



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

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**BOARD OF ADJUSTMENT  
MINUTES**

**Wednesday, May 11, 2016  
7:30pm**

**Present:** George Foley, Member, Chairman  
Peter Cook, Vice Chairman  
Webb Scales, Member, Clerk  
Kevin Visnaskas, Member  
Marcia Farwell, Member  
Charlotte Pogue, Alternate (Voting for Peter Cook)  
Jill Adams, Alternate (Voting for Marcia, Case 393)

**Absent:** Peter Cook, Vice Chairman

**Appoint / Reappoint a Chairman, Vice-Chairman, and Clerk for the 2016-2017 year**

Webb made a motion to reappoint all of the last year's delegates for this upcoming year. Charlotte seconded. Vote yes 5-0.

George asked Charlotte to vote for Peter tonight. Charlotte agreed.

Marcia recused herself from this case. George asked Jill to vote for Marcia for Case 393. Jill agreed.

**Case 393**

In attendance for this hearing Jerry Farwell, Owner/Applicant, Gina Bent (abutter), Mark Lutton (Abutter), Clarence Farwell.

George read the hearing notice "Notice is hereby given that a hearing will be held at or about 7:30 p.m. on Wednesday, May 11, 2016 in the Town Hall meeting room. Applicant Gerald Farwell for Brookline Barrel Mill, LLC is requesting a Variance from Section 502.00 of the Brookline Zoning Ordinance to allow a residential duplex on a commercial lot. Lot H-107 located at 25 South Main Street consisting of 1.172 acres."

George asked if fees had been paid and abutters notified. Kristen said yes to both.

Webb said in 1984 the previous owner had come to the Zoning Board also requesting a variance to allow a duplex on this lot. There is case law that states the Zoning Board cannot hear the same case twice so they will first need to find that this is not the same case. The original Variance application stated it was a residential zone. This lot is now a commercial/agricultural zone. This building was renovated and became a residential use in 1986 per the building permit on file in the Building Inspectors office. The Zoning Ordinance does allow a residential use on a commercial property if it was done before 1992. This lot is different due to a subdivision and lot line adjustment there is now less acreage.

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The Board agreed this lot and the building has changed and this would not be the same case. **Webb made a motion that the Board finds that a material change of circumstances affecting the merits of the application has occurred, and therefore, per Fisher v. City of Dover, they can proceed to consider the merits of the case. The change of circumstances is that the State Supreme Court and State Legislature have changed the requirements for granting a variance since the last case was heard. Kevin seconded. Vote yes 5-0.**

**Jerry** said he would like to turn 25 South Main Street into a duplex he showed the Board photos of the property as it is already set up to be a duplex. There are two staircases to the upstairs one the south side and one on the north side, two furnaces in the basement, two rear doors, and two front doors. The only thing he will need to add is the second kitchen. This has a five bedroom septic system and a letter from Meridian Land Service that states this septic is adequate for this site. **Jerry** said the State has said there is a growing need for affordable housing. This will help with that need. He has already painted the interior and refinished the floors. The exterior will be painted also. **George** asked when this was last a residence. **Jerry** said 2 months ago.

**Gina** said she was the owner and it was used for storage before they bought it and they had done all the upgrades when they converted it into a residence. This building didn't even have electricity. **Webb** stated that in 1996 this was a permitted use. A building permit was obtained. Now this lot is in the commercial district.

**Webb** read Zoning Ordinance section 502 Uses permitted (j.) Residential dwelling units existing prior to March 14, 1992 and home businesses within these units subject to the provisions of Section 1700.

**Webb made a motion to find that the original building permit for the original residence was issued properly based on the Boards reading of 1996 article 4 Section B (12) of the 1996 Brookline Zoning Ordinance. Kevin seconded. Vote yes 5-0.**

**Webb** said it was not a duplex up to this proposal. **Jerry** said it was not. **Webb** said this is still in the commercial zone and has been a non-conforming use since 2014 but the use is grandfathered. **George** read Section 800.01 a. of the Zoning Ordinance which states "Any nonconforming use may continue in its present use, however, it shall not be changed to another nonconforming use." This will be changed from a simplex to a duplex. **Jerry** read section 800.01(3) of the Zoning Ordinance which states "Any increase in heated living space which, in the judgment of the Zoning Board of Adjustment, is capable of increasing the number of bedrooms for a nonconforming dwelling or lot, may require that the septic system be approved by the NH Division of Water Supply and Pollution Control and the Town of Brookline in accordance with the provisions of RSA 485-A:38 and the Town's regulations for the number of bedrooms currently in the home or proposed for the home." **Jerry** states that the expansion will not change the original interpretation. **Webb** stated he believes he would need to request a Special Exception from section 800 of the Zoning Ordinance. **George** read section 502 (j.) of the Zoning Ordinances and stated that nothing allows for a residential use in a commercial zone except the date. **George** asked how this was a change of use changing this building to a duplex is still a residential use. **Webb** agreed you cannot change the use but this would be another non-conforming use for this lot. **Kevin** said this would be an expansion of the use. **Webb** said he thought **Jerry** should be applying for a special exception from section 800 and this should be a whole new hearing. **Jerry** agreed. **Kevin made a motion that the Zoning Board finds that a change from a single family residence to a duplex would not be a change of use but an expansion of the non-conforming use. Therefore, the applicant would need to apply for a Special Exception from section 800 of the Brookline Zoning Ordinance. Jill seconded. Vote yes 5-0.**

**Jerry** said he would like to withdraw the variance application and reapply at a later date for a Special Exception.

#### **Case 394**

In attendance for this hearing Bennett Chandler, Owner/Applicant.

**George** read the hearing notice "Notice is hereby given that a hearing will be held at or about 8:00 p.m. on Wednesday, May 11, 2016 in the Town Hall meeting room. Applicant Bennett Chandler for Canney Hill Development, LLC is requesting a Variance from Section 1503.04/1505.04 of the Brookline Zoning Ordinance requesting the removal of the 50' subdivision buffer requirement. Lot J-24-31 located at 12 Wildwood Drive consisting of 1.782 acres."

**George** asked if fees had been paid and abutters notified. **Kristen** said yes to both.

**Bennett** said with so much going on he just didn't realize that the 50 foot subdivision buffer was located on this lot. Due to the 20 % slopes of this lot it would be difficult to build a home and not have it located in this 50 foot buffer area. The slope also makes the front part of this lot unusable. This is also a view lot if he put the house anywhere else it would devalue the property. He is looking for relief of this buffer. He owns all the abutting lots and the nearest house on the buffer side of this lot is his home. It is 350 feet away from this lot and all wooded. **Webb** asked if his lot G-51 could be subdivided again. **Bennett** said it could be yes. **Bennett** said the driveway will come up around the back of the lot. **Charlotte** asked if that was a more level area to build the home. **Bennett** said they put the driveway there so they could exploit the view on this property. **George** said the whole purpose of this buffer in an open space development is to allow less acreage per house lot and add the 50 buffer for all the surrounding residences from this more intensive use. **George** read section 1503.04 of the Brookline Zoning Ordinance which states "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." **Bennett** said this is the only logical place to put the house. In this subdivision the driveways are located on the side of the house and that garage doors do not face the road. **Kevin** said the developer is also the only affected abutter to this lot. **Bennett** said that's correct. **Webb** asked if he could do a lot line adjustment with lot G-51. **Bennett** said he could but that would affect the current use status of his lot. They also have a Purchase and sales agreement in place for lot J-24-31. **George** said he would rather see a lot line adjustment than a variance to remove a buffer. **Kevin** asked if the buffer could just be placed on lot G-51 the other side of this lot line. The Board agreed that would work. **Bennett** said he has no issues with that. Could add an easement to that property for 50 feet on the other side of the lot line. **Webb** agreed that would work. **George** said move the no build area to lot G-51 with an easement would work then the 50 foot buffer will still be in place. **Webb** said Bennett would need to amend the subdivision plan and speak with the Planning Board. **Bennett** said he will contact Meridian Land Services to have something ready for the next Planning Board meeting. **Webb made a motion to find that the site perimeter buffer in Section 1503.04 of the Brookline Zoning Ordinance can be on either side of the property boundary. In this case, the applicant is able to move the site perimeter buffer to the other side of the property line because the applicant owns the lots on both sides of the boundary. Kevin seconded. Vote yes. 5-0.**

Webb made a motion that the applicant doesn't need the variance. Seconded by Kevin. Vote yes 5-0.

The Board requested the applicant present a copy of the revised recorded deeds detailing the continuous 50 foot subdivision buffer easement location on lot J-24-31 and the adjoining lots G-51 and G-51-4 along with a copy of the amended subdivision plan showing the location of the buffer in order to obtain the building permit.

#### Code of Ethics

Marcia made a motion to accept the code of ethics as recommended by the Selectboard at the April 11, 2016 Selectboard meeting. Kevin seconded. Vote yes 5-0.

#### Zoning Board Rules of Procedure

Marcia made a motion to accept the Zoning Board Rules of Procedure. Kevin seconded. Vote yes 5-0.

#### Minutes

Webb made a motion to approve the March 30, 2016 minutes of the Zoning Board of Adjustment meeting as written. Peter seconded. Vote yes 4-0.

#### Adjourn

Marcia made a motion to adjourn at 10:15 pm. Jill seconded. Vote yes 5-0.

George Foley, Member, Chairman

Webb Scales, Member, Clerk,

Marcia Farwell, Member

Kevin Visnaskas, Member

Charlotte Pogue, Alternate,

Jill Adams, Alternate,

Minutes submitted by Kristen Austin