



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

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**BOARD OF ADJUSTMENT
MINUTES**

Wednesday, May 08, 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 Meeting

Discuss rehearing for case 370

In attendance for this meeting Danny and Gina Bent (applicants), Linda Saari (Brookline Resident), and Brendan Denehy (Brookline Resident).

Peter said tonight's meeting is a business meeting to discuss holding a rehearing for case 370. **Peter** asked that the discussion should be whether or not to hold a hearing and not to rehash the case. **Peter** asked if everyone had a copy of Marcia's letter. This constitutes a request for a rehearing. **Peter** read from the ZBA Handbook "In order to submit a motion for rehearing, a person must have "standing" i.e., the legal right to challenge the boards decision. Abutters, persons who own property close enough to the land in question to demonstrate that they are affected directly by the boards action (i.e., a person aggrieved), and the Board of Selectmen all have all have standing to appeal a ZBA decision." **Peter** said it unclear to him that Marcia has the "standing" to call for a rehearing. **Marcia** said according to the attorney from the LGC (Local Government Center) Paul Sanderson, that anyone that has a problem with the decision or an issue with the decision has the right to call for a rehearing. **Peter** asked if the attorney knew that you are a member of the board when you spoke to him. **Marcia** said yes he did. **Peter** said according to the RSA's it is unclear to him that there is standing. **Marcia** said she is aggrieved by the decision made at the prior meeting. **Peter** said if a Board member is at issue with a decision and can call a rehearing, cases could go on forever. Not that he wants to stop this meeting because he is unclear. **Marcia** said I think you remember Peter, just because no abutter were here at the last meeting that had a problem, the whole town could be aggrieved by what we do. **Peter** said it is just unclear to him that Marcia has standing in this case but there could be other issues. **George** said he couldn't see where Marcia is affected by the decision. He understands that she disagrees with the decision but it affects lot H-104-1 and abutting lots. **George** said Marcia is not a direct abutter to this lot and not directly affected. **Marcia** said she is affected by this and she believes the Board is affected by this decision. She absolutely does feel the Board made a bad decision. **George** said he is looking at the grounds that Marcia is requesting a rehearing on and yes we allow grandfathered units but that doesn't mean it goes further; he doesn't feel this is applicable. **Peter** said if they do continue, we as a board have to decide whether to grant a rehearing, whether Marcia has standing or not. **Peter** asked that they move on and allow Marcia to state her case.

ZBA Minutes
May 08, 2013

Tonight we need to decide if there was enough wrong with the last case to hold a rehearing. **Peter** asked that **Marcia** explain why she believes they need to hold a rehearing.

Marcia read her letter requesting a rehearing:

"I believe we made an error in the ruling in the case of Dan and Gina Bent wanting a residence in the industrial commercial zone.

The Board denied the appeal stating that the BI was correct in denying the building permit as they want a residence in the Commercial zone.

According to our regulations we DO allow residences – see J residential units existing before 3/14/1992 AND we do allow churches and associated parsonages (clearly residences). According to the atty's at the LGC No additional evidence is required for a rehearing unlike what was advised to the applicants on Wednesday evening. Anyone who believes a mistake was made (i.e. me) can bring forward a request for a re hearing and I am so doing.

The LGC also pointed out that the Bents did note that they will be living above their business and could consider themselves as caretakers or security personnel. Also allowed under 502:n. The LCG atty noted that the advice offered by the Board to go to the planning board to re-zone their specific lot was considered SPOT Zoning and is not allowed by law.

I am submitting this to try to avoid any further court action."

Peter asked **Marcia** where it states caretakers and security personnel are allowed. **Marcia** said according to the attorney at LGC under Zoning Ordinance section 502 (n) "Personal services and offices" this allows Danny to live there to be the security person or caretaker; he is allowed to do so. I believe at the last meeting Danny stated that since they moved in they haven't had anything stolen from the property. **Peter** said he feels that that statement means offices and they are not residences. **Marcia** said according to the attorney night watchmen, Personal services, or caretakers are allowed and they are allowed to live there. Also, under section 502 (v) "Any use which does not offend by emission of smoke, dust, gas, noise, Oder, or fumes" is allowed. **Marcia** said she believes at the last meeting Webb said that section only applies to commercial use but this would be considered any other use. The attorney agreed that the residence could have been allowed under section 502 (v). Also, Webb told the Bent's they could go to the Planning Board and ask them to rezone the lot and the Attorney said that is called spot zoning and that is not allowed by law. **Marcia** said the Board attended a conference last Monday and at that meeting they talked about how important a notice of decision is. **Marcia** said she went to the Town offices to get a copy of the hearing notice that was mailed to the Bent's and it only stated that the special permit was granted. The applicant asked for an appeal from an administrative decision not a special permit and that was not listed on the decision notice. The notice didn't say the Board upheld the request or denied it, it wasn't recognized at all. The Attorney said that was an improper disposition of this case. She believes the ZBA gave the Bent's some bad advice by recommending them to go to the Planning Board and ask to have the lot rezoned. **Peter** agreed that they didn't address the notice properly. **Webb** said they made a motion to find that the application be denied; it is clearly stated in the minutes. **Marcia** said it was not listed on the notice of decision. **Webb** said the minutes specifically state that we made a finding. **Marcia** said they also granted a Special Permit and it was not asked for nor were the abutters notified of it. **Peter** agreed that was in error. It wasn't noticed properly. **George** said they should notice it for the next meeting and issue it at the next meeting. **Peter** said they would need an application. **Webb** said the Board should hear rehearing for an Appeal for and Administrative Decision and if successful we will revoke that notice and that could leave the Bent's without any legal coverage of their present residential arrangement. **George** said the only thing we haven't done is issued the finding in writing. **Marcia** asked if there is a time period to send a notice of decision. **Webb** read that they had have five days to give the written notice of decision. **Marcia** said that is grounds for a rehearing alone. **Webb** said he didn't believe it was. **Marcia** thinks the Board made several

mistakes. The Board shouldn't have given advice to go to the Planning Board and it wasn't proper to tell the applicant that they couldn't have a residence in a commercial zone it is clearly allowed. **Webb** said they will have to agree to disagree on that. **Peter** said they didn't meet the five days to notice the written decision of finding that is a big enough error to hold rehearing. **Webb** said he thought the Board granting a special permit and not noticing it has a lot of traction for a rehearing. **George** said they could revoke that permit because it was improperly granted and see if the applicant applies for it. **Webb** said if they inappropriately granted it is possible to revoke in a meeting where it is not notice. **George** said we weren't legally noticed at the first hearing. **Webb** said if we hold a rehearing it would be for the Appeal from the Administrative Decision not a Special Permit. **Marcia** said there is plenty of areas where we could have granted this and allowed them the residence. She does not believe they wanted a permit only allowing them the residence for a year. **Peter** said he has heard two or three times tonight about the Board giving advice and the ZBA is not an advice giving board, we are a judicial board. **Peter** suggested in the future they refrain from giving any advice. **Webb** said what we have done in the past was to help guide the applicant down the best path for them and the town. Maybe that was poor judgment on our part and we should just sit quietly in judgment. **Peter** said tonight he believes they need to grant the rehearing due to not noticing the meeting properly. **Webb** said he didn't think there are grounds to hold a rehearing. It is clearly stated in the minutes that the Board made a finding in regards to the Appeal from an Administrative Decision. **Peter** said it was not noticed properly and the appropriate notice wasn't given within 5 days. **George** said we would just have to reissue the decision notice. **Peter** said we have missed the five day deadline and would have to hold the rehearing and send out the appropriate decision notice within the five days. **George** said what would be the point of having a rehearing if they are going to come to the same conclusion. **Peter** said we will be able to issue the correct decision notice within the five days.

Webb said he would hope a new application would be in before the next meeting. **George** said we have on our plate a request for a rehearing. **Webb** said we need to decide if we are going to grant the rehearing and we also have a procedural error that we came about by an unwarranted granting of a Special Permit. We could invite the applicant to apply for a procedure of their choice but we should probably outline what their options are. **Peter** said he doesn't believe they should go down that road. **Marcia** said we should grant the rehearing. She believes there were enough mistakes made at the previous meeting. **George** said he doesn't feel there is reason good enough to hold a rehearing; if we rehear the case we will come to the same decision. **Peter** said correct but we can then issue the correct decision notice within the correct amount of time.

Marcia made a motion to grant the request for a rehearing for case 370. Kim seconds. Vote yes 3-2. Peter, Marcia, and Kim voted yes. George and Webb voted no.

Marcia asked how long they have to hold the rehearing. **Peter** within 30 days. **Marcia** asked when the next meeting would be. **Kristen** said June 12th.

George made a motion to revoke the permit that they issued illegally at the last hearing. Peter seconds. Vote failed 3-2 and George voted yes. Webb, Marcia, and Kim voted no.

Peter said the Special Permit still holds. **Webb** said he is not convinced that granting the Special Permit was inappropriate or uncalled for but he is unsure that there is an official request for a Special Permit. We can reaffirm it at the next meeting. **Marcia** asked if the applicant has to do anything. **Kristen** said she was unsure and would have to look it up but believed the letter from Marcia is all they will need. **George** said the permit is issued, we didn't revoke it. **Webb** asked if the Board would have to go to the Selectboard if they wanted legal advice. **Marcia** said you can call LGC and get legal advice free of charge. **Peter** said you would need to go to the Selectboard if you want paid legal advice.

Linda Saari said you can call the LGC for quick legal advice over the phone but if you want a written response and email them it takes a bit longer but they will send a response. **Linda** said she has called many times over the years as a former Selectperson. **Linda** suggested to Marcia that she contact the Attorney she spoke with to get the response she received by phone emailed to her. **Marcia** said she will see if she can have them follow up with an email. **Gina Bent** asked if she would need to come into the office and pay to have the abutters notified again.

Peter said he doesn't believe so with a rehearing. **Peter** said no more fees if that is what you're asking. **Gina** thanked the Board. .

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

Peter Cook, Member, Chairman _____

George Foley, Member, Vice-Chair _____

Webb Scales, Member, Clerk _____

Marcia Farwell, Member _____

Kim Bent, Member _____