wetlands because that was determined by a soil scientist when they did the subdivision, so it's there. Whether it appears wet all the time or not, it's still considered wetlands because of the soil types there.

NEIL DUNN: No, I was...typically you see the little sugar maples and the Cat o' nine tails and marsh weeds and I didn't see anything that...so I was just trying to get a handle. Thank you.

JAMES SMITH: Yeah, typically, if they do those surveys, the soils give you one line, the plants give you another line. It's a complicated process at best to come up with that definition of where the wetlands actually are.

JASON PARENT: Mm-hmm.

JAMES SMITH: So just because there's not water there...

JASON PARENT: No, I understand.

JAMES SMITH: ...does not make it a...

NEIL DUNN: Yeah, no, it was my question. I'm just...

JASON PARENT: But's it not [indistinct].

JAMES SMITH: Yeah, so...

LARRY O'SULLIVAN: But we also understand that this isn't delineated anymore. You can't tell where that 50 foot buffer starts or ends or the 25 foot that we're going to be suggesting starts. Or that the Conservation Commission suggested. So I don't understand how you can do this without a surveyor involved or without...

RICHARD CANUEL: Well, you can because it's already been surveyed and that conservation area is marked. Or it should be marked.

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LARRY O'SULLIVAN: How is it marked in open ground where there's no trees?

RICHARD CANUEL: It should have been flagged...

NEIL DUNN: In the ground.

RICHARD CANUEL: ...at some point in time, yeah.

LARRY O'SULLIVAN: Are they there?

RICHARD CANUEL: Should be.

NEIL DUNN: Should be.

RICHARD CANUEL: Yeah. It should be marked.

JAMES SMITH: I think the applicant mentioned that after he was in residence for quite a while, the builder actually came back and did, in fact, erect those signs.

JASON PARENT: The conservation signs?

JAMES SMITH: Yeah.

JASON PARENT: Yeah, I don't think it was the builder. I think it was maybe the Conservation Commission or whomever brought in the signs all over our neighborhood.

RICHARD CANUEL: Yeah, it was done by the builder.

LARRY O'SULLIVAN: Is the border marked is the question as opposed to signs. Because the signs are...

JAMES SMITH: It would be the edge of the wetland.

LARRY O'SULLIVAN: ...they're not posted into the ground, are they?

JASON PARENT: The signs are tapped into a tree.

RICHARD CANUEL: Yes.

LARRY O'SULLIVAN: On the trees, right?

RICHARD CANUEL: Yes.

JASON PARENT: Yes, sir.

537 LARRY O'SULLIVAN: And what do they do when there aren't any trees? There's a big 50 foot bare spot there
538 between the start of the buffer and the end of it. There's no trees in that buffer, right?
539
540 JASON PARENT: No. My backyard? No.
541
542 LARRY O'SULLIVAN: So how did they mark it? How would you know where you are? That's my question.
543
544 JASON PARENT: They just recently marked it.
545
546 LARRY O'SULLIVAN: It was recently marked?
547
548 JASON PARENT: Those signs haven't been up for more than a year.
549
550 LARRY O'SULLIVAN: No, I meant the...where your 50 foot..
551
552 JASON PARENT: Oh, no. That's just off the reference plan of where...where it is on the reference plan.
553
554 LARRY O'SULLIVAN: It's going to be an eyeball kind of thing, right?
555
556 JASON PARENT: But who makes the reference plan?
557
558 LARRY O'SULLIVAN: That's a good question.
559
560 NEIL DUNN: Richard...
561
562 JAMES SMITH: Larry...
563
564 JASON PARENT: I'm just saying that it's someone...
565
566 JAMES SMITH: Larry? You've got a certified plot plan showing the house. That's your reference.
567
568 LARRY O'SULLIVAN: So you work everything out of the house?
569
570 JAMES SMITH: Right.
571
572 LARRY O'SULLIVAN: Off of the house.
573
574 JAMES SMITH: Right, Rich?
575
576 RICHARD CANUEL: This is a certified plan, sure. Yeah.
577
578 LARRY O'SULLIVAN: So we would then...
579
580 RICHARD CANUEL: It's to scale.
581

582 LARRY O'SULLIVAN: ...instead of saying how far into the buffer, then...wait a second. We have the plan of the
583 house but we don't have the plan of where the buffer starts or ends. That's certified? Where is that?
584
585 JAY HOOLEY: On the...
586
587 JAMES SMITH: No, keep going.
588
589 NEIL DUNN: It's to scale. Richard could measure and...measure it off.
590
591 RICHARD CANUEL: Sure. Yeah.
592
593 JAMES SMITH: No, the first plan in the thing. Keep going back. That one.
594
595 LARRY O'SULLIVAN: How is this certified? I don't understand. This is what the applicant has provided.
596
597 JAMES SMITH: Right.
598
599 LARRY O'SULLIVAN: And all this was is the pool dropped onto a certified plan? Is that what that is?
600
601 JAMES SMITH: Right. Yeah.
602
603 LARRY O'SULLIVAN: I see. So there weren't modifications...
604
605 JAMES SMITH: See, that's what we had for a problem last month. He had something drawn onto that plan but
606 it was...
607
608 LARRY O'SULLIVAN: Mm-hmm.
609
610 JAMES SMITH: It wasn't to scale. Now this is to scale, so we have a little better idea as to get some
611 dimensions, showing the edge of the deck of the pool approximately 12 feet off the left hand corner.
612
613 LARRY O'SULLIVAN: I see it.
614
615 JAMES SMITH: And I guess it's what, 16 feet on the other?
616
617 NEIL DUNN: Twenty six.
618
619 JAMES SMITH: But that 16 feet is, in fact...[indistinct] 16 feet. And his letter gives dimensions from the...
620
621 LARRY O'SULLIVAN: The base of the house or the foundation?
622
623 JAMES SMITH: Right.
624
625 LARRY O'SULLIVAN: Okay, so that's where...what we would use as our beginning point, then. Our reference
626 point as opposed to the signs that are not within a 100 feet of where this is.

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JAMES SMITH: Any other questions?

JAY HOOLEY: Should you have a copy of this plan in front of you? Where it says "Building setback typical," I assume that's...I believe it's 30, correct me...40.

RICHARD CANUEL: Forty feet. That's right.

JAY HOOLEY: Forty feet and the house is pretty much at that, so the house was moved as far forward in this lot as it could be.

RICHARD CANUEL: Simply because of the buffer.

JAY HOOLEY: Okay.

JAY HOOLEY: Following that same line where it takes a 90 degree turn towards the rear, I assume that is the side setback?

RICHARD CANUEL: That would be the 15 foot setback.

JAY HOOLEY: So if we look at this, and I don't know what to call that shape, the immediate set of dotted lines around the home, the pool in its entirety, to not require a variance at all, would have to be, in its entirety, inside of that.

RICHARD CANUEL: That's right.

JAY HOOLEY: Okay, that does....So I think...to the earlier point, he'd certainly be looking at the variance for the side setback if he wasn't looking for the variance at the rear.

LARRY O'SULLIVAN: Mm-hmm.

JAY HOOLEY: Because I think he can pretty much look at that and see...

JASON PARENT: Mm-hmm.

JAY HOOLEY: ...you can't get that peg into that hole.

LARRY O'SULLIVAN: You mean without a variance?

JAY HOOLEY: Right. Right, you can't get the peg into the hole that would be 'no variance.'

LARRY O'SULLIVAN: Who wouldn't be more comfortable with it in a side setback where there's nothing nearby than in the rear where we have a conservation district? So, that's my point there. So...but it has been considered and...

672 JAY HOOLEY: Yeah, but if you look, Larry, the 50 foot, that is also to the right...
673
674 LARRY O'SULLIVAN: I see.
675
676 JAY HOOLEY: So the corner...I'm not sure you could do it without hitting it no matter what. Do you see how it
677 turns forward again as you get to the right side of the lot?
678
679 LARRY O'SULLIVAN: Yes, I do.
680
681 JAY HOOLEY: Yeah.
682
683 JAMES SMITH: Okay. The shed. Richard? If he builds it properly, it could be placed in the buffer?
684
685 RICHARD CANUEL: The shed is allowed to be within the buffer zone, provided it does not exceed 200 square
686 feet and it's not constructed utilizing asphalt shingles or preservatively treated lumber.
687
688 JAMES SMITH: Okay. So the shed can sit where it sits as shown.
689
690 RICHARD CANUEL: Yeah.
691
692 JAMES SMITH: So we don't have a problem with that.
693
694 JASON PARENT: So there's no variance needed for that? I can...
695
696 RICHARD CANUEL: Nope, not at all.
697
698 JAMES SMITH: As long as you follow the criteria of the shed for in the buffer zone.
699
700 JASON PARENT: Okay. Thank you.
701
702 LARRY O'SULLIVAN: This is part of the cost you have when you have the conservation area right behind your
703 home; is to go through some hoops, but you get to enjoy it for as long as you stay there, right?
704
705 JASON PARENT: No, again, it's very popular with our neighborhood. There's 800 acres back there. I'm hoping
706 for a few feet I can put this pool in.
707
708 JAMES SMITH: So can we slide that pool in any direction to get it further from the buffer?
709
710 JASON PARENT: If the Board...if I can get the permanent structures within the 25 feet that we talked about
711 through the mitigation with Conservation Commission and have shrubs or flowers or whatever the
712 Commission was comfortable with, so that aesthetically, I wasn't just letting brush completely grow back in
713 the back yard, I would be fine with that. We would make it work. I'd pull the west end of the pool, that left
714 end of the pool that's 12 feet off and pull that in and move it over to the right a little bit and make it work
715 within the 25, what I'm nervous about is the restrictions with the other 25 that brush is just growing right up
716 off of the fence now, to your point before, Mr. Smith, that I'd like to have something nice and I'm willing to

717 contribute to the vegetation back there through shrubs or whatever was acceptable. Which, you know, with
718 the...in our meeting the Conservation Commission, that seemed to be okay, along with the strip of non-
719 chemically treated mowed turf. So there would be a strip in front of the bushes or shrubs or whatever I'd
720 have. There'd be a strip and then it would just be fencing and the...

721
722 JAMES SMITH: Well, be careful what you're saying, because what we're looking for is 25 feet of natural
723 vegetation.

724
725 JASON PARENT: Okay.

726
727 JAMES SMITH: Now, you're talking about a strip of...

728
729 JASON PARENT: Well, that was in the...that's in the motion, isn't it? Or am I reading it incorrectly?

730
731 JAMES SMITH: No...

732
733 JASON PARENT: It was in the motion from the...

734
735 LARRY O'SULLIVAN: The suggestion from the Conservation Commission, is that what you're referring...?

736
737 JASON PARENT: Yes, sir. Do you want this?

738
739 JAMES SMITH: We can get back to the...

740
741 JASON PARENT: ...[indistinct] do you have it?

742
743 JAMES SMITH: Well, okay. The way I read it, if Mr. Parent were to allow "the first 25 feet adjacent to the
744 wetland would grow back to its natural woody vegetation, then only what is needed of the remaining buffer
745 [c]ould be used for the proposed pool, decking....fencing, along with a strip of non-chemically treated mowed
746 turf."

747
748 LARRY O'SULLIVAN: That would be outside the 25 feet.

749
750 JAMES SMITH: So the first 25 feet...

751
752 JASON PARENT: Okay.

753
754 JAMES SMITH: ...needs to be vegetation. Natural vegetation.

755
756 JASON PARENT: Okay.

757
758 JAMES SMITH: So if you're going to have any kind of grass or anything else, it has to be further than 25 feet
759 from the wetlands.

760

761 JASON PARENT: Okay. Okay. Could I have shrubs or bushes come up to the fence of the back of the pool,
762 then, I guess would be my next question? Or is that not to be...?
763
764 JAY HOOLEY: If that's what they're suggesting.
765
766 JAMES SMITH: Yeah.
767
768 JASON PARENT: Is that okay?
769
770 JAMES SMITH: Yup.
771
772 LARRY O'SULLIVAN: I think that's what they're suggesting.
773
774 JASON PARENT: And that would be fine, because aesthetically, again, it would look...
775
776 JAY HOOLEY: Right.
777
778 JASON PARENT: ...you don't have weeds going through or whatever comes up going through the fencing to do
779 that.
780
781 JAMES SMITH: Yeah. But the point I'm trying to make sure you understand...
782
783 JASON PARENT: Mm-hmm.
784
785 JAMES SMITH: We're looking for...they're looking for 25 feet. Strictly vegetation. And they're saying native.
786
787 JASON PARENT: Okay.
788
789 JAMES SMITH: If you went back to them and they gave you some directions on some particular plants that
790 they would accept in that 25 feet, then it would be between you and them on that point.
791
792 JASON PARENT: Okay.
793
794 JAMES SMITH: But they're still looking for 25 feet.
795
796 JASON PARENT: Okay.
797
798 JAMES SMITH: So any grass would have to be between that 25 foot mark and the...
799
800 LARRY O'SULLIVAN: The house.
801
802 JAMES SMITH: ...the house.
803
804 JASON PARENT: The house. Okay. Okay.
805

806 JAMES SMITH: That's the way I read it. Does everybody agree with that?
807
808 JAY HOOLEY: I think that's what they're...
809
810 LARRY O'SULLIVAN: Yes.
811
812 JASON PARENT: Okay.
813
814 JAY HOOLEY: But I have to assume, when they referenced helping him with plantings, they meant in the
815 grown 25 feet.
816
817 NEIL DUNN: Absolutely.
818
819 JAMES SMITH: Yeah.
820
821 JAY HOOLEY: Yeah, okay.
822
823 JASON PARENT: Okay.
824
825 JAY HOOLEY: So you don't have to just sit there and hope.
826
827 JASON PARENT: Well, that's what I'm saying. If we can come to an agreement, I didn't want to put a pool in
828 and say 'Well, no, you can't touch a single thing over here.' I wouldn't have done it then. I would have just
829 left it all open grass...
830
831 JAY HOOLEY: Right. Yeah.
832
833 JASON PARENT: ...and we wouldn't have the pool and that would be that.
834
835 JAY HOOLEY: Are you comfortable that you can make those adjustments to the right and forward to meet the
836 25? Because if we pass...
837
838 JASON PARENT: I think so. The way I'm looking at it, I feel like I'm fairly close now.
839
840 JAY HOOLEY: Right.
841
842 JASON PARENT: Am I not? I looked at the reference off it. Twelve hundred and fifty square feet of the pool
843 and decking is in the 25 feet and 325 square feet is not. So I'm pretty close now I think, if I'm looking at it
844 correctly and reading it correctly. So...
845
846 JAY HOOLEY: If you want to keep it exactly parallel with the home, you've probably got to go a little further
847 right and forward to...
848
849 JASON PARENT: Correct.
850

851 JAY HOOLEY: ...if you don't mind a little angle, you could probably get it done a little closer to the left.
852
853 JASON PARENT: Correct. And that's fine.
854
855 JAY HOOLEY: Okay.
856
857 JASON PARENT: If I'm looking at 325 feet of adjustment, I think I can do that.
858
859 JAY HOOLEY: Yeah. I mean, you can either do it by...
860
861 JASON PARENT: Right, right...
862
863 JAY HOOLEY: ...turning the pool...
864
865 JASON PARENT: You can turn it or move it the right.
866
867 JAY HOOLEY: ...moving it right and forward or some combination of those things.
868
869 JASON PARENT: That would be fine. As long as I could get some sort of shrub line or tree line or whatever and
870 I don't know if I need to go back to the...
871
872 NEIL DUNN: Only for guidance, I think.
873
874 JASON PARENT: Yeah.
875
876 NEIL DUNN: For the plantings.
877
878 LARRY O'SULLIVAN: Consultation.
879
880 JASON PARENT: With the plantings? As long as the plantings can go within the 25 feet of the natural
881 vegetation that grows back, that's great.
882
883 JAMES SMITH: I'm still...Okay, and at this point, we'll open it up to anyone who has...wants to speak in
884 support of this? If not, anyone who is either in opposition or has questions? Seeing none, I'll go back to the
885 Board. Okay. At this point, we'll close the public hearing and we'll go into deliberation on the requested
886 variance.
887
888 DELIBERATIONS:
889
890 LARRY O'SULLIVAN: You seem to be the most uncomfortable with it.
891
892 JAMES SMITH: Well, I just wanted to make sure that he understood what the 25 foot was supposed to be.
893
894 LARRY O'SULLIVAN: Twenty five feet, I think he's quite clear that it remains pure. Whatever it's going to be
895 out there...

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JAMES SMITH: Yeah, well I...

LARRY O'SULLIVAN: If he wants to put plantings in, he goes to the Conservation Commission, so...

JAMES SMITH: I got the impression he was going to have the grass in that area, too.

LARRY O'SULLIVAN: Me, too. But I believe that's been clarified.

JAMES SMITH: Okay, but that's what I was trying to...

LARRY O'SULLIVAN: Mm-hmm.

JAMES SMITH: ...make sure everybody was understanding. Anyone else?

LARRY O'SULLIVAN: I feel pretty comfortable that the filtering, if it's restricted as part of the application here or whatever the variance is we approve, is going to be key in reducing the potential impact on the conservation area. So, to me, that is a major, major part. I think that the agreement that the Conservation Commission said about leaving the 25 feet, if these mitigating things happen, really is...it helps, but at the same time, it makes it far more complex to be able to monitor. So I'm hoping the Conservation Commission doesn't mind doing the consultations there.

JAMES SMITH: Okay. Neil?

NEIL DUNN: It sounds now that Mr. Parent is within the intent or the thought process of the Conservation Commission, he's agreed to a filter system that doesn't need backwashing and is a replacement filter, which is a little bit more expensive, obviously than is backflushing, so I'm good.

JAMES SMITH: Okay. We're open to a motion.

LARRY O'SULLIVAN: Well how about we talk about the things that we would restrict. What I wrote down was the filtering and filtering equipment, that there will be no intrusion past the 25 foot...what would we call that? Past 25 feet within the...?

JAY HOOLEY: Into.

NEIL DUNN: Within the setback.

LARRY O'SULLIVAN: ...setback?

NEIL DUNN: Yeah. That's kind of the backwards way to do it, but yes. But that's how I [indistinct].

JAMES SMITH: I think "maintain the first 25 of feet in a natural vegetation," or something to that effect.

LARRY O'SULLIVAN: With consultation from the Conservation Commission.

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JAMES SMITH: And...yeah. Plantings would be...

JAY HOOLEY: Acceptable.

LARRY O'SULLIVAN: So can we reword that so that it actually fits into a motion to approve with those restrictions?

JAMES SMITH: Okay, go ahead.

LARRY O'SULLIVAN: Okay, so I make a motion to approve case 3/20/13[-1] as presented, with the restrictions that consultation with the Conservation Commission for planting, that there's no intrusion past 25 within the setback and that the filtering equipment and materials are restricted to...I don't know what that would be called. Ecologically...? You call it.

NEIL DUNN: I called it "cartridge filters with no backflushing." I mean, the backflushing is a big concern, that that's where you wash it out.

LARRY O'SULLIVAN: Okay, if that's what it's called. So we'll use that term and that's my motion.

JAMES SMITH: Do I have a second?

NEIL DUNN: Can we ask Richard if that's good enough for enforcement purposes?

RICHARD CANUEL: It works for me.

NEIL DUNN: I'll second that.

JAMES SMITH: Okay, all in favor?

LARRY O'SULLIVAN: Aye.

JAY HOOLEY: Aye.


NEIL DUNN: Aye.

JAMES SMITH: Aye.

The Clerk read the result into the record.

JASON PARENT: And just so I'm clear, and the shed can go anywhere within that buffer as long as it meets the criteria of under 200 square feet and the non-pressure treated wood...

NEIL DUNN: Right.

986 JASON PARENT: ...and no asphalt? Correct? Okay.
987
988 JAY HOOLEY: If you decide you want asphalt shingles, bring it about 40 feet forward.
989
990 JASON PARENT: There you go. Okay. Other than that, though, I can put it anywhere in the buffer, on either
991 end of the 25 feet?
992
993 JAMES SMITH: Yeah. I mean...
994
995 JASON PARENT: Okay.
996
997 JAMES SMITH: No, no, no. We're talking about the 50 foot buffer. It can anywhere within that 50 foot buffer.
998
999 JASON PARENT: Within the 50 foot buffer, yes. Okay.
000
001 JAMES SMITH: But it has to be built according to the...
002
003 JASON PARENT: Yes.
004
005 JAMES SMITH: ...restrictions of that area.
006
007 JASON PARENT: Okay. Yup. And with the cartridge filter system; use the, obviously I was going to anyway,
008 but the zinc system or the non-chlorinated? I don't know if that's part of that. I just want to make sure that
009 that's...I want to be compliance, so...
010
011 RICHARD CANUEL: Yeah. I think the biggest concern is that you're not using a backwash-type system. That's
012 all.
013
014 JASON PARENT: Okay.
015
016 JAMES SMITH: Yeah.
017
018 JASON PARENT: Very well. Thank you.
019
020 RESULT: THE MOTION TO GRANT CASE NO. 3/20/2013-1 WITH RESTRICTIONS WAS APPROVED, 4-0-0.
021
022
023 RESPECTFULLY SUBMITTED.
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027
028 NEIL DUNN, CLERK
029 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

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APPROVED JUNE 19, 2013 WITH A MOTION MADE BY LARRY O'SULLIVAN SECONDED BY JAY HOOLEY AND APPROVED 5-0-0.