



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

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**BOARD OF ADJUSTMENT
MINUTES
Wednesday, October 9, 2013**

Present: Peter Cook, Member, Chairman
George Foley, Member, Vice-Chair
Webb Scales, Member, Clerk
Marcia Farwell, Member
Kim Bent, Member
Charlotte Pogue, Alternate (voting for Marcia for case 373)

General Business Meeting

Case 372

In attendance for this hearing Applicants Jeffrey and Tina McEvoy and Francis Gavin (Gavin Construction and Remodeling).

Peter said this was continued from the August 14, 2013 meeting. **Peter** read the hearing notice:

“Applicants Jeffrey & Tina McEvoy are requesting a Special Exception to allow an Accessory Dwelling Unit. Lot B-83-5 is located at 263 Route 13 containing 12.2 acres in the residential/agricultural zone. Brookline Zoning and Land Use Ordinance, Section 2000.00.”

Marcia said she doesn't know why they are here tonight to hear this case they have enough acreage to build a duplex and not have to come to the Zoning Board why would they need to come in for an in-law apartment. **Peter** said a duplex can be built but that may complicate the current use status, they need double the acreage of a house lot to build a duplex.

Marcia made a motion to grant the special exception as they are not allowed not to grant this if they meet all the criteria.

Without a second to the motion Peter suggested going through the criteria with the updated plan. **Francis** said since the last meeting the plans have been updated and approved by the Building Inspector. They are waiting for state approval for the septic approval. **George** asked if the Fire Department had any comments. **Francis** said they asked that the smoke detectors be attached to the main house but they had no issues with this plan. Emergency Management will give them a house number when they apply for a building permit.

George made a motion to approve the special exception to have an accessory dwelling unit on lot B-83-5 as presented on plan. Webb seconded. Vote yes 5-0.

Case 373

In attendance for this hearing Randy Haight (Meridian Land Services) Attorney Peter Bennett (representing Robert & Sandra Grant), and Marcia Farwell (Abutter).

Marcia said she is an abutter to this property and will be recusing herself from this hearing. **Peter** asked Charlotte to vote for Marcia in this case. **Charlotte** agreed.

Peter read the hearing notice:

"A hearing will be held at or about 8:00 p.m. on Wednesday, October 9, 2013 in the Town Hall meeting room. Applicants Robert & Sandra Grant are requesting a Variance from Section 603.02 b and Section 1103.01 of the Brookline Zoning Ordinance to allow the construction of a 13'x 24' garage within 5.0' of the lot line and the construction of a 10' x 14' porch within 22' of the Lake Potanipo High Water Mark. Lot L-11 is located at 27 Lake Potanipo containing .11 acres in the residential/agricultural zone."

Randy handed the board a plan of the property as well as aerial photos.

Peter Bennett said he is here on behalf of Sandy and Robert Grant. He read his statement in regards to the application:

(1) Property. Robert Y. Grant and Sandra L. Grant (the "Applicants") are the owners of Tax Map Lot L-11 located at 27 Lake Potanipo, consisting of .15 acres, more or less, with an existing single-family house, driveway, deck, steps and retaining wall (the "Property"). The Property is located in the Residential/ Agricultural district, which district requires a minimum lot size of 80,000 square feet, minimum frontage of 200 feet, building setbacks of 30 feet in the front and 15 feet on the side, and a wetland buffer/building setback of 50 feet in the rear. The Property lies entirely in the Aquifer Protection Overlay District and is also subject to the Shoreline Protection Act (RSA 483-B). The Property predates the adoption of the Brookline Zoning Ordinance (the "Ordinance").

(2) Proposed Improvements. The Applicants propose to construct a 355 square foot garage adjacent to the deck on the northwestern side of the house to be constructed within 5 feet of the boundary of Lot L-9 (33 Lake Potanipo). In addition, the Applicants propose to construct a porch containing 140 square feet, more or less, on the southeasterly side of the Property adjacent to the existing deck. The size of the existing deck and steps would be reduced from 765 square feet to 530 square feet and approximately 20 square feet of the existing retaining wall and approximately 240 square feet of the existing driveway will be removed.

(3) Variance Requested. The Applicants are requesting variances from the following provisions of the Ordinance:

(a) Section 603.02.b. of the Ordinance, which requires sideline setbacks of 15 feet, to permit construction of a garage within 5 feet of the northwesterly boundary of the Property; and

(b) Section II 03.0 I of the Ordinance, which requires a 50 foot wetland buffer zone from the mean high water mark of a surface water, to permit the construction of a 140 square foot porch within 22 feet of the high water mark of Lake Potanipo.

(4) Criteria for Variance.

(a) Granting the variance would not be contrary to the public interest. The proposed additions of the garage and driveway overlap existing decks and impervious areas on the Property. The proposed improvements are consistent with the other buildings and improvements in the area along the shore of Lake Potanipo.

(b) If the Variance were granted the spirit of the Ordinance would be observed. The proposed improvements overlap existing improved areas and are similar to the improvements of other properties in the area which are located within the 50 foot wetlands buffer.

(c) Granting the Variance would do substantial justice. The proposed improvements will permit the Applicants to enhance the utility of the Property in a manner consistent with improvements to other properties along the shore of Lake Potanipo.

(d) If the Variance were granted the values of the surrounding properties would not be diminished. The proposed improvements will increase both the utility and the value of the Property, and therefore likely to increase, rather than diminish, the value of surrounding properties.

(e) Unnecessary Hardship. Owing to special conditions of the Property that distinguish it from other properties in the area, denial of the variance would result in the unnecessary hardship for the following reasons:

(i) No fair and substantial relationship exists between the general public purposes of the provisions of the Ordinance and the specific application of the provisions to the Property. Because the Property predates zoning and is entirely located within the wetlands buffer, the request to add improvements consistent with other homes in the area does not affect any public purpose of the Ordinance. Similarly the request for a variance from the 15 foot setback requirements, not inconsistent with the purpose of the Ordinance, particularly given the minimal side yard setback of the adjacent Tax Map Lot L-12-1.

(ii) The proposed use is reasonable because the addition of the garage and proposed porch are consistent with the residential nature of the building and are consistent with other homes along the shore of Lake Potanipo. It would be an unnecessary hardship to prevent the Applicants from making improvements that are similar to the improvements made by nearby homes located within the 50 foot wetlands buffer.

(f) An unnecessary hardship exists because, owing to the 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 the variances necessary to enable a reasonable use of it. The property is subject to the special condition that it is a pre-existing dwelling located entirely in the wetlands buffer district without improvements (a garage and a porch) that are necessary to fully utilize the property as a residence, unlike other improved properties along the shore of Lake Potanipo. Without such improvements, the property cannot be reasonably used in strict conformity with the Ordinance and, if the Variances were denied, the Applicants would have to relocate the site's dwelling outside of the wetlands buffer in order to have reasonable use of the Property."

George said first the Board has to find the special condition of this property from the rest. **Peter Bennett** said so much of this lot is in the wetlands buffer. That separates this lot from the others. **Randy** stated that the applicant will be removing some pavement to add pavement in front of the garage. The amount of impervious area will remain at 41.7% of the lot which will meet the zoning requirements. We have also submitted a shoreland permit to the State. The porch and the deck will be raised on piles. The existing deck stairs will be removed and the porch built over the deck that is there now and the deck will be extended. **George** asked if the driveway is currently paved. **Randy** said yes. **Webb** stated all the lots in this are non-conforming. **Randy** said correct all lots are preexisting and they do not have road frontage. Lake Road is a private road. **Marcia** said she thought it was going to be a two story porch. **Randy** said he did not see the designs for the porch he is here to show the footprint of the porch and the house in regards to the lot lines and setbacks. **Marcia** said she didn't have any issues with this. **George** asked what the distance between the new porch and the setback for lot L-9 are. **Randy** said six feet. **Randy** said lot L-9 (abutter) sits higher than Lot L-11 (applicant). **Charlotte** asked if the roof line of the garage

will be level with the house. **Randy** said he doesn't have those plans he only has the footprint. They will be able to enter the house front the garage.

Webb and **George** said they were concerned with the view of lot L-8 located directly behind the new porch especially if it is going to be two stories. **George** said they could add a condition to the approval and grant a one story porch. **Randy** said the building directly behind the new porch is a detached 3 bay garage and not a home. **Peter** said if there is a second story on the porch would that affect the septic. **Randy** said if it is another bedroom then yes it would. It would trigger a new septic plan. **Peter** asked when they wanted to start this project. **Randy** said he believes they would like to start this fall. **Peter** said if they ask for building plans and delay the decision for another month it would hold up the project. **Marcia** said it is a three bedroom house and she doesn't believe they are looking to add any more bedrooms. She also thinks the Boards concerns are unfounded. This is already a very tall house and the row of trees on that side of the house block the view now to the lot behind it (Lot L-8). The Board reviewed the criteria and had no further issues.

George made a motion to grant the variance from section 603.02 b and 1103.01 from the Brookline Zoning Ordinance to allow the construction of the garage and the three season porch as presented on the plan. **Webb** seconded. Vote yes 5-0.

George made a motion to approve the meeting minutes of June 12, 2013 and August 14, 2013 of the Zoning Board meetings. **Peter** seconded. Vote yes 4-0.

Peter made a motion to adjourn at 9:05 pm. **George** seconded. Vote yes 4-0.

Peter Cook, Member, Chairman _____

George Foley, Member, Vice-Chair _____

Webb Scales, Member, Clerk _____

Marcia Farwell, Member _____

Kim Bent, Member _____

Charlotte Pogue, Alternate _____

Minutes submitted by Kristen Austin.

The next ZBA meeting will be held on November 13, 2013.