



Zoning Permit 2024-013 Violation Appeal

MERITS DECISION

This is an appeal by John Prince (Appellant or Mr. Prince) of a January 26, 2026 decision of the Town of Concord (Town) Zoning Board of Adjustment (ZBA) concerning the construction of a pond/dam structure at his property located at 151 Miltimore Road, Concord, Vermont (the Property).

In this matter, Mr. Prince is represented by Harold B. Stevens, II, Esq. The Town is represented by Daniel D. McCabe, Esq. Interested person James Hayes has also appeared in this matter and is self-represented.

The Court held a merits hearing on August 18, 2026 via the Zoom videoconferencing platform. All parties attended. Parties requested the opportunity to file post-trial memoranda, which were to be submitted by Friday, September 4, 2026. Appellant submitted a pre-trial memorandum. The Town submitted a post-trial brief. The Court subsequently took this matter under advisement.

Factual Findings

1. In 2023, John Prince initiated construction of a pond on his property having an address of 151 Miltimore Road, Concord, Vermont.
2. Due to concerns raised by neighbors James and Christina Hayes, Mr. Prince applied for town review and approval of the pond. At this time, the pond was not completely constructed.
3. On August 19, 2024, the Town of Concord Zoning Administrator (ZA) approved Mr. Prince's zoning application for a pond under Permit No. 2024-013, as reflected on the Town's application/permit form showing "Approved."
4. The Hayes appealed the ZA's approval to the town's Planning and Zoning Board (PZB).¹

¹ The decision on appeal was rendered by the ZBA. Prior documents refer to the Town's PZB. Review of those documents indicates that the ZBA and the PZB are the same entity because they refer to the same appeals, parties, hearings and the appear to contain the same members. No party has asserted that these are separate entities. For the sake of clarity and properly characterizing the evidence before the Court, the Court references the board specifically identified in the corresponding exhibits.

5. During the PZB review, on October 25, 2024, the PZB issued a status letter to interested persons stating that the PZB would require a stamped engineering letter regarding the pond design to address potential flooding risks.

6. Mr. Prince attempted to retain an engineer to review and opine on the partially constructed pond. Mr. Prince was unsuccessful in finding a willing engineer to review the partially constructed pond.²

7. Following neighbor complaints in 2024, the Vermont DEC Environmental Compliance Division investigated the partially constructed pond twice and closed the matters with “No Violation(s) Found.”

8. In separate 2025 ANR/DEC incident Complaints, the Wetlands Program and Dam Safety for Vermont each concluded “No Violation(s) Found,” with Dam Safety stating “no jurisdiction ... not considered a dam,” and the Environmental Enforcement Officer reporting “no wetland concern ... no violations found.”

9. On January 15, 2025, the ZBA’s signed minutes reflect that the Town attorney advised the ZBA that it could not require the applicant to obtain liability insurance for the uphill pond.

10. After consulting with the ZA, Mr. Prince withdrew his pond permit application on August 26, 2025. The withdrawal was formally acknowledged at the September 16, 2025 regular meeting.

11. Thereafter, Mr. Prince resumed construction of the pond.

12. On November 10, 2025, the Town ZA issued an NOV to Mr. Prince asserting four violations:

- a. Violation of Board Conditions ..., among other things, that engineering oversight was required as a condition of approval, that Mr. Prince’s work after withdrawal violated that directive,
- b. Unpermitted Land Development - that no permit had been issued,
- c. Nonconforming Use of Land –
- d. Structure Definition - and that the “dam” is a “structure.”

13. Upon receiving the NOV, Mr. Prince ceased construction of the pond and removed a portion of the dam so water could freely flow out.

14. Mr. Prince appealed the NOV by letter dated November 28, 2025.

² The October 25, 2024 status letter also expressed additional issues which are not at issue before the Court. These included requirements that Mr. Prince confer with the State to confirm there were no wetland concerns and confer with the Road Foreman regarding the Town’s right-of-way. Mr. Prince engaged with the State which found no wetlands violations. Mr. Prince moved the bank of the pond further back onto his property away from the Town’s right-of-way.

15. The ZA's December 7, 2025 staff report recommended a hearing limited to the validity of the NOV and bylaw interpretation and opined that any violation had been cured but that the earlier "engineering oversight and design approval" remained to complete construction.

16. On December 16, 2025, the PZB's minutes state Mr. Prince was in compliance at that time and scheduled a January 20, 2026 hearing on the appeal.

17. On January 26, 2026, the ZBA issued a written decision in the appeal of the NOV stating that the Town was "stand[ing] by its original condition from the October 16, 2024 hearing" requiring "a stamped engineering review and approval of the pond/dam structure" before conditional approval. The ZBA also noted that it recognized that Mr. Prince was not in violation as of the hearing, and warning of future violation if the pond were completed without engineering approval.

18. The ZBA did not issue any decision on any other aspects of the NOV. For example, whether Mr. Prince's previous construction of the pond required zoning permitting.

19. On February 18, 2026, the January 26, 2026 decision was filed with the Town Clerk.

20. Appellant appealed the January 26 2026 decision to this Court.

Discussion

Mr. Prince filed his Statement of Questions when he was self-represented. As such, they contain argument that is inappropriate for a Statement of Questions and generally posed in a manner that does not reflect our de novo review. The Court understands that the Questions generally ask whether Mr. Prince must obtain an engineer's letter related to the pond by virtue of a prior permit condition, whether the pond is subject to the Town of Concord Zoning Regulations (the Regulations), and whether the Town is precluded from claiming the pond are in violation of the Regulations under the doctrine of equitable estoppel. See Statement of Questions (filed Mar. 17, 2026).

The ZBA issued a decision solely on the first issue: whether Mr. Prince violated a prior permit condition requiring engineering review of the pond. It is therefore the only issue that this Court can adjudicate because the ZBA did not adjudicate the remaining aspects of the NOV in the first instance. See In re Killington Resort Pkg. Project Act 250 Permit Application, No. 173-12-13 Vtec, slip op. at 4-5 (Vt. Super. Ct. Envtl. Div. Jan. 28, 2015) (Durkin, J.) (citing In re Torres, 154 Vt. 233, 236 (1990)). Because of this, the Court addresses the permit condition violation first.

Despite the parties repeatedly asserting that there is a "condition" imposed by the Town on the construction of the pond requiring an engineer's letter, no such condition was ever finally imposed. Mr. Prince applied for a permit for the pond. After that permit was granted, the Hayes' appealed to the ZBA. In that process, the ZBA issued a status letter stating that it would require as a condition of

approval that Mr. Prince receive such engineering review. The underlying application was subsequently withdrawn and no final permit was issued imposing this engineering review requirement as a condition. Thus, there is no final and binding condition imposed on Mr. Prince and, therefore, he cannot be in violation of a condition that was never imposed.³

This conclusion leaves the remainder of the NOV's substance: whether the pond requires a zoning permit. The ZBA did not rule upon whether the pond constituted a structure, unpermitted land development, or a nonconforming use of land as described in the NOV. Each of these three noticed violations functionally address whether the pond is subject to local zoning. On appeal, Mr. Prince challenges this violation and asserts that he does not need zoning approval to construct the pond. While Mr. Prince took the appropriate steps to cure the physical violation after receiving the NOV and while disputing its merits, he clearly challenges the NOV's assertion that the pond required and/or requires a zoning permit and, therefore, the assertion that its construction is a violation. Because this Court has limited appellate jurisdiction, a remand is necessary here to ensure that the ZBA fulfills its responsibility to hear the entirety of Mr. Prince's appeal, and fully adjudicate the full scope of the NOV, in the first instance. See Killington Resort Pkg. Project Act 250, No. 173-12-13 Vtec, slip op. at 4-5 (Jan. 28, 2015) (Durkin, J.) (citing Torres, 154 Vt. 233, 236).

For the foregoing reasons, the Court concludes that there is no violation of a permit condition requiring engineering review prior to completion of the pond/dam because there is no final permit for its construction. We therefore answer Mr. Prince's Question challenging whether he is in violation of the alleged "condition" in the negative.

Despite this conclusion, the Court cannot adjudicate the remaining aspects of this appeal and Mr. Prince's remaining Questions in his Statement of Questions. These Questions functionally request the Court to adjudicate the NOV's assertion that the pond is subject to local zoning for the reasons cited within the NOV. The ZBA did not address these violations in the first instance in the decision that is presently on appeal. Further, the ZBA did not address Mr. Prince's argument as raised

³ To the extent that Mr. Prince seeks a ruling of this Court concluding that the Town is without authority to impose such a condition, the Court will not rule on that issue in this matter. This is an appeal of an NOV and not of a zoning permit imposing such a condition. Thus, in this context, to rule upon whether the ZBA could impose a condition on a future approval would be to issue an improper advisory opinion. See In re Snowstone, LLC Stormwater Discharge Authorization, 2021 VT 36, ¶ 28, 214 Vt. 587 ("Courts are not authorized to issue advisory opinions because they exceed the constitutional mandate to decide only actual cases and controversies."); see also Baker v. Town of Goshen, 169 Vt. 145, 151-52 (1999) (noting that the issues presented on appeal "must be a necessary part of the final disposition of the case to which it pertains.") (citation omitted).

in his Statement of Questions that the Town is precluded from claiming the pond requires zoning review pursuant to the doctrine of equitable estoppel.⁴

As such, the matter is **REMANDED** to the Town to allow it to consider the remaining noticed violations in the first instance consistent with this Decision within the context of the remaining Questions before the Court, which challenge whether zoning review is required or precluded. This concludes the matter before the Court. A Judgment Order accompanies this Decision. Electronically signed September 29, 2026 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" in a cursive script and the last name "Walsh" in a more formal, slightly cursive script.

Thomas G. Walsh, Judge
Superior Court, Environmental Division

⁴ The Court notes, however, that Mr. Prince provided scant evidence to support this argument at trial when considering the high bar of providing equitable estoppel against a government actor.