



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

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

Telephone (603) 673-8855
Fax (603) 673-8136

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

**BOARD OF ADJUSTMENT
MINUTES
Wednesday, February 10, 2016**

Present: George Foley, Member, Chairman
Peter Cook, Vice Chairman
Webb Scales, Member, Clerk
Kevin Visnaskas, Member

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

Case 392

In attendance for this hearing Tom Zajac from Hayner / Swanson Inc.(Civil Engineer), Attorney Brad Westgate, and John Motta (Owner/applicant).

George read the hearing notice “Applicant JPM Real Estate, LLC is requesting a Special Exception from Section 1103.11 and 1106 of the Brookline Zoning Ordinance, to allow the reduction of the 50 foot Wetland Conservation District Buffer Zone to permit a portion of a proposed restaurant building, associated parking spaces, drive-thru lane, walkways and other improvements. Lot E-22-2 is located at 176 Route 13, consisting of 2.00 acres.” **George** asked if fees have been paid and abutters notified.

Kristen said yes to both.

George said you have the right to be heard by a five member board – currently there are three members of the Board and an alternate in attendance; to prevail you will need three votes in the affirmative of at least three members – if you do not get three votes in the affirmative it is not grounds for appeal. Do you wish to continue with your case tonight? **John Motta** said yes he wished to continue with this case.

Brad Westgate said he represents JPM Real Estate LLC (John Motta, Owner), and Tom Zajac is the Civil Engineer with Hayner/Swanson here to present to the Board tonight. **Brad** said Mr. Motta owns several Dunkin Donuts in the Nashua area. He also owns the Dunkin Donuts that is currently located in the Sunoco Gas Station on Route 13 in Brookline. They are on the schedule for the Planning Board next week to present this case to them. They have already attended the Conservation Commission meeting, and they have signed the wetlands permit that DES is now reviewing.

Brad showed the Board plans for lot E-22-2. The first is an aerial view of the property showing the foundation that exists now on the easterly side of Route 13 along with the existing septic. The second plan shows the wetland area of which there are a total of three, one being man-made. He also showed where the 50 foot wetland buffers were located on this property. Inside this 50 foot buffer they are requesting a Special Exception to allow a portion of the restaurant, drive thru lane, walkways, and other improvements. They are also asking for a Special Exception form section 1106.02 of the Zoning Ordinance to permit

grading in the wetlands to install a portion of the drive aisle/access way and related improvements. They are asking for the ability to reduce the buffer so they can improve the property. What they are planning to do inside the buffer will not conflict with what the ordinance requires.

George asked if the Conservation Commission had any issues with this plan when they reviewed it.

Tom said they asked that they reconfigure the rain garden at the intersection of Quimby Road and Route 13. They have made the changes that the Conservation Commission requested. **George** asked if the Conservation Commission had any issues with the wetland area on the plan. **Brad** said no the only issue was with the rain garden at the northern corner of this property and not the wetland area. **Arthur and Shannon Kelly** (Owners of the Stove Keepers - Abutter) said they are concerned with the amount of water they will be accumulating on their property. **Webb** said it looks like they will be digging down a few feet where the culvert is located that runs under Route 13. This looks like it will only improve the situation by reducing the amount of water that runs onto your property. **Tom** said they will be improving the drainage in this area around this culvert so there should be the same amount of water or less that will run through the culvert. **Shannon** asked is there was a caveat if it makes more water run through the culvert onto their property. **Brad** said there are laws that state a property owner can not create a worse condition for another. **Brad** said if it does make it worse it would be a civil matter. **George** said this is why they go to the Planning Board and Zoning Board. If it is not built to the design you have the right to take legal action. **Brad** said the Town Engineer also reviews the drainage. **Keith LaFrance** (abutter) asked where the driveway will be located – this area is all wetlands toward the south. **Tom** said they will be shifting the driveway south about 60 feet. **Webb** said it looks like after all the approvals come through there will not be wetlands on the southern part of this property where they will be putting in the driveway. **Brad** thanked the Board and the abutters who have attended this meeting.

Webb made a motion that the Board make a finding that a Wetlands Functions and Values Assessment had been performed using the New Hampshire Method for the Evaluation of Wetlands and that the proposed use will not conflict with the purpose of the Ordinance. Peter seconded. Vote yes 4-0.

Webb made a motion to grant a special exception from section 1103.11 of the Brookline Zoning Ordinance to reduce the wetlands buffer zone as required to execute the plan when approved by the Brookline Planning Board. Peter seconded. Vote yes 4-0.

Webb made a motion that the Board finds that the proposed use is essential to the reasonable use of land outside the Wetlands Conservation District and that no provisions for wildlife access corridor is required and that the Board acknowledges that the Conservation Commission had forwarded no requirements for the Wetlands Conservation District. Peter Seconded. Vote yes 4-0.

Webb made a motion to grant the special exception under Section 1106 of the Brookline Zoning Ordinance to permit the plan when approved by the Planning Board with the condition that the Wetlands Permit is approved by the State. Peter seconded. Vote yes 4-0.

Minutes

Kristen said she was looking back at the minutes and believes that they never made a motion to approve the minutes of the December 11, 2013 ZBA meeting. She asked that the Board review the minutes and they could approve them tonight.

Peter made a motion to approve the minutes of December 11, 2013. George seconded. Vote yes 3-0.

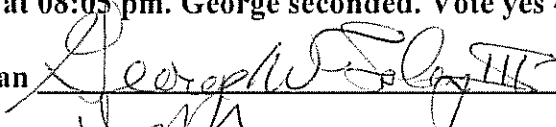
Webb made a motion to approve the minutes of November 04, 2015 as written. George seconded. Vote yes 3-0.

Webb made a motion to approve the minutes of October 14, 2015 as written. George seconded. Vote yes 3-0.

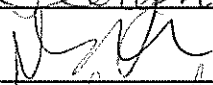
Adjourn

Peter made a motion to adjourn at 08:05 pm. George seconded. Vote yes 4-0.

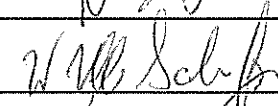
George Foley, Member, Chairman



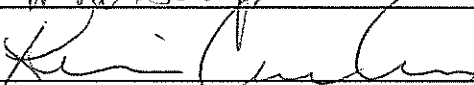
Peter Cook, Vice- Chairman,



Webb Scales, Member, Clerk



Kevin Visnaskas, Member



Minutes submitted by Kristen Austin

