



TOWN OF
BROOKLINE, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES
Wednesday, July 13, 2016
7:30pm

Present: George Foley, Member, Chairman
Peter Cook, Vice Chairman
Webb Scales, Member, Clerk
Marcia Farwell, Member
Kevin Visnaskas, Member
Jill Adams, Alternate

Absent: Charlotte Pogue, Alternate

Case 397

In attendance for this hearing George Razzaboni (Applicant), Randy Haigh (Meridian Land Services Inc.), and Robert Riedel (abutter -18 Oak Hill Road).

George read the hearing notice “Applicant Razzaboni Home Builders, Inc. is requesting an Equitable Waiver of Dimensional Requirements under Section 1105.01 of the Brookline Zoning Ordinance to allow the construction of a leach field and a septic tank within 100’ of a wetland and under section 1106.02 to allow the construction of a driveway within 40’ of a wetland. This is for lot K-28-2, Located at 3 Quigley Way consisting of 2.119 acres”

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

Peter asked Randy if he attended the Conservation Commission meeting last night to discuss this application. **Randy** said because it has to do with wetland he presented this to them to see if they had any concerns. **George** stated the Conservation Commission had sent a letter to the Zoning Board members that states “At the July 12, 2016 Conservation Commission meeting Randy Haight, Meridian Land Services, discussed the plan for lot K-28-2 (ZBA Case 397). The Board agrees with Meridian Land Service’s conclusion in regards to the placement of the leaching field being that this is the only place it could go on this lot. The Board is in support of the Zoning Board granting the Application for an Equitable Waiver of Dimensional Requirements for the leach field placement and the driveway placement in the setback.”

Randy said this lot was created in 2013 along with three others. At that time the wetland area to the north shaped like a donut was not noticed. The state inspector was also out and he didn’t notice this

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wetland either. Since then all the land was sold and Quigley Way was built. When they cleared lot K-28-2 and were digging test pits they noticed this donut shaped wet land. **Randy** showed photos of the wetland area to the Board. The soil in this area is sandy gravel above and till underneath. There is nowhere on this lot to put a leach field 125 feet from the wetlands. **George** asked just to clarify that the northerly wetland is not listed on the original subdivision plan. **Randy** said that is correct the northerly donut shaped wetland was just discovered. **Randy** said inside the donut shaped wetland is about 700 square feet of dry land. **Randy** said he has submitted a letter stating the low functional value of this wetland which is why the State only requires a 50 foot buffer from a wetland of this nature. **Webb** stated that on the plan there is figure of total dry land and a number for wet area but if added together it doesn't add up to the total square footage of the lot. **Randy** said it may not the total amount of dry land is the total amount of contiguous dry land it is listed so the Board knows it meets zoning.

Marcia asked if the house has been started on this lot yet. **Randy** said no they were digging test pits when they discovered this wetland and knew they wouldn't make the required 125 feet setback. **Randy** said the furthest away from the wetlands he can move this leach field is 100 feet. **Bob Riedel** asked if he would need to be concerned with anything draining onto his property. **Randy** explained there was no way anything would be able to drain onto his property from where this leach field is situated.

George said there are four criteria that need to be met in order to grant an Equitable Waiver of Dimensional Requirements.

George read the criteria's:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.

The Board agreed this has been met. **Webb made a motion that the Board finds this case meets part (a) of the criteria required. Peter seconded. Vote yes 5-0.**

George read:

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

The Board agreed this has been met. **Webb made a motion that the Board finds this case meets part (b) of the criteria required. Peter seconded. Vote yes 5-0.**

George read:

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.

Webb said he has an issue with this section as applied to all wetlands but would be fine with this section if it only applied to the northerly wetland. Currently the septic system is being placed in between two wetlands if one is a lower functioning value can the septic be moved 25 feet to the north to the second

test pit area listed on the plan, this way the Town's 125 foot setback requirement is met for the southern wetland and the States required 50 foot set back is also met for the northern wetland listed. Then they are only granting a waiver for the newly discovered northern wetland area. The Board agreed. **Randy** said he could move the septic to the north as Webb suggested. He verified the measurement were correct and met the States requirement of 50 feet to the northern wetland and the Town's requirement of 125 from the southern wetland. With this change the Board agreed that criteria (c) has been met.

George made a motion that the Board finds this case meets part (c) of the criteria required as it pertains to the northerly wetland area. Webb seconded. Vote yes 5-0.

George read:

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

Randy said there are a couple of things that could be done to correct this error both are costly. You could add a catch basin and extent the pipe out for drainage or you could apply for a dredge and fill permit. The Board agreed this has been met. **Marcia made a motion that the Board finds this case meets part (d) of the criteria required. Webb seconded. Vote yes 5-0.**

Marcia made a motion to Grant the Equitable waiver of Dimensional Requirement to allow the construction of the septic system within 125 feet of the northern wetland but not less than 50 feet. Webb seconds. Vote yes 5-0.

Randy said the only thing left is the driveway. The turnaround by the garage will be in the setback.

Webb read section 1106.02 of the Brookline Zoning Ordinance:

"1106.02 The following uses shall be permitted in the Wetland Conservation District without a special exception, provided applicable erosion control measures are in place, there is repair and restoration of any disturbed areas and all available mitigation measures to address changes in water quality and quantity as required by Town Staff and recommended by the Conservation Commission are employed. However, all projects listed below together with any disturbance of the buffer zones involved therein shall be presented to the Conservation Commission, with a request for review in writing, as required by the New Hampshire Wetlands Bureau, for its intervention, opinion, recommendations and/or approval.

- a. Streets, roads, driveways and other access ways and utility right of way easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the Wetlands Conservation District."

Randy said he did present this to the Conservation Commission last night and they had no issues with this either.

The Board agreed this use is permitted already.

Marcia made a motion to find that the use of a driveway is permitted per Section 1106.02 (a) of the Brookline Zoning Ordinance so no equitable waiver is required. Webb seconded. Vote yes 5-0.

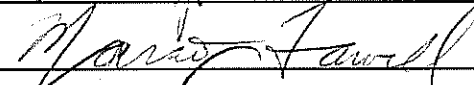
Adjourn

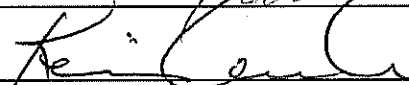
Marcia made a motion to adjourn at 8:30 pm. Kevin seconded. Vote yes 5-0.

George Foley, Member, Chairman 

Peter Cook, Vice Chairman, _____

Webb Scales, Member, Clerk 

Marcia Farwell, Member, 

Kevin Visnaskas, Member 

Minutes submitted by Kristen Austin