



**TOWN OF
BROOKLINE, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT**

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**BOARD OF ADJUSTMENT
MINUTES
Wednesday September 13, 2023
7:30pm**

Present: **Peter Cook, Chairman**
 Archer Batcheller, Vice Chairman
 Webb Scales, Member, Clerk
 Dan Marcek Jr., Member
 Marcia Farwell, Member
 Dave Partridge, Alternate

Absent: **Charlotte Pogue, Alternate**

Peter read the rules of the hybrid meeting.

- Any meeting attendees participating via Zoom are asked to activate the “mute” function until called upon by the chair.
- Meeting attendees via Zoom must use the “raise hand” function under the “reactions” tab to participate in the meeting – and will be permitted to comment once and if called upon by the chair.
- Anyone providing comments during the meeting must first identify their name and address.
- The “chat” function for Zoom participants will be disabled by the meeting administrator or otherwise not addressed; “chat” items will not be part of the public meeting/record.
- Meeting attendees via Zoom will not be listed as attendees in the minutes (except Board members)
- The meeting’s physical location is the official meeting room. Should technical difficulties arise with the remote portion, the meeting will continue at the physical location.

Case 454

Peter read the hearing notice “Applicant Raisanen Homes Elite LLC is requesting a Variance from Section 1400 of the Brookline Zoning Ordinance to allow the construction of a thirty (30) unit elderly housing development that does not follow the Growth Management ordinance section for lot D-30, located at 237 Route 13, consisting of 28.50 acres.”

The fees have been paid and the abutters notified.

Dan Barowski with Fieldstone Consultants was in attendance at this hearing also abutter Sandi Baer.

ZBA Minutes
September 13, 2023

Dan B. stated that the Brookline Master Plan clearly indicates that need for Elderly housing in town. **Dan B.** read through the application:

A variance is requested from Section 1400 of the Brookline Zoning Ordinance to permit the construction of a thirty (30) unit elderly housing development that does not follow the Growth Management Ordinance. The subject parcel is 237 Route 13 and known as lot 30 on tax map D. The lot is 28.5 acres and located in the Residential-Agricultural district. The Growth Management Ordinance (GMO) limits the number of new residential structures built in Town in order to limit the strain on municipal services. The purpose of this variance request is to allow the proposed elderly housing development to be constructed without being limited by the GMO standards since elderly housing developments have minimal impacts to municipal services.

The numbered items below correlate to the "Facts in support of granting the variance" outlined in the Town Application for a Variance.

1. Granting the variance would not be contrary to the public interest because:

The proposed development will be an elderly housing (55+) community. The homeowners in the development will not have young children that would create additional strain on the Brookline school system. The proposed development will fit in with the adjacent uses as the site is zoned residential/agricultural and abutting properties are single family residential as well. The additional homes would increase the tax base for the town while not creating excessive negative impacts on the school system and other municipal services. For these reasons granting this variance would not be contrary to public interest.

2. If the variance were granted, the spirit of the ordinance would be observed because: The purpose of the Growth Management Ordinance is as follows;

1. To meet the demand for high quality education and school services while maintaining classroom sizes in accordance with the current and long-standing school board policies within the existing structural capacity of the schools. The schools both in the Brookline School District and the Cooperative School District are close to physical capacity based on current space configuration, long-standing school board policies, and the population growth in Brookline. Uncontrolled or unmonitored growth has the potential to result in a significant reduction in the quality of education and school services;
2. To provide the Town time to conduct a Town-wide hydrogeological study of existing well water capacity and to protect existing water resources;
3. To allow the Town the opportunity to plan for increases in Town services in an efficient manner; and
4. To ensure that Brookline receives its fair share of the regional population growth. Brookline is growing faster in recent years than all communities in the Nashua region and according to the 2020 census data, it is the fastest growing community in the NRPC region.

The proposed development will meet the spirit of the ordinance because the new homes will not increase the number of students attending the Brookline school system and therefore will not

increase classroom size. A project this size will still be built, and units sold across the span of a number of years in order to meet market demands. While the time frame will be shorter than the GMO dictates, the type of development will still allow for adequate time for the town to continue their studies and future planning without an impact to the schools or other municipal services. The project will also provide reasonable growth to the town of Brookline. Since this proposal will provide the above and will result in no negative impacts to the public we believe that granting the variances would observe the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Granting this variance would allow for the most reasonable construction timeframe for the development. The GMO requires multiple lot subdivisions such as the, proposed development to be phased and would only provide a maximum of 4 building permits per year. The limitations on growth for the proposed elderly housing would extend the timeframe for completion to 8 years. This would create unnecessary injustices for future homeowners of the first homes built as construction would be happening on the road for the following 7 years minimum. Granting this variance would do substantial justice because it would allow for the productive use of the property, as described above. In other words, a denial of this variance request would be an injustice to my client as there would be no apparent gain to the general public by denying this application.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

This proposal consists of an elderly housing development with single family residential lots which is consistent with abutting uses. The residential use on site will not produce excessive noise or light pollution. The design of the road will meet the Town standards and will fit in with the visual appearance of the neighborhood. Therefore, we do not believe that this proposal would have any negative impact on the values of surrounding properties. Our experience has been that new home construction, will typically have a positive impact on the value of surrounding properties.

5. Unnecessary Hardship

- a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - i. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The subject parcel D-30 is 28.5± acres with approximately 480' of frontage on Route 13. This parcel is a uniquely oversized lot on route 13 with good potential for subdivision. The proposed elderly residential development is a permitted use in the district and differs from a standard subdivisions because the future homeowners will not increase impact on the school system. The general public purpose of the Growth Management Ordinance is to prevent large population increases in a short timeframe that would put pressure on municipal services. The proposed project is unique because it will not put excessive pressure on the municipal services even if constructed at a rate faster than 4 units per year. The property is a rare opportunity for

subdivision on Route 13 and the proposed development is uniquely proposed to meet the spirit and intent of the ordinance without the need to be restricted by the Growth Management Ordinance. Based on the above, we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

And:

ii. The proposed use is a reasonable one because

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- Granting this variance would allow for the construction of an elderly housing development in a timeframe that best meets market conditions.
- This project would have no measurable negative impacts on the surroundings or their property values.
- The development would not be contrary to the public interest.
- This project will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public.
This proposal would in our opinion observe the spirit and intent of the ordinance.
- The development will help increase the tax base and provide housing for the growing population.
- Since this proposal will provide the above and will result in no negative impacts to the public we believe that the proposal is reasonable.

b. Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The subject property is unique because of its location along route 13, size, and potential for subdivision. If this variance request is denied it will create unnecessary housing hardship for the community. Strict conformance with section 1400, Growth Management Ordinance, of the Brookline Zoning ordinance would cause negative impacts to the community by limiting homes during a time where housing is needed most. Additionally, stretching the proposed subdivision out over 8 years takes away the opportunity to provide the public with homes based on the market conditions, which are subject to rapid change, based on these reasons we believe a variance is necessary to enable a reasonable use of the property.

Marcia asked if this would be a town road. **Dan B.** (Fieldstone) said no this would be private.

Webb asked if the Planning Board had directed him to come to the ZBA. **Dan B. (Fieldstone)** said no but in essence through the wording of the Zoning Ordinance the Planning Board has pushed

us to come here tonight. **Dan M.** said the argument that you are making is that this will not impact the town services, but it will, and there is also a water concern in town, is there any information on that. **Dan B. (Fieldstone)** said he doesn't have any information on that at this time. **Dan M.** asked how much of the land will be open space. **Dan B. (Fieldstone)** said he wasn't sure. **Peter** stated that this is the first step in the process. **Dan M.** said the slopes are steep on this lot would this be too steep for a development like this. **Webb** said it is up to the Planning Board to say whether this is a viable plan. **Archer** said if they do not grant this tonight, they can still build it would just be a much slower process. **Webb** said it would not be viable to have this development take that long. **Dan B. (Fieldstone)** said at this time they are looking for relief from the Growth Ordinance Section 1404. **Abutter Sandi** asked if they knew when they would be breaking ground on this project. **Dan B. (Fieldstone)** said he was not sure when they could start this project at this time. **Donna Marsh** (Brookline Resident) asked if these would be duplexes or triplexes. **Dan B. (Fieldstone)** said he does not have an answer at this time. **Archer** said the Ordinance does state no more than 2 bedrooms in a unit. **Sandi** (abutter) asked about the lighting throughout the development. **Peter** stated the Planning Board would address all those issues, we are just here to decide on this variance request. **Peter** said if you had come in before the Zoning Ordinance change voted in at the March Town Meeting, you would have been exempt from the Growth Ordinance and would only need to apply to the Planning Board. **Dave** asked if there is an ability to limit this decision or is it all or nothing. **Webb** said he believes that it is all or nothing. The faster it goes up the less of an impact it will have on the community. **Marcia** said there is a need for this kind of development in town. The Board reviewed the variance request. The Board agreed with all the questions with one abstention for the question that this use would be a reasonable one. **Webb** said if they grant this variance request, they can't allow this development to use up all the building permits that are allowed to be given out during the year per the Growth Ordinance Section.

Webb made a motion that the Board finds the variance would not be contrary to public interest because relief from the Growth Ordinance will not unduly impact the town. Peter seconded. Vote yes 5-0.

Marcia made a motion to grant the variance from the growth Ordinance section 1405.4 with the condition that building permits that are issued for this development will not be counted under the Growth Ordinance Section 1405.4. Seconded by Peter. Vote yes 5-0.

Peter said your request for a Variance has been granted. You will be receiving written notice of this decision in a few days, and it will be available tomorrow. You, the Select Board, the abutters, and anyone directly affected by this decision have the right to request that the Board hold a rehearing on this case. A request for a rehearing must be submitted in writing to the Town Offices no more than 30 days from today and must fully explain why the Board should grant a rehearing. A request for a rehearing is a necessary precondition for appealing the Board's decision to Superior Court. In the absence of a request for a rehearing, the decision will become final and unappealable.

Case 455

Peter read the hearing notice "Applicant Quinn Martell is requesting a Special Exception from Section 800.03 (b) of the Brookline Zoning Ordinance to replace an existing structure in the rear

setback with a new structure that will be 10ft wider, but which will encroach no farther into the rear setback on his lot H-47, located at 13 Main Street, consisting of .600 acres.”

Fees have been paid and abutters notified.

Quinn said the new structure going up will be the same size as the barn that was there, but it will be turned 180 degrees to accommodate a 3 car garage. **Marcia** said there will be more in the setback but not closer to the lot line. **Archer** asked if there was a reason why it is still in the setback. **Quinn** said he is trying to make the most of his lot and this will look better when he is finished. He said he had spoken to his closest abutter, and they didn't have an issue with this new structure. **Webb** read the section 800.03 Criteria 1. The proposed alteration, expansion, or exchange will not change the nature and purpose of the present use. **Webb** said this was a garage on a residential lot and will be the same after it is built. **Quinn** said that is correct. The Board agreed.

Webb read Criteria 2. The proposed alteration, expansion, or change would involve no substantially different effect on the neighborhood. The Board agreed with that.

Webb read Criteria 3. The proposed alteration, expansion, or change would extend no farther into the setback than the portion of the structure which already resides in the setback. Per the plan submitted this is also true.

Marcia made a motion to grant the Special Exception to allow the structure to be replaced in the setback as per the plan submitted. Dan Seconded. Vote yes 5-0.

Peter said your request for a Special Exception has been granted. You will be receiving written notice of this decision in a few days, and it will be available tomorrow. You, the Select Board, the abutters, and anyone directly affected by this decision have the right to request that the Board hold a rehearing on this case. A request for a rehearing must be submitted in writing to the Town Offices no more than 30 days from today and must fully explain why the Board should grant a rehearing. A request for a rehearing is a necessary precondition for appealing the Board's decision to Superior Court. In the absence of a request for a rehearing, the decision will become final and unappealable.

Mail

Peter said they have received a letter requesting a rehearing for Case #452. **Peter** stated that he read the letter and he doesn't believe there is new information in the case to allow the Accessory Dwelling unit. He believes there is new information, but the new information seems to indicate there is more of a home business activity issue which would be a discussion with the Planning Board. **Dave** said we didn't give them permission to build the building just to allow an Accessory Dwelling unit on the second floor. The Board agreed that the issues that are listed in the letter should be brought to the attention of the Code Enforcement officer to have him look into it. Tonight, they just need to decide if there is reasons to hold a rehearing. **Webb** stated after reading the letter he doesn't believe the decision they made was improper in any way. There was no information in the letter that was germane to the decision they made; something needs to be done it's just not in our scope. **Peter** said he would send a letter to the abutters that have written this letter, so they know the outcome of this rehearing request. **Marcia made a motion to deny the request for a rehearing. Dan seconded. Vote yes 5-0.**

Minutes

Marcia made a motion to approve the minutes of July 12, 2023. Seconded by Dan. Vote yes 5-0.

Marcia made a motion to approve the minutes of August 9, 2023. Seconded by Dave. Vote yes 5-0.

Adjourn

Marcia made a motion to adjourn at 9:20 pm. Archer seconded. Vote yes 5-0.

Peter Cook, Chairman, _____

Archer Batcheller, Vice-Chairman, _____

Webb Scales, Member, Clerk, _____

Dan Marcek Jr, Member, _____

Marcia Farwell, Member, _____

Minutes submitted by Kristen Austin.

ZBA Meets when needed on the second Wednesday of the Month as needed.