



Telephone (603) 673-8855  
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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, June 12, 2019**

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

**Absent:** George Foley, Member, Chairman, Peter Cook, Member, Vice-Chairman

Dave Partridge is in attendance who is interested in being part of the Zoning Board.

**Webb** said in the absence of the Chairman and the Vice-Chairman the Clerk is the next one in line to run the meeting. **Webb** asked Charlotte to vote for Peter Cook and Jill to vote for George Foley. They both agreed.

**Appoint/Reappoint – Chairman, Vice-Chairman, and Clerk**

**Marcia** moved to reappoint George Foley as Chairman for the next year. **Jill** seconded. Vote yes 5-0.

**Marcia** moved to reappoint Peter Cook as Vice-Chairman for the next year. **Kevin** seconded. Vote yes 5-0.

**Marcia** moved to reappoint Webb Scales as Clerk for the next year. **Kevin** seconded. Vote yes 5-0.

**Case 415 Variance**

**Webb** read the hearing notice: Applicant Ender Ozgur is requesting a Variance under Brookline Zoning Ordinance Section 800.01 to allow a convenience store located at 12 Main Street Lot F-128 consisting of .2 acres.” **Webb** said fees have been paid and abutters have been notified.

**Webb** read Brookline Zoning Ordinance Section 901.00.

**901.00** Where a lot in separate ownership, the deed to which is duly recorded on or before 12 March 1968 and which is recorded and taxed according to the 1972 tax records of the Town of Brookline, NH, does not conform to the area and frontage

requirements of the zone in which it is located, such lot may be used for any purpose permitted in that zone on said date provided that such use conforms with the requirements of the Water Supply and Pollution Control Commission (WSPCC).

**Marcia** asked if he was here because the store was closed for over a year. **Webb** said he believes that is correct. If they can prove that it was a store before zoning then the applicant will not need a variance. After some research it states in the deed dated 1968 that this is the store lot.

**Marcia made a motion to find that this lot F-128 conforms to Zoning Ordinance section 900 and was a store lot before 1968. Kevin seconded. Vote yes 5-0.**

**Marcia made a motion finding that the variance is not required. Kevin seconded. Vote yes. 5-0.**

**Ender** thanked the board and stated he will have an organic store at this location; he had stores in New York and they were successful.

#### **Case 416 A Special Exception**

**Webb** read the hearing notice "Applicants David & Lisa Woolrich are requesting a Variance under Brookline Zoning Ordinance Section 1505.04 to allow the construction of a pool, the surrounding concrete decking, and a black chain link fence to be built in the 50 foot site perimeter buffer on Lot D-1-32 located at 25 Ames Road consisting of 1.409 acres." **Webb** said fees have been paid and abutter notified.

**David** said they would like to install an in ground pool on their lot. The plan presented is the only spot on the lot that would require the least amount of landscaping. There is a retaining wall in the front of the property and cannot put it there. He also spoke with his neighbors that it would directly affect and they had no issues with this plan. **Webb** said Lot B-80 is a lot that contains the 50 site perimeter buffer; if in the future this lot was developed they would also have the benefit of the 50 foot site perimeter buffer. **Marcia** said she is more concerned with the 15 foot setback. **David** said the pool is about 12 feet from the property line. The Board agreed per the Ordinances the fence can be in the setback but the pool itself can't be and suggested the pool be moved the 3 feet so it is not in the 15 foot set back.

**Webb** went through the application

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

#### **Applicant Answer:**

The in ground pool and supporting infrastructure will not be visible from the off the property and will result in no removal of substantial landscaping (i.e. removal of fully grown trees). There will be no impact on public interest.

**Webb** said tree removal from the buffer would concern him but it looks like they would not need to remove any trees from this plan.

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

#### **Applicant Answer:**

Pursuant with 800.01 our proposed in ground pool will not impact the nature and purpose of the current land and the current location is currently part of our lawn and is open and will not

involve any substantially different effect on the neighborhood as the proposed location is not visible from any location off property and will not involve any removal of substantial landscaping (i.e. removal of fully grown trees).

3. Granting the variance would do substantial justice because:

Applicant Answer:

The current space is used and maintained as a yard. Replacing the grass with a pool would not impact the intent of the statute.

**Webb** said the justice granted is that the applicant is improving his lot.

**Jill** said what is good for your lot is normally good for neighboring lots.

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

Applicant Answer:

The pool and surrounding infrastructure (concrete decking and fence) are not visible from the surrounding properties and would not impact their value.

**Marcia** said it isn't visible until lot B-80 is developed. **Dave Partridge** said even if you move the pool back 50 feet it will still be visible from Lot B-80 which looks like flat land.

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 location is on our private property and is not visible from any public or private land.

ii. The proposed use is a reasonable one because:

Applicant Answer:

The current location is already open, flat and private, requiring no substantial landscaping (i.e. removal of hills, building of retaining walls, etc.).

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:

The topography of the property does not allow for another installation location without creating significant financial hardship due to slopes, additional trees, and landscaping.

**Webb** said they need to find what's unique about this property. What would allow us to grant or deny this variance? **Marcia** said this subdivision has allowed for these smaller lots to be created and in her opinion that make this unique. **Dave** said if they move to pool over it will cost another \$15,000 to \$20,000 to build a retaining wall. Also, the way the house was placed on this lot it doesn't leave much room for a back yard. **Jill** said the applicants have put a lot of thought into where this pool would be able to go. **Marcia** said there would be a financial hardship here if they had to move it. **Webb** said it has to be a special condition of the property and not a financial hardship. **Kevin** said it looks as though the house was set back a little too far. The location of the house would be the unique quality of the property. **Jill** said how many lots in this subdivision have the 50 foot site perimeter buffer. The Board reviewed that subdivision plan. **Jill** said she doesn't find this to be an unnecessary request. **Marcia** agreed. **Webb** suggested they make a finding.

**Marcia** agreed. **Marcia** made a motion to find that no fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property and that the property cannot reasonably be used for a pool in strict conformance with the ordinance due to the topography of this lot, the location of the house, that there will be no additional tree removal to construct the proposed pool, and that the buffer is already open. **Kevin** seconded. Vote yes 5-0.

**Marcia** made a motion to motion to Grant this variance to allow the construction of a pool, the surrounding concrete decking, and a black chain link fence all to be built with in the 50 foot site perimeter buffer on lot D-1-32. **Kevin** seconded. Vote yes 5-0.

#### **Code of ethics**

**Marcia** made a motion to accept the code of ethics as recommended by the Selectboard. **Kevin** seconded. Vote yes 5-0

#### **ZBA Rules of Procedure**

**Webb** said they will need to add the new variance procedures to the Rules of procedure.

#### **Minutes**

They will need to review at the next meeting.

**Marcia** moved to adjourn at 8:40 pm. Seconded by **Kevin**. Voted Yes 5-0.

**Webb Scales, Member, Clerk**\_\_\_\_\_

**Marcia Farwell, Member,** \_\_\_\_\_

**Kevin Visnaskas, Member,** \_\_\_\_\_

**Charlotte Pogue, Alternate,** \_\_\_\_\_

**Jill Adams, Alternate,** \_\_\_\_\_

**Minutes submitted by Kristen Austin.**



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**Conservation Commission**

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**Recommended Code of Ethics**

Non-Binding Resolution passed at the March 2005 Town Meeting:

**1. Purpose**

The proper operation of democratic government requires that public servants be independent, impartial, and responsible to the people; that government decisions and policy be made through the proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government members to perform their duties without conflicts between their private interests and those of the citizens they serve.

The purpose of this code is to establish guidelines for the ethical standards of conduct for public servants. As such, the Town of Brookline

- Expects our public servants to act in the best interest of the town.
- Expects public servants to disclose, whenever possible, any personal, financial or other interests in matters affecting the town that come before them for action.
- Expects public servants to remove themselves from decision making if they have a conflict of interest.
- Expects public servants to be independent, impartial, and responsible to their fellow townspeople in their actions.
- Expects that the public servant's decisions and policies be made through the proper channels of government.

**2. Definitions**

**Conflict of Interest** – A situation or circumstance where a public servant's personal, pecuniary or financial interests have the potential to interfere with the proper exercise of a public duty.

**Pecuniary Interest** – Any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public at large, such as tax reduction or increased prosperity of the town.

**Personal Interest** – Interest in a matter, aside from official interest as a function of a public servant's position, which is more direct than that of the public at large and would influence the action of the public official.

**Public Servant** – All officers and employees of the Town, whether elected, appointed, paid, volunteer, or anyone acting in a position other than as a member of the general public. A person is considered a public servant upon their election, appointment, or designation as such, although they may not yet officially occupy that position.

**Recuse** – To remove or excuse oneself from participating in a specific action or discussion due to a conflict of interest. Recusal means to remove oneself completely from all further participation as a public servant in the matter in question. Public servants who have been recused shall immediately leave the room or shall seat themselves with the other members of the public at large who are present. When recused, public servants shall not participate in further discussions unless they clearly state for the record that they are doing so only as a general member of the public. A recused public official is effectively a member of the general public and shall not deliberate nor vote on the matter in question.

### **3. Code of Ethics**

Public servants shall avoid conflicts of interest.

Public servants shall recuse themselves and shall not take part in the decision-making process of any matter before the town in which they have a personal or pecuniary interest. Members of the Planning Board and Zoning Board of Adjustment are further bound by the provisions of RSA 673:14.

Public servants shall not directly or indirectly solicit gifts or accept or receive any gift (whether in money, services, loans, travel, entertainment, hospitality, premises or in some other form), under circumstances in which it could be reasonably inferred that the gift was intended to influence them in the performance of their duties or was intended as a reward for any recommendation or decision on their part.

Public servants must not disclose or improperly use confidential information obtained in the course of their duties.

No public servant shall use town letterhead or stationary for any purpose other than official town business. Members of boards, committees, and commissions may only use town letterhead for purposes approved by their respective board, committee or commission.

No member of a board, committee, or commission shall speak on behalf of their respective board, committee or commission unless authorized to do so by their respective board, committee, or commission. This is not to suggest that individual members cannot speak publicly, but rather to emphasize that they should clearly state they are speaking only on their individual behalf and not represent himself or herself as speaking for the board, committee, or commission.

Adopted by Board of Selectmen – June 13, 2011

Adopted by Board of Selectmen – April 2, 2012

Adopted by Selectboard – April 1, 2013

Adopted by Selectboard – March 17, 2014

Adopted by Selectboard – March 30, 2015

Adopted by Selectboard - March 28, 2016

Adopted by Selectboard – April 24, 2017

Adopted by Selectboard – April 9, 2018

Adopted by Selectboard – May 6, 2019

Adopted at the Zoning Board Meeting June 12, 2019 meeting:

George Foley, Member, \_\_\_\_\_

Peter Cook, Member, \_\_\_\_\_

Webb Scales, Member, \_\_\_\_\_

Marcia Farwell, Member, Marcia Farwell

Kevin Visnaskas, Member, Kevin Visnaskas

Charlotte Pogue, Alternate, Charlotte Pogue

Jill Adams, Alternate, \_\_\_\_\_

