



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

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**BOARD OF ADJUSTMENT  
MINUTES  
Wednesday, April 10, 2013**

**Present:** Peter Cook, Member, Chairman  
George Foley, Member, Vice-Chair  
Webb Scales, Member, Clerk  
Marcia Farwell, Member  
Kim Bent, Member

**Absent:** Charlotte Pogue, Alternate

**General Business**

**Adopt Code of Ethics**

George made a motion to adopt the code of ethics recommended by the Board of Selectmen. Peter seconds. Vote yes 5-0.

**Nomination of Chairman, Vice-Chairman, and Clerk**

George nominated Peter Cook as Chairman, Webb nominated George Foley as Vice-Chairman, and George nominated Webb as the Clerk.

Marcia made a motion to adopt the slate of officers just nominated Peter Cook as Chairman, George Foley as the Vice-Chair, and Webb Scales as the Clerk. Seconded Kim. Vote yes 5-0.

Kim seconded. Vote Yes 5-0.

**Minutes**

Marcia moved to approve the minutes of February 13, 2013 as written. George seconded. Vote yes 5-0.

**Case 370**

In attendance for this hearing are Danny and Gina Bent, Applicants.

Peter read the hearing notice. "This is concerning an Appeal from an Administrative Decision to allow the applicants Danny & Gina Bent to convert the 2<sup>nd</sup> floor offices of a commercial building into living space. Lot H-104-1 is located at 73 Route 13 consisting of 3.058 acres in the Commercial/ Industrial Zone. Brookline Zoning Ordinance Section 502 (j)". Peter said the building permit applied for was denied to renovate the second floor office into living space in the commercial / industrial zone because this use is not permitted per section 502 (j) of the Zoning Ordinance. Section 502 (j) states uses allowed "residential dwelling units existing prior to March 14, 1992 and home businesses within these units subject to the provisions of section 1700." Peter said an allowable use is section 502 (v) "Any use which does not offend by emissions of smoke, dust gas, noise, odor, or fumes." Peter said the ZBA has the power to hear and decide such appeals if it is alleged there is an error. Peter said he didn't believe the Building Inspector denial was incorrect. Reading the ordinance residential use prior to 1992 is

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allowed. **Webb** said that is the grandfather clause. **Marcia** said she wasn't sure why the Board wasn't hearing a variance tonight. **Peter** said we have a much more free ranging discussion not being limited to the 5 variance criteria. **Webb** said he didn't advise applying for a variance because he didn't believe it would be granted due to the criteria needed to be met. **Peter** asked the applicants to state their case. **Gina** said when they lost their home the office above the garage was their best option. We have done everything to make this area safe; the Fire Department has done all the inspections. They have met every safety requirement. **Marcia** said there is a letter stating that the septic is ok for the use. **Danny** said he just had Skilling put in a new well. This all happened so fast there wasn't enough time to come to the ZBA and ask permission. Someone noticed the deck being added and called it into the Town. Everything has been done above code and the deck was added for a second means of egress. **Peter** asked if the applicant had any reason to argue that the Building Inspector was wrong. **Danny** said no he came to the property and was pleasant about it; he was just doing his job. **Marcia** said she thought the building permit could have issued under 502 (v) it is not clear that it is referring to commercial use only. **Webb** stated he thought it was clear that it was referring to commercial use.

**Peter** asked if fees have been paid and abutters notified. **Kristen** said yes. **Marcia** said it speaks volumes that no abutters have shown up here at the meeting tonight. **Gina** said they have spoken to all the abutters. She can't imagine they are offending anyone. **Kim** said giving the fact that there are no complaining abutters here tonight about the current residential use, the applicants have a sufficient septic, and a new well was installed for this use she felt inclined to vote under 502 (v) and believes that the Board has the right to overturn the Building Inspectors denial of the building permit.

**Marcia** said it is interesting that we tried to get mixed use zoning in town and it didn't go anywhere but this case would be the perfect fit for mixed use zoning.

**George** asked how big the lot is. **Danny** said about 3 acres. **Webb** said the ZBA can grant a temporary permit tonight per Ordinance 2500 (a) which states "the ZBA can permit a non-conforming temporary use for an initial period not more than one year. A permit may be renewed by the Board of Adjustment for a period of not more than one year at a time".

**Peter** read from the ZBA handbook "most of the zoning ordinances are confusing and are open to interpretation." **Marcia** said she thought the Building permit should have been issued under ordinance 502 (v) "Any use which does not offend by emissions of smoke, dust gas, noise, odor, or fumes." The permit could have also been issued under 502 (n) "personal services and offices" as Danny could be his own security watchman. **Danny** said no one has stolen anything since they moved in. **Webb** said this is a job for the Planning Board they should consider rezoning this lot or come up with a new ordinance which takes time but if granted, the special permit is up in a year the Planning Board would have time to bring an ordinance change to the Town Meeting. **George** agreed with Webb. **Peter** said they would need permission from the voters at town meeting to change the zoning or the ordinance and that would be right under the one year time frame. **Webb** stated that they should make some kind of finding as far as the appeal from an administrative decision goes.

**George made a motion that the board under ordinance 2500 (a) to permit a non-conforming temporary use for an initial period of time of not more than one year (April 11, 2014). A permit can be renewed by the Board of Adjustment for a period of not more than one year at a time to allow the residential use of lot H-104-1, 73 Route 13. Webb seconded. Vote yes 4-1. Peter, George, Webb, Kim voted yes and Marcia voted no.**

**Marcia** said that a one year permit puts undue stress on the applicant and doesn't agree with the decision not to grant a building permit under 502 (v).

**Webb made a motion the Zoning Board finds the Appeal from an Administrative Decision be denied and the Decision of the Building Inspector be upheld. George seconded. Vote yes 3-2. Peter, George, Webb voted yes and Marcia and Kim voted no.**

**Marcia made a motion to adjourn at 8:30pm. Peter seconded. Vote yes 5-0.**



Peter Cook, Member, Chairman

George Foley, Member, Vice-Chair

Webb Scales, Member, Clerk

Marcia Farwell, Member

Kim Bent, Member

