



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, November 4, 2015

**Present:** George Foley, Member, Chairman  
Webb Scales, Member, Clerk  
Kevin Visnaskas, Member  
Charlotte Pogue, Alternate (voting for Peter)  
Jill Adams, Alternate (voting for Marcia)

**Absent:** Peter Cook, Vice Chairman and Marcia Farwell, Member

**George** opened the meeting. He asked that Jill vote for Marcia Farwell and Charlotte to vote for Peter for tonight's meeting. They both agreed.

**Case 389**

In attendance for this hearing: Fire Chief Charles Corey.

**George** read the hearing notice: "The Brookline Fire Department is requesting a Variance from Section 1103.01 of the Brookline Zoning Ordinance. To allow the construction of a cistern within the 50 foot wetland buffer. Lot H-31 is located at 4 Bond Street."

**George** said abutters have been notified.

**Charlie** said they would like to install a 10,000 gallon cistern so the Fire department can fill the trucks inside the station. When this is completed it will look like the lawn again. The only thing you will notice is a pipe. This will be filled from or well. **George** asked if they draw from the river now. **Charlie** said yes they do but everything in the river is old and to excavate that out of the river would be worse. That needs to be replaced and that would be more costly. **George** asked if this will run the well pump out. **Charlie** said this cistern will fill up slowly and it will be set up with an automatic shut off if there is a big demand on water. **Charlie** reviewed the plan with the board. **Webb** asked why they wanted to build the tank here. **Charlie** said this is the best place to put it due to the water table. There is really no where we can go without being in the buffer. Once we get approval from the Zoning Board they will need approval from the State.

**George** read the application:

1. Granting the variance would not be contrary to the public interest because:

**Applicant Answer:** It's going to be in the ground.

**George** said the public interest would be the Fire Department having water.

**Charlie** said they didn't want it to be an eyesore. **Webb** said he thought the public interest would be to protect the water and the land around it he believes the public interest is sustained in this case. This will be a structure that will hold water which will be installed as to not modify the surface.

2. If variance were granted, the spirit of the ordinance would be observed because:

Applicant Answer: the cistern will be below ground.

**George** asked if they will be adding two feet of dirt on top. So this will be an impermeable surface and the water will be able to absorb into the ground and to the river. **Charlie** said this will be flush to the ground and they will bring it back to what it was before.

3. Granting the variance would do substantial justice because:

Applicant Answer: it will give the fire department a valuable water source.

4. If the variance were granted, the values of surrounding properties would not be diminished because:

Applicant Answer: Landscaping will ensure that no modifications will be evident.

**Charlie** said they have finished the monuments and now the cistern, in the end it will be all nice grass with bushes planted and flowers you won't even notice that this cistern is there.

#### 5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

**George** said this was left blank. In this case there is really no other place to put this cistern. **Webb** said the issue is that the ordinance is here to protect the ground and in his opinion there is nothing about this property that applies here or makes it unique. **Kevin** asked if the Topography had anything to do with this being a unique property. **Webb** said the question is whether there is a fair and substantial condition.

And

ii. The proposed use is a reasonable one because:

Applicant Answer: This will allow us to fill our fire trucks inside in the cold weather in the station. We can be thawing the fire trucks and filling with water at the same time.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to 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 a variance is therefore necessary to enable a reasonable use of it.

**George** said supplying water to the fire trucks is an acceptable use.

**Webb made a motion to grant the variance request in case 289 to allow the cistern to be constructed within the 50 foot wetlands buffer varying the provisions of section 1103.01 of the Brookline Zoning Ordinance. Charlotte seconded. Vote yes 5-0.**

### **Case 390**

In attendance for this hearing: John and Margaret Monachelli (Applicants) and Francis Gavin (contractor). **George** read the hearing notice; "Applicant Margaret Monachelli is requesting a Variance from Section 1701.01 of the Brookline Zoning Ordinance, to remain in compliance as a home business, a Variance from Section 1702.02 to operate in no more than 3,000 sf, a Variance from Section 1702.03 to allow the addition of 40'x 26' to the existing home business, a Variance from Section 1702.05 to permit up to 12 employees at any time, in addition to home inhabitants, to work on the premises, and a Variance from Section 800.03 to allow the 40'x 26' addition that will be in line with the front of the house, located in the front setback. Lot K-26 is located at 49 South Main Street, consisting of 1.500 acres."

**George** said fees have been paid and abutters have been notified.

**Margaret** said they had come before the Zoning Board in 2008 prior to buying the property but with the intent to renovate the barn and use up to 3,000 sf of the barn with 9 employees. At that time that had applied for most of these variances. When they purchased the property and had the final ok from the Town to have the home business the economy tanked and the renovation to the barn was going to be too costly. In 2011 they had built an addition and opened the business in 2012 in the home. They have been doing very well and are at a point that more space is needed. **Margaret** approached the Board to review the plan. **Margaret** noticed the plan was incorrect and didn't have the first addition that was built in 2011. **George** stated the plan was dated in 2008. **George** asked what the setback from the property was. **Francis** said it was 30 feet from the center line of the road. **Webb** said in the previous case for the first addition we established that the addition was going to aggravate the setback. This new addition will be closer to the road and will further aggravate the setback. **George** asked how far into the setback this new addition would be. **Francis** said he is not sure he didn't measure that and does not have a plan with those measurements. **George** read section 1701.01 of the Brookline Zoning Ordinance "1701.01

**Definition of a Home Business** - A small-scale business operated within a residence and/or accessory structure whose primary commercial activity takes place at the location of the residence and/or the accessory structure or a business in which employees, other than employees who are residents of the home, are required to be on the property in a work related capacity. The business must be incidental and subordinate to the use of the lot for residential purposes and not detract from the residential character of the lot. All home businesses must comply with the criteria set forth in Section 1702.00 through Section 1706. (March 10, 2004)" **Margaret** said they had applied for a home business and they live there. **John** said they were approved for no more than 3,000 square foot home business. **Webb** said section 1701.01 is the definition of a home business and he doesn't feel like he could vary a definition. **Margaret** they are already functioning as a small business. **John** said we have already been approved to have a home business up to 3,000 sf. **Kevin** asked with the new addition what would the square footage of the home business be. **John** said it will still be under 3,000 square feet after the addition is finished. **Kevin** said if this was granted up to 3,000 sf for the home business at the previous meeting that would imply that they will still be in compliance with the first variance request. **Webb** said yes but there are a number of hurdles that they will need to get through tonight. We don't have a variance application for the section (1705.05) that calls for the number of business related car trips to and from the property to be under 24 per day. **Webb** said this property is also unique because it is located on the outskirts of the commercial zone. **George** said at some point you may want to see if this lot could become part of the commercial

zone or dual use lots something like that may work out for you. You would need to discuss this with the Planning Board to change the zoning of a property. At this point there is no application for section 1705.05 of the Zoning Ordinance and they can only vary what has been requested. **Margaret** said she was not aware of that Ordinance she would need to figure out how many car trips there are a day currently. She believes they are under the 24 trips a day currently but would really need to look into it. **Webb** said they have already been approved for 9 employees a day if they drop the request for the 12 employees it may make this easier. **Margaret** said she currently has 7 employees they were approved for 9 at a previous Zoning Board meeting. She believes she will be able to keep it at nine for a few more years. She applied for a larger number of employees figuring she had to come before the Board anyways just in case 12 employees was need in the near future instead of coming back for another hearing. **George** said so far they have found that the home business is in compliance with most of these Sections.

**Webb made motion that the Board finds per the testimony for tonight's hearing that the existing business is in compliance with sections 1701.01, 1702.02, and 1702.05 giving the previously granted variance. Kevin seconded. Vote yes 5-0.**

**George** said this leaves section 1702.03 "No additions or changes shall be made to the residence that will make it impractical to revert the building to purely residential use." **Margaret** said even with the new addition this could easily be reverted back into a home. **Francis** said they would only have and x-ray machine which could be removed and sold and kennels that could be removed also.

**Webb made a motion that the Board finds that the changes to the property would not make it impractical to change back to a residential use. Kevin seconded. Vote yes 5-0.**

**Charlotte** read section 800.03 "**800.03 Nonconforming Structures**

Any lawful nonconforming structure existing at the time of adoption of this Ordinance, may be occupied, operated and maintained; however, any alteration, expansion or change of the structure that further aggravates a front, side or rear setback shall only be permitted by special exception in accordance with Section 800.01 c and the diagram below.

Proposal "C" requires a grant of variance by the Board of Adjustment, provided, however, that in addition to meeting the legal standard for a variance, the proposal also meets the general criteria for a special exception found in this Ordinance; Accessory structures that can meet the setbacks do not require a special exception."

**George** read section 800.01 Nonconforming Uses "c. Except for proposal "B" (see diagram in section 800.03), any alteration, expansion or change of a nonconforming use or structure shall only be permitted by special exception by the Zoning Board of Adjustment if it finds that:

1. The proposed alteration, expansion or change will not change the nature and purpose of the original use; and
2. The proposed alteration, expansion or change would involve no substantially different effect on the neighborhood; and
3. 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."

**Margaret** said they are not planning on adding bedrooms. They did put in an extra septic system. **Francis** said the extra septic system was new in 2009. The new addition will have a couple of sinks and a washing machine. They had discussed this with Tom at Meridian Land Services and he stated the septic system they have now is sufficient for this purpose. **George** said if this is converted into bedrooms they would need a larger septic system.

**George** read the variance application:

1. Granting the variance would not be contrary to the public interest because:

Applicant Answer: the existing house and 2012 addition is already located in the front setback. The new addition will just extend this encroachment toward the barn. Which is also encroaching into the setback.

2. If variance were granted, the spirit of the ordinance would be observed because:

Applicant Answer: the proposed expansion will not change the nature and purpose of the use already previously approved by the Zoning Board. The proposed expansion would involve no substantially different effect on the neighborhood.

3. Granting the variance would do substantial justice because:

Applicant Answer: Brookline Animal Hospital is an asset to the Town of Brookline. We provide convenient veterinary care for Brookline residents. We employ Brookline residents. We provide boarding and care for Brookline stray animals at no charge and to the town. We provide an annual rabies clinic for the town. We attract clients from all surrounding towns. We engage the service of local businesses to grow and maintain our business. (Ground maintenance, cleaning services, local contractors, snow removal, and tree services, etc.)

4. If the variance were granted, the values of surrounding properties would not be diminished because:

Applicant Answer: the structure and business are already existing and are maintained to appear attractive and appealing.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Applicant Answer: The existing structure is closer to the road than idea, however, that cannot be changed. In order to allow this business to continue to thrive and to continue to provide services to the community we need more room. The proposed addition is the only feasible way to expand.

And

ii. The proposed use is a reasonable one because:

Applicant Answer: The house and 2012 addition are already encroaching on the setback, as is the barn. We are simply asking to allow an extension between these already encroaching structures. Previous, 2012, addition and variances have been approved 11/16/2011.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship

will be deemed to exist if, and only if, owing to 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 a variance is therefore necessary to enable a reasonable use of it.

Applicant Answer: if we cannot physically grow our structure, Brookline Animal Hospital will have to stop seeing new clients and patients and our valuable services will be limited and all of our benefits to the community will be limited. Alternatively, if we need to move to a larger facility, we may be forced to leave town in order to grow and remain successful.

**Webb made a motion that the Board finds that the result of the proposed addition will leave a setback of 10 feet. Jill seconded. Vote yes 5-0**

**Webb moves to grant the variance for case 390 from article 800.03 permitting a 26'x40' addition as per plan in line with the front of the house further aggravating the setback. Jill seconded. Vote yes. 5-0.**

**Francis** asked what the next step was. **Webb** said a permit from the Building Inspector. **George** said you will also need to go back to the Planning Board because they are going off the old site plan. **Webb** said he highly recommends that you speak with Valerie but not sure if the applicant would need to go to the Planning Board as they are not changing the business. **George** said that is not a decision by the Board just a suggestion. He would recommends that she calls Valerie (Town Planner). **Margaret** asked about the final vehicle count but she will look into how many trips a day they have now. **Webb** said if that increases then you will need to come back to the Zoning Board to ask for a variance of that section.

#### Adjourn

**Kevin made a motion to adjourn at 10:35pm. Jill seconded. Vote yes 5-0.**

George Foley, Member, Chairman

Webb Scales, Member, Clerk

Kevin Visnaskas, Member

Jill Adams, Alternate,

Charlotte Pogue, Alternate

Minutes submitted by Kristen Austin