



TOWN OF
BROOKLINE, NEW HAMPSHIRE

BOARD OF ADJUSTMENT

P.O. BOX 360 – 1 Main Street
BROOKLINE, NH 03033-0360

<http://www.brookline.nh.us>

Telephone (603) 673-8855

Fax (603) 673-8136

BOARD OF ADJUSTMENT
MINUTES

Wednesday, February 13, 2013

Present: Peter Cook, Chair
George Foley, Vice-Chair
Webb Scales, Clerk
Marcia Farwell, Member
Kim Bent, Member
Absent: Charlotte Pogue, Alternate.

Case 367

In attendance for this hearing: Gary Nedelman, applicant, Mary-Elizabeth & Melvin Fields, Abutters, and Brendan Denehy (abutter).

Peter read the hearing notice:

"Notice is hereby given that a hearing will be held at or about 7:30 p.m. on **Wednesday, February 13, 2013** in the Town Hall meeting room. Applicants **Gary and Susan Nedelman** are requesting a **Variance** to allow the construction of a replacement septic system (piping, septic tank, and leach field) that is within the sideline setback. This is for lot L-17 located at 27 Mason Road, containing .240 acres in the residential/agricultural zone. Brookline Zoning and Land Use Ordinance, Section 603.02.b.'

Peter asked if the fees have been paid and the abutters notified. **Kristen** said yes.

Gary said the lot is known as 27 Mason Road. It is non-conforming lake front lot and we are applying for a permit to replace the septic system. The reason for a variance is that the required 15 foot Town required setback is not provided but is ok with the 10 foot State required setback. **Peter** do you know anything about the existing system. **Gary** it lacks documentation and a septic tank has not been found. It is believed to exist under the porch. There is a vent pipe for a septic system. **Marcia** the purpose is to make this a state approved septic system. **Gary** yes. **Marcia** said the only setback that will be affecting will be the left side. **Gary** yes. **George** asked if this system will be underground. **Gary** said yes this is a subsurface sewage disposal system.

Mary Fields said even though it is a 100 feet from the lake she has a problem with the leaching field. It has to take out all the waste and hazards from water that goes into the septic system. She is also surprised that the person who is putting in the septic system isn't here tonight. There are some scientific questions that should be asked of him. This is close to her lot, what if she wanted to put in a well on her land. There is no perk test information here tonight she wants to know where that water will be flowing to. You will be putting in six tubes. What will be in these tube that will burn out the bio hazards, solvents, and oils that go down the drain and how will that be cleared out or where will it drain to. That's only the issues she has with the leach field not the septic system. Why can't they put in a closed system with an alarm. Then you have it pumped when it needs to be emptied. She also has to give permission for the trucks to go over her lot to access the back of Mr.

Nedelman's property. Things have already been done without her permission. **Peter** asked Gary where he was at with State permission. **Gary** said the State is waiting for tonight's outcome. **Peter** said he feels the issues that Mary has will be dealt with on the state level. **Peter** we are not a board that understands all the science and Mr. Nedelman will have to behold to State requirements and he understands that Mary has issues with the new septic system. We are here tonight to deal with the setback issue only. **Mary** said they have already started the process and she doesn't want to have her toes stepped on again. If they do not get permission to use her property as the judge stated with the previous owner then she will have to put a fence up. **Peter** asked Mary if the current system has caused her any issues. **Mary** said no but if you're going to put in a new system it should be improved.

Peter read the letter from abutter Connie Tomaso.

"This is in reference to the letter we received from the zoning board in reference to my property on Mason road, Brookline NH.

I Constance Tomaso the owner of lot 16 on Mason Road in Brookline **do not** have a problem with the requested variance applied for by Gary & Susan Nedelman of 27 Mason Road, Brookline, NH. for installation of a new septic system provided its design and installation are approved by both the appropriate town and state agency's to protect the water shed and the lake.

I do request that during this process **no equipment or materials** be present on my property (Lot #16) before during or after said construction is performed. If this poses a problem I may be contacted by phone or mail to see if any arrangements can be made to alleviate the difficulty.

Thank you for your time and considerations in this matter."

Peter gave a copy of the letter to Mr. Nedelman.

Marcia said Mr. Fields feels the same way. **Peter** this is not part of the hearing and not part of our business to infer with neighbors. **Brendan Denehy** said he didn't have any issues with the replacement of the septic system.

Peter read the five criteria on the application:

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

Applicant Answer: The existing 3-bedroom waterfront year round home has a septic system that predates state approval. The existing dwelling is within 15' of the property line. The homeowner is proposing to eliminate the existing system and replace it with a state approved system. The proposed septic system would provide better treatment of the sanitary waste discharging from the existing home as well as provide better protection to surrounding land and groundwater, in addition to protecting the nearby public waters of Lake Potanipo.

2. If the variance were granted, the spirit of the ordinance would be observed because:

Applicant Answer: The existing lot predates this zoning ordinance. The spirit and intent of the ordinance is to protect abutting properties from impacts due to construction close to the property line. There will be very little change in grading associated with the construction of the system. Once constructed this system will be below ground and not visible to the abutters or public. The proposed system will improve the protection of their property from the potential of a failed septic system.

3. Granting the variance would do substantial justice because:

Applicant Answer: The lot was created prior to the ordinance. The existing house is within the setback. This would allow the owner to upgrade the septic system to an approved design consistent with NHDES regulations. The proposed system will have a reduced potential for groundwater and surface water contamination thus provide assurance and comfort to the owner, abutters, and public stakeholders that negative impacts will not occur.

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

Applicant Answer: The proposed septic system installation will not diminish abutting property values. In fact, the new septic system will actually enhance abutting property values. If the Board were not to approve the variance, if and when the septic system was to fail, a replacement septic system could not be constructed on the property. Then there would be a severe depreciation in the value of the home. Granting the variance will allow the applicant to replace their septic system in a similar manner as many of the other non-conforming lots have done on the lake. Granting the variance will allow the homeowner to make a non-conforming lot less non-conforming with both town and state septic system approval requirements.

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 purposes of the ordinance provision and the specific application of that provision to the property because:

Applicant Answer: The intent of the ordinance is to prevent buildings or visible structures to encroach upon the neighbors by being within 15' of the property line. This parcel and building is non-conforming to the regulations. In order to construct a septic system we need to encroach upon the sideline setbacks. We are in conformance to the state requirement of 10' from the property line for the leach field. The final septic will not be visible to the neighbors, therefore not violating the intent of the ordinance.

And:

ii. The proposed use is a reasonable one because:

Applicant Answer: The proposed use is reasonable in that it allows for an upgraded septic to be installed to protect the groundwater of the town.

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.

Applicant Answer: This is a non-conforming lot that is very narrow. There is not sufficient area outside the setback to construct the septic system.

Marcia made a motion to grant the variance from section 603.02b of the Brookline Zoning Ordinance to permit the construction of a septic system within the side setback including piping, septic tank, and leach field as per plan presented. Webb seconded. Vote yes 5-0.

Gary asked how long the variance was good for. **Peter** said a variance goes with the property.

Case 368

In attendance for this hearing Robert Knudsen, applicant and Jesse Mattern, Abutter.

Peter read the hearing notice:

"Notice is hereby given that a hearing will be held at or about **8:00 p.m. on Wednesday, February 13, 2013** in the Town Hall meeting room. Applicants **Robert and Angela Knudsen** are requesting a **Variance** to allow the construction of a home 15 feet into the 50 foot site perimeter buffer. This is for lot J-24-11, located at 37 Wildwood Drive, containing 2.101 acres in the residential/agricultural zone. Brookline Zoning and Land Use Ordinance, Section 1503.04."

Peter asked if the fees have been paid and the abutters notified. **Kristen** said yes.

Bob said there is a 50 foot buffer that runs along the side of his property. **Bob** pointed out on the map where the line is. Due to the way the lot is situated he would like to encroach 15 feet in into that buffer to build his home. **Peter** asked if this was an open space subdivision buffer. **Bob** said yes. **Peter** explained the perimeter of the whole subdivision has a 50 foot setback around the entire subdivision. **Bob** said there is dense forest in between the neighbor and our lot. We would like to use as much of the lot as we can we do pay taxes on it. **Bob** handed out a plan of what the house will look like. The 15 feet would benefit them greatly. **George** asked **Bob** to point out the driveway on the plan provided. **Bob** said there is a clear break in the stone wall and the driveway will go through that area. **George** asked if he was aware that there's laws that states you can't move a stone wall. **Peter** said that is not what they are here for tonight.

Peter read section 1503.04 "Site Perimeter Buffer. Each development must be situated within a permanently protected undeveloped site perimeter buffer, identified on the site plan, not less than 50 feet wide or a value as deemed necessary by the Planning Board on all boundaries of the original parcel except for access to connecting roads, which, unless it is already wooded and satisfactory to the Planning Board, must be planted and landscaped so as to provide a visual barrier between the development and adjacent properties. The Planning Board may require additional buffer width where unique circumstances of an abutting use or property warrant. The site perimeter buffer shall not count towards the required minimum protected open space."

Peter asked what was beyond the buffer. **Bob** said Woodland Drive. **Peter** asked if the 15 feet will open it up to a neighbor. **Jesse** said he is the neighbor and owns lot J-25. It is hard now to see what the impact will be until the building is built and it's too late. **Bob** said there is still 200 feet of dense thick forest between the two homes. **Jesse** said he moved here 8 weeks ago and **Bob** came to him to discuss what they would like to do and has kept him informed from the start. **Marcia** asked if they could compromise 5 feet and encroach 10 feet into the 50 foot buffer instead of 15 feet. **Bob** said he is willing to do that. **Jesse** said he was ok with that. **Webb** said even if he puts his house 10 feet into the setback that's only for the structure he will still need to cut trees. **Peter** said the ordinance does not state it needs to be maintained forever.

Peter read the 5 criteria from the application:

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

Applicant Answer: The effects are minimal and hardly noticeable. We have gone to great lengths to create a visually pleasing house and this will allow us to make the best use of our property.

Marcia said they just agreed on putting the house 10 feet into the buffer instead of 15 feet. **Bob** agreed. **Jesse** agreed he was ok with the 10 feet.

2. If the variance were granted, the spirit of the ordinance would be observed because:

Applicant Answer: There is still a significant amount of dense forest between neighbors.

Webb said the homeowner will still have to go about 15 feet into the setback or more to cut trees.

Marcia asked **Jesse** how many acres are in his lot. **Jesse** said about 7 acres his house is located by the back of the property line.

3. Granting the variance would do substantial justice because:

Applicant Answer: It would allow the houses in the neighborhood to be separated by a significant amount of dense forest.

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

Applicant Answer: because the surrounding houses are a few hundred feet away from the property line. Also, this would allow the area between properties to be separated by a significant amount of dense forest.

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 purposes of the ordinance provision and the specific application of that provision to the property because:

Applicant Answer: As stated before there is still a significant amount of dense forest that will act as a buffer which will continue to separate our property from the neighbors.

Marcia said she thinks the special condition is that fact that it is an open space subdivision and this lot is abutting a 7 acre lot. **Peter** said he thought the special condition would be the lot size of 2.1 acres in an open space lot where they are usually well under two acres.

And:

ii. The proposed use is a reasonable one because:

Applicant Answer: There is still a significant amount of dense forest that will separate our property from the neighbors. Also, this allows us to better utilize more of our property for which we pay taxes on.

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.

Applicant Answer: There is still a significant amount of dense forest that will separate our property from the neighbors. Also, this allows us to better utilize more of our property for which we pay taxes on.

George reread section 1503.04. **Peter** asked if they felt a lawn would be considered developed. **George** said the ordinance states a visual barrier. **Jesse** said that is a problem because the trees are gone already. **Bob** said when he read the ordinance he understood it to mean no structure could be placed in the 50 foot buffer. He cut the trees where the house will go. **Marcia** asked if there is still dense forest. **Bob** said yes 150-200 feet of dense forest still remains. **Jesse** asked if some trees could be put back if needed. **Marcia** asked if the abutters could work that out between themselves. **Bob** said of course he is willing to work with Jesse and work on an agreement about the trees if there is an issue. **Jesse** agreed.

Marcia made a motion to grant the variance to allow the construction of a home 10 feet into the 50 foot site perimeter buffer. Kim seconded. Vote yes 3-2.

Case 369

In attendance for this hearing Daryl Pelletier representing Ron Pelletier manager of 32 Proctor Hill Road LLC.. **Peter** read the hearing notice "Notice is hereby given that a hearing will be held at or about **8:45 p.m.** on **Wednesday, February 13, 2013** in the Town Hall meeting room concerning a request for a **Special Exception**. Applicant **Ron Pelletier, Manager of 32 Proctor Hill Road LLC** is requesting to operate a retail shop in the residential/agricultural zone. Lot H-73 is located at 32 Proctor Hill Road consisting of 4.56 acres. Brookline Zoning Ordinance Section 2500.00 (b)."

Peter asked if the fees have been paid and the abutters notified. **Kristen** said yes.

Peter read the Zoning Ordinance:

Section 2500: The Board of Selectmen shall make appointments to a Board of Adjustment of five members conforming in duties to the provisions of Chapter 674:33 of the NH RSA as amended. Thereafter as terms expire or vacancies occur, the Board of Selectmen shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment. The Board of Adjustment here provided shall conform in membership and terms of office to the provisions of Chapter 673:5 of the NH RSA as amended. In addition to the general powers granted, the Board of Adjustment by Chapter 673:5 of the NH RSA, may, in harmony with and subject to its provisions:

Section 2500 b. Permit in the Residential-Agricultural District an industrial or commercial use which a public hearing demonstrates that it can meet the requirements of Section 500, paragraphs 502 (v) and 503 and is not otherwise detrimental to the neighborhood.

Section 502 v. Any use which does not offend by emission of smoke, dust, gas, noise, odor, or fumes
Section 503.02 a. Setbacks Front. Each structure shall be setback at least 30 feet from the front lot line.

Daryl said they would like to use the building that housed little laurel preschool as a retail/consignment shop. **Marcia** asked why he needed to come to the ZBA at all; they already have a commercial use on this lot. **Peter** said he thought they had already given him relief for the Auction Gallery. **Webb** said this is a change in use the school was allowed in a residential section where as retail shop is not. **Daryl** said it was a retail shop at one point in time before the preschool was there. **Peter** asked Darrel if he met the criteria 200 feet of frontage and 30 feet front setback. **Daryl** said yes there is well over 200 feet of frontage and 38 feet in the front. **Peter** asked if it would be detrimental to the neighborhood. The Board agreed it would not.

Webb made a motion that the Board finds that the proposed use can meet the requirements of section 500, 502 v., and 503.02 a. **Peter** seconded. Vote yes 5-0.

Marcia made a motion to grant the special exception to permit the operation of a retail shop in the residential/ agricultural zone. **Webb** seconded. Vote yes 5-0.

Minutes


Marcia made a motion to approve the Minutes of June 13, 2012 as written. **Webb** seconded. Vote yes 3-0.

Re-Appointments


Webb made a motion to recommend to the Selectman that **Marcia Farwell** be reappointed as a full member of the Zoning Board with a term to expiring March 31, 2016. **George** seconded. Vote yes 4-0.

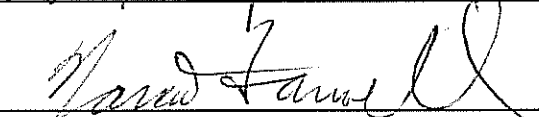
Webb made a motion to adjourn at 9:30 pm. **George** Seconded. Vote yes 5-0.

Minutes submitted by **Kristen Austin**

Peter Cook, Chairman _____ 

George Foley, Vice-Chairman _____ 

Webb Scales, Clerk _____ 

Marcia Farwell, Member _____ 

Kim Bent, Member

A handwritten signature in black ink, appearing to read "Kim Bent", written over a horizontal line.

