



TOWN OF
BROOKLINE, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES
Wednesday, February 14, 2018

Present: George Foley, Member, Chairman
Peter Cook, Member, Vice-Chairman
Webb Scales, Member, Clerk
Kevin Visnaskas, Member
Jill Adams, Alternate

Absent: Marcia Farwell, Member, and Charlotte Pogue, Alternate

Case 409

Applicant 364 Route 13, LLC c/o Edward & Joan Delage, is requesting a Variance under Section 602 of the Brookline Zoning ordinance to allow a family operated ice cream shop in the residential zone. Lot B-20 is located at 346 Route 13, and consists of 0.76 acres.

Also present for the case: Francis (Buddy) and Cindy Lou Dougherty.

George ask the applicant to present the case and explain why the 5 criteria should be granted. **Joan** presented the 5 points:

1. Granting the variance would not be contrary to the public interest because:
"We are taking this vacant property and opening a family owned and operated business. The property has been vacant/unoccupied for 9 years."
Any non-conforming use, not use for 1 year needs a variance, regardless of previous uses.
2. If the Variance were granted, the spirit of the ordinance would be observed because:
"Our goal is to improve the property and the building to attract and encourage development and growth."
The Board asked if the applicant had a septic system design capable to support the proposed business. **Joan** said that they have a new design that has been approved by the State.
Regarding the "spirit" of the ordinance, it was noted that the Office of Energy and Planning states that the Zoning Board of Adjustment should not change the Ordinance. **George** said that the Board cannot change the ordinance but our ordinance provides for it.
3. Granting the variance would do substantial justice because:
"We are taking this property that has been vacant for 9 years and investing to improve the curb appeal. We have no intention of disrupting the property values; giving purpose to the lot."
4. If the variance were granted, the values of the surrounding properties would not be diminished because:
"The surrounding properties will not diminish because the proposed improvement will complement the town's values. If anything, this will improve the surrounding properties."
It was noted that the lot next door is even smaller with 2 building on it.
5. Unnecessary Hardship
 - a. i.

“As the property stands with no plumbing, no heating and a leaking foundation a variance is needed to improve the property.”

a. ii.

“In order for the property to be useful, it needs to have these improvements done. Once the work is completed the property will provide for all involved, the town, the community and families.”

George went over criteria 5 in the “Guide for the ZBA” regarding how to demonstrate hardship. The Board discussed other similar or home businesses located in the area.

Peter said that there is a good chance that the variance would not be granted because there is no demonstration of hardship, but told the applicants they may have to come back another night.

Webb suggested finishing the presentation. Then the applicants have the option to withdraw, or the Board could take a vote to approve or not approve it. If would be a “not” we can have a discussion about next steps.

Joan said that they bought the property on the assumption it was a commercial lot. **Webb** said that the applicants need help with 5.a.i. because he has trouble finding that the ordinance is unfair and there is not ground for challenging the zoning on your lot.

Buddy said that the property has always been a business, has never been a residence. **George** said that Buddy was correct but the grandfather status lapsed 8 years ago.

Joan took the advice of the Board and withdrew the application.

The Board next discussed Section 2600 (b) of the zoning ordinance and suggested that the applicant fills out a new application for a Special Exception.

Appointment / reappointment of Members and Alternates

Webb, seconded by Jill, moved to make a recommendation to the Selectboard to reappoint the following Members and Alternates:

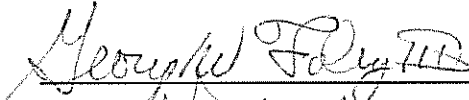
- Kevin Visnaskas, Full Member, until March 2020
- Peter Cook, Full Member, until March 2021
- Webb Scales, Full Member, until March 2021
- Jill Adams, Alternate Member, until March 2021

Minutes

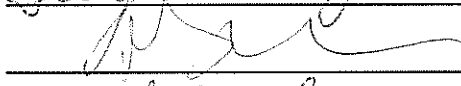
Jill moved to approve the Zoning Board minutes of October 11, 2017 as written. Webb seconded. Voted YES 5-0.

Peter moved to adjourn at 8:50 pm. Webb Seconded. Voted YES 5-0.

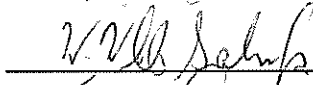
George Foley, Member, Chairman



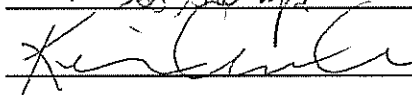
Peter Cook, Member, Vice-Chairman



Webb Scales, Member, Clerk



Kevin Visnaskas, Member



Jill Adams, Alternate

Minutes submitted by Valérie D. Rearick

