



TOWN OF
BROOKLINE, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES
Wednesday, October 14, 2015

Present: George Foley, Member, Chairman
Webb Scales, Member, Clerk
Marcia Farwell, Member
Kevin Visnaskas, Member
Jill Adams, Alternate (voting for Peter Cook)

Absent: Peter Cook, Vice Chairman and Charlotte Pogue, Alternate

Case 388

George read the hearing notice "Applicant Francis Gavin is requesting an Appeal from an Administrative Decision and an Equitable Waiver of Dimensional Requirements (if needed). This request is for an appeal from the decision made by the Building Inspector that the man-made agricultural pond is a wetland under Section 1102.04: (Buffer Zone) of the Brookline Zoning Ordinance. Lot F-18 is located at 48 Rocky Pond Road consisting of 65.358 acres. ."

George said fees have been paid and abutters have been notified. **Francis Gavin** said he had dug a pond sometime around 1999 to 2001. This was dug in an area between two pieces of ledge and he added a dam. This is filled by surface runoff. **Francis** read section 1103.10 of the Zoning Ordinance:

1103.10 Wetlands Exempt. The regulations and restrictions set forth in this District shall not apply to the following wetland areas or their buffer zones:

c. manmade agricultural/irrigation ponds and swales.

Francis said this is the reason for his request to be in front of the ZBA. **Marcia** asked how deep the pond is when it is full. **Francis** said it is about 8 feet deep when it is full. It is about half full at the moment. **Francis** said it fills up in the winter spring and then by fall it is down to about 4 feet or so he has had it down to mud. **Marcia** asked how large of an area this pond is. **Francis** said he never thought to measure for tonight but it's about 100 feet across and 250 feet long.

Kevin asked what it is used for at the moment. **Francis** said they own ducks and they use it right now. He will be using it to grow plants in the green house that is why he put the greenhouse that close to the pond. **Marcia** asked if the greenhouse has already been built. **Francis** said yes it has. **Francis** said he went to the Building Inspector in the summer of 2014 and asked about putting up a greenhouse. The frame is 2 inch pipe with plastic over it. The plastic will need to be replaced every 4 years or so. **Francis** said they had come to the conclusion that because it wasn't a permanent structure and there was no need for a permit. The green house is 30 feet wide by 116 feet long. When he called the Building Inspector to get power hooked up to the greenhouse and the Inspector said he would need to go to the ZBA because the

greenhouse was in the 50 foot wetlands buffer. **Marcia** asked how far the building encroaches into the buffer. **Francis** said it is about 10 feet from the pond. The Board reviewed a plan from Meridian Land Services that shows the greenhouse and its proximity to the pond. **Webb** asked if there was a concrete pad for the floor. **Francis** said he poured a concrete pad in the front of it for the winter when he parks a truck on it so it will not sink into the mud. **George** asked if the concrete pad was on the house side of the greenhouse away from the pond. **Francis** said yes. He has plants and other junk in the greenhouse at this time. **George** asked if it was anything that would be leaking fluids. **Francis** said nothing like that no fuel tanks are being stored just ladders, 2x4's, plants etc. **Francis** said there are sauna tubes about 2 feet into the ground and spaced about every 4 feet apart so the wind doesn't take it. **George** read note 11 on the plan that states the wetlands were surveyed by a Soil Scientist Timothy Ferwerda with Meridian Land Services per corps of engineering manual y-87-1. **George** said on the plan this is marked as a delineated wetland and they have added a wetlands buffer line on the map. **Kevin** asked why the Building Inspector doesn't think this is exempt. **George** read the letter from the Building Inspector to Kristen that states "You asked me to send you something for your records regarding the Francis Gavin application to the Zoning Board. Mr. Gavin is in violation of the 50 foot setback requirement from a wetland in the towns zoning regulations. There is a greenhouse built to close to wetlands. I am not a wetlands scientist, but a pond might fall under the category of a wetland? Not to mention it is a manmade pond so we may also want to ask if he has all the permits from DES to even build a pond. Romeo Dubreuil, Building Inspector." **George** asked if there was a wetland in this area before this pond was dug. **Webb** said after ten years this area will become a wetland. **Francis** said he is not arguing that it is a wetland, it's a pond. **Webb** said the question is, is it a wetland that is entitled to a buffer. **Kevin** said he just wishes that the Building Inspector had put in writing why he believes that it is a wetland and in need of a buffer. **George** read the Building Inspectors letter stating why he thought Francis needed to go before the ZBA. **Marcia** said you could also use section 1103.10 d. that states "fire ponds, drafting basins and cisterns". **Francis** said yes there is an agreement with the Fire Department that if need they can use this pond as a drafting site. **George** asked if he had anything from DES that stated he could dig a pond. **Francis** said no he didn't. He is located on the top of a hill the only reason it is there it is in between two pieces of ledge. **Marcia** it's probably the only reason it holds water. **Francis** said the Building Inspector had also called the State Dam Safety Engineer, Corey J Clark, whom came to inspect the dam last week he said he wasn't sure why he was there but there was no cause for alarm and Francis could tell the ZBA that he had inspected and he is all set. **George** said he isn't sure why he didn't need a building permit for this building. **Francis** said if he needs one he will apply for one.

Marcia read section 1103.11 of the Brookline Zoning Ordinance "**Reduction of the Wetland**

Conservation District Buffer Zone: A special exception for a reduction of the buffer zone may be granted by the ZBA if all the following conditions are met:

a. A Wetland Functions and Values Assessment (using the New Hampshire Method for the Evaluation of Wetlands) be performed by a Certified Soil Scientist or Certified Wetland Scientist, at the applicant's expense."

George read the letter from Francis that accompanied his application "Decision of the enforcement officer to be reviewed: Building Inspector Dubreuil's determination that the manmade pond on lot F-18 is instead a wet land, and as such, subject to Ordinance 1102.04: Buffer Zone. I' Francis Gavin, am hereby rebutting that determination; that the manmade agricultural pond in question on my property, in not a wetland, but rather a manmade agricultural pond that I created myself. Therefore, such a pond would be exempt from any buffer zones under Ordinance: 1103.10: Wetlands Exempt, Section C: "manmade agricultural/irrigation pond and swales."

Webb said we required a building permit for structures for more than 100 sf. **Francis** said he believes you are missing the word permanent in that meaning. **Webb** said when you start sinking sono-tubes into the ground 2 feet it starts to sound more like a permanent structure. **Marcia** asked what supports this structure. **Francis** said 2 inch steel poles for the frame.

George said he spoke with the Building Inspector and he had said he was not aware of the size and if he had known he would have required a building permit. **Marcia** said they need to determine if this is a wetland or not. **George** said there is a specific exemption for a manmade pond. We have heard nothing that states it is not a manmade pond. He is inclined to say that for that one piece of it the setback doesn't apply but in order for you not to have to come back to the Zoning Board the applicant should get a building permit. **Marcia** agreed said she believes this would be exempt.

George asked Jill to vote for Peter tonight. **Jill** agreed.

Marcia made a motion to grant the appeal from the administrative decision that this wetland would be exempt because under section 1103.10 c. it is a manmade / irrigation pond. **Jill** seconded. Vote yes 5-0.

Francis said for clarification are you ordering me to apply for a building permit for this greenhouse. **Marcia** said no they have no right to do so. **George** said the Building Inspector can. If you jump the gun and have a permit ready that might be a good idea.

Minutes

Marcia made a motion to approve the August 12, 2015 minutes as written. **Kevin** seconded. Vote yes 5-0.

November Meeting date

Kristen said there will be a case scheduled for November. The second Wednesday falls is a holiday (11/11/2015 Veterans Day) and the office is closed. The Board decided that the first Wednesday (11/4/2015) would work for all of them to meet.

Adjourn

Marcia made a motion to adjourn at 8:15pm. **Kevin** seconded. Vote yes 5-0.

George Foley, Member, Chairman _____

Peter Cook, Vice-Chairman _____

Webb Scales, Member, Clerk _____

Marcia Farwell, Member _____

Kevin Visnaskas, Member _____

Jill Adams _____

Minutes submitted by **Kristen Austin**

