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

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

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

**BOARD OF ADJUSTMENT
MINUTES
Wednesday, August 08, 2018**

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

Absent: Kevin Visnaskas, Member and Charlotte Pogue, Alternate

George asked Jill to vote for Kevin. Jill agreed.

Case 413 A Special Exception

George read the hearing notice "Notice is hereby given that a hearing will be held at or about 7:30pm on Wednesday, August 8, 2018 in the Town Hall meeting room. Applicant Eric DiVirgillio is requesting a Special Exception under Brookline Zoning Ordinance Section 1103.11 to reduce the Wetlands Conservation District Buffer Zone to construct a storage shed and a Variance from Section 1505.03 to allow this shed to be built within the 15 foot rear setback for Lot D-55-32 located at 18 Powers Lane consisting of 1.217 acres."

George said fee have been paid and abutters notified.

Eric said he started construction before he received a building permit. The Building Inspector had come out and asked him to have it surveyed because it look as though the shed was slightly over the lot line. The survey did show it is over the lot line slightly.

George read the Building Inspectors letter *"Regarding the property, (lot D-55-32) it should be noted that the building in question is by definition a barn NOT a Shed, it is over 600 square feet in size and may have two stories, as indicated by the second floor joist being l-joint."*

Secondly this structure is already half built and is not, a "proposed" barn as this hearing notice would seem to describe.

Regarding the application asking for a variance from Section 1505.03 to allow this BARN (to be built) within the fifteen-foot setbacks. It is my opinion the wrong application, if I were asked it should be an equitable waiver of dimensional requirements. To which it would not pass muster.

The Applicant never applied for a building permit and was fully aware of his obligation to do so. In my opinion was fully aware of all the actions he was taking were not in compliance.

My suggestion is to move the barn to a location on the property that doesn't not meeting the zoning requirements."

Eric said he would like to speak to this letter. The proposed building is not going to be 600 square feet it will be 585 square feet. The span was ever 20 feet you need an I-Joist. He has no issues if he hasn't filled out the correct application he will do so but he doesn't believe that an equitable waiver of dimensional requirements would apply here. **George** read the Zoning Ordinance section 1103.11

1103.11 Reduction of the Wetland Conservation District Buffer Zone: A special exception for a reduction of the buffer zone may be granted by the ZBA if all the following conditions are met:

- a. A Wetland Functions and Values Assessment (using the New Hampshire Method for the Evaluation of Wetlands) be performed by a Certified Soil Scientist or Certified Wetland Scientist, at the applicant's expense.
- b. The results of this assessment indicate that the wetland is of such value that the proposed use will not conflict with the purpose of this Ordinance.
- c. Under no circumstances shall this apply to any designated Prime Wetland.

Eric said the Conservator Commission has provided a letter that stated they didn't have the functions and values test but find this is not a prime wetlands.

George agreed and read the Conservation Commission letter for the record

"At the June 12, 2018 Conservation Commission meeting the Board reviewed the plan submitted by you for a shed to be built on your property.

At this meeting the Board made a finding, as per Brookline Zoning Ordinance Section 1106, which stated "the Conservation Commission finds that this structure is not located in a Prime Wetland but the Conservation Commission have not had any ecological importance or hydrologic connectivity information at this time for lot D-55-32."

If you have any questions please feel to contact the BCC at 603-673-8855 ext. 216."

Marcia asked if the wetlands buffer is 50 feet. **Webb** said yes. **Marcia** asked **Eric** if he planned on moving this structure. **Eric** said he will cut it so it is on his lot. **Marcia** asked of this shed could be moved, **Eric** said the issue is where to move it to. **Eric** provide a map showing where everything is located on his lot house, septic area pool patio, gas tank, generator, etc. He also showed where there is a large area that is rock or ledge and he would not be able to build the shed on in that location. He believes this was his best option. **Peter** said there is nowhere to move outside the wetlands buffer to move this structure to. **Webb** said it would be easier to move the wetlands buffer. **Eric** said the Fieldstone Consulting report said this is not detrimental to the wetlands. **George** said this is the report for the soil scientist.

Kathy Havey (Abutter) asked if there was a building permit issued for this structure. **Webb** said the building inspector has asked him to stop building until this is resolved. **Kathy** asked what the proposed use of this shed would be. **Jill** said looks like it may just be a storage.

Kathy said wouldn't you want to know if there would be fuel or oil stored in this shed.

George read the letter of concerns from Brookline Resident Ann Somers :

"I have the following concerns about the request to remove the wetlands buffer:

1. *The restrictions on the property were known or knowable at the time of purchase.*
2. *Regarding "hardship," there is a pool installed where a shed might otherwise have been sited.*
3. *The shed construction has evidently taken place within the buffer prior to being permitted.*
4. *Sheds very often provide storage for gasoline; no promises can be made against future use.*
5. *If not to avoid such risks, what is the purpose of a buffer zone?*
6. *If this is allowed, how will it be possible to refuse others, and what is the purpose of having a buffer zone?*

Ann Somers (My Husband Loring Webster, shares my concerns)"

George said this is not a president setting Board whatever the outcome this is a case by case basis if it come before the Zoning Board. If this is allowed it doesn't mean the next one who asks for the same thing will also be granted it.

George said he also received an email from one of Eric's abutters that is unable to attend this meeting Ray Ross (abutter) stated in his email "*He has no issues with the Board granting Eric's request.*"

George said fi they reduce the wetlands buffer by 25 feet on this lot it will get it off this property. Steve Wagner (abutter) as if this has been discussed that this is an open space development. There should be a 50 foot no disturbance buffer around this entire development. Steve said they can see the shed from their kitchen window they wouldn't be here right now if he hadn't called the Building Inspector.

Webb made a motion to grant the special exception under Zoning Ordinance section 1103.11 to reduce the wetland buffer so the boundary line ends at lot D-55-32 but does not reduce it to less than 25 feet from the edge of the wetland. Jill seconded. Vote yes 5-0.

Case 413 B Variance

George explained that all five criteria must be met for a variance to prevail. Eric read through his application:

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

Applicant Answer:

The building is not adjacent to a buildable lot nor will it impede any sight distances, such as a roadway or driveway travel way. The location of the proposed structure has been surveyed and will not impede any contemplated uses of adjacent lands.

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

Applicant Answer:

The location of the proposed building has been surveyed and confirmed to be within lot D-55-3. The adjacent and surrounding land provides a minimum of a 50ft buffer from the lot line,

which more than compensates for the reduction in the lot setback. All access to the shed is from outside of the required setback.

3. Granting the variance would do substantial justice because:

Applicant Answer:

Open space development lots have less available land to be used and granting this variance will allow use of the only reasonable location for this building on this particular lot.

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

Applicant Answer:

There are no directly adjacent building lots to be impacted while the open space land provides separation from any nearby properties. The construction of a shed is common in the surrounding areas and would not be unusual.

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:

ii. The proposed use is a reasonable one because:

Applicant Answer:

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.

The Board made a finding that there are multiple reasonable locations on this lot D-55-32 for the proposed structure. The Board also found that there is nothing distinguishing this lot from any other lot in the neighborhood.

Based on the findings and the evidence from this hearing the Board made a motion to deny the request for a variance. This motion to deny was approved unanimously.

Minutes

Webb made a motion to accept the minutes of May 09, 2018 as amended. Jill seconded. Vote yes 4-0. Marcia abstained.

Marcia moved to adjourn at 8:50 pm. Seconded by Peter. Voted Yes 4-0.

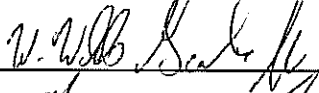
George Foley, Member, Chairman



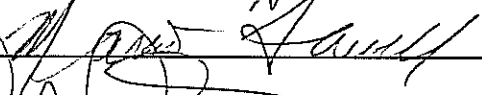
Peter Cook, Member, Vice-Chairman



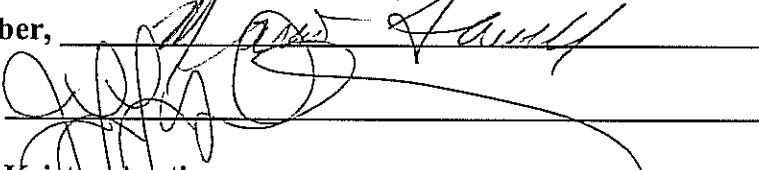
Webb Scales, Member, Clerk



Marcia Farwell, Member,



Jill Adams, Alternate,



Minutes submitted by Kristen Austin.

