



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

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**BOARD OF ADJUSTMENT
MINUTES**

**Wednesday, October 9, 2019
7:30pm**

Present: George Foley, Chairman
Webb Scales, Member, Clerk
Marcia Farwell, Member (left at 8:50pm)
Kevin Visnaskas, Member
Dave Partridge, Alternate, (voting for Peter)

Absent: Peter Cook, Vice Chairman, Charlotte Pogue, Alternate and Jill Adams, Alternate

George asked Dave to vote for Peter. Dave Agreed.

Case 420

George read the hearing notice "**Applicant Jeremiah Boucher, Patriot Holdings, LLC (for lot Owner Gulla Real Estate Holdings, LLC)** is requesting a **Variance** from Brookline Zoning Ordinance **Section 503.02 b** to allow the construction of a structure within the 15 foot side and rear lot line. **Lot K-23-3** is located at **63 Route 13** consisting of **2.299 acres.**" George said abutters have been notified and fees have been paid.

Mike Ploof from Fieldstone Land Consultants, PLLC is here to represent Jeremiah Boucher with Patriot Holding LLC and Gulla Real Estate Holdings LLC. The subject parcel (Tax Map K Lot 23-3) is presently zoned Industrial/Commercial. The total area of the existing lot is 2.299 acres. The existing facility consists of four identical 30' by 120' self-storage buildings. The applicant is proposing to expand the current self-storage facility by adding two more self-storage buildings. One proposed building will be along the existing pavement at the rear of the site and lie no more than 5' from the lot line. The building is designed to be 20' by 190' and then step to 10' by 80' as depicted on the attached concept plan. The second building shall be constructed along the pavement in the northern portion of the site. It will be 10' by 70' and will be situated at least 5' from the side lot line.

Dave said so you will be constructing this rear building 5 feet from the property line. **Mike** said that is correct.

Mike read from the application he submitted:

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

Granting this variance would allow for the continued productive use of the existing property. The construction of the building to the rear of the site will provide permanent buffering to the residential properties as the building will block all activities and the doors will be internally facing. The building that is proposed along the north portion of the lot in the side setback will provide screening to the industrial activities to the north. Currently the abutting property to the north stores construction materials near the property boundary and the processing of this material creates a fair amount of dust that makes its way into the rental units. The construction of a building in this location will help shield this activity and the dust. Both of these buildings are proposed to improve buffering to the neighboring properties while providing for a local storage need as the existing facility is at capacity. For these reasons we believe this proposal will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. Therefore, granting this variance would not be contrary to the public interest.

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

We believe the spirit of the ordinance is to provide acceptable building setbacks so that there is harmony in neighborhoods with adequate buffering and separation between properties. The proposed expansion is designed to improve the buffering to the surrounding properties between the various uses. This proposal would also maintain the existing foliage buffers with the surrounding properties. When you contemplate this factor, we believe this proposal is in spirit with the ordinance. This project will also increase the Town tax base and will allow reasonable use of the subject property with no measurable negative impact on the neighborhood, the public health, safety or welfare. For all of these reasons we believe that granting the variance would observe the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Substantial justice is done when the loss of denying a variance exceeds the gain to the general public in strictly enforcing the ordinance.

In this instance granting this variance would allow for a more productive use of the property while providing for additional buffers to the neighboring properties. The proposed use would be consistent with its surroundings and the proposed layout would provide adequate buffering to the abutting properties. This project would have minimal impacts on local services and provide a service to local residential properties. Thus, granting this variance will do substantial justice to the owner.

4. Granting the Variance would not diminish the value of surrounding properties because:

This proposal consists of allowing a commercial building to be constructed within the lot line setback. The current use is already self-storage and the decreased setback will not require the removal of any landscaped buffers. The lot line between the subject parcel and the site to the north, Tax Map Parcel H-104, currently has no landscaping. A concrete block retaining wall that lies on the adjacent property is the only feature. The tree line to the east of the property follows the lot line that the subject parcel shares with H-106 and K-23-2. Construction of an additional building within the setback would not change the foliage in the setback area and would actually improve the buffering of all activities both on-site and off-site. Granting this variance, therefore, will not result in a diminution of property values for surrounding properties.

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:

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

We believe the spirit of the ordinance is to provide acceptable building setbacks so that there is harmony in neighborhoods with adequate buffering and separation between properties. The proposed expansion is actually designed to improve the buffering to the surrounding properties between the various uses. This proposal would also maintain the existing foliage buffers with the surrounding properties. The proposed buildings will increase the buffering to the residential properties, will aid in blocking any dust from entering the rental units and will buffer the site activities between the two industrial properties. When you contemplate this factor we believe this proposal is in spirit with the ordinance and no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the subject property. This proposal will result in improvements to the neighborhood, will result in an increase the Town tax base and will allow reasonable use of the subject property with no measurable negative impact on the neighborhood, the public health, safety or welfare.

2. The proposed use is a reasonable one because:

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- Granting this variance would allow for a more productive use of the exist property.
- This development will be in harmony with the neighborhood and will not result in negative impacts to the surroundings.
- The development is sensitive to the surroundings and proposes a layout that improves buffering to the adjacent properties and associated improvements.

For all of the reasons we believe that the proposed use is reasonable.

B. Explain how, if the criteria in paragraph (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 existing property is small in size and is situated at a higher elevation to the abutting properties. The best way to improve the buffering to the adjacent properties is to position smaller buildings around the perimeter of the property where possible. The buildings will block all on-site activities to the residential properties and will block any dust and site activities between the two industrial properties. The special conditions of the property in our opinion make this the best proposal for the design of additional buffering and the expansion of the facility.

Kevin asked if this was the same owner as the existing units. **Mike** said yes, it is, and the original four building area at max compacity. **Kevin** asked if the neighbors had asked for this to be buffered. **Mike** said no, the main issue is the commercial lot to the north the dust that is created from that lot blows onto this lot and into the buildings. The proposed building to the north will buffer the original buildings from the dust. **George** said they must find what is unique about this property to issue a variance. **Mike** said this will lighten up the amount of dust that is getting into the existing units. **Marcia** said they are proposing a buffer because they don't have anything buffering this lot right now. **Dave** agreed that adding the building to the north would add the buffer from the dust created by the abutting lot. But is that a significant enough reason to vary the ordinance for the rear building. They could add a smaller building in the back and keep it out of the set. **Webb** asked if this will have security lights all around the building. **Mike** said there will be no access to the back of the new building to be built in the rear of the lot (easterly side) only the front will be lit. **Marcia** said this will be it for new buildings in the future. **Mike** said after these are built there will be no more room on this lot. **Marcia** asked how many more units this building will provide. **Mike** said he wasn't sure of the unit configuration so he doesn't know how many new units this would bring. **Webb** said this new building to the north would create a much needed buffer from the dust created by the commercial lot to the north. **Dave** said if you chopped off 60 feet of the building to the back you would no longer be violating the buffer. **Mark Fessenden** (Abutter Lot K-23-2) said he is an abutter to the rear of the property. He has spoken to Mr. Gulla about the plans to build the new buildings and he has no issues with it. **Mark Fessenden** said the lighting that they have installed now doesn't bother him and with the new building to the rear it would buffer his lot even more from the light. **Webb** agreed that you could build the building to the rear of the property without violating the setback at all. **Dave** said they would loose about 1,000 sf of space but wouldn't encroach into the

setback. **Webb** made a motion that the Zoning Board made a finding that a hardship would exist if this variance is not granted, because the buffer provided by the Brookline Zoning Ordinance on the northern side of this lot is not working as it was intended. **Dave** seconded. Vote yes 5-0.

Webb made a motion to grant the request for a variance from section 503.02 of the Zoning Ordinance to allow the construction of a self-storage building within the 15 foot side set back on the northern side of Lot K-23-3 located at 63 Route 13 as depicted on the plan. Seconded by **marcia**. Vote yes 5-0.

Case 421

George read the hearing notice “**Applicant Jane Provins Revocable Trust of 1996** is requesting a **Variance** from Brookline Zoning Ordinance **Section 502** to allow a single-family residence above a proposed commercial building for an existing wood business on a lot which contains both Industrial/Commercial and Residential/Agricultural zoning. **Lot A-6** is located at 101 North Mason Road consisting of **111.2 acres**.” **George** said abutter have been notified and fees have been paid.

Mike Ploof from Fieldstone Land Consultants, PLLC is here to represent Jane Provins owner. **Mike** said the subject parcel (Tax Map A Lot 6) is presently zoned Industrial/Commercial and Residential/Agricultural. The total area of the existing lot is 112.2 acres. The applicant is proposing to subdivide Lot A-6 into three (3) large acreage lots with the new lot A-6 consisting of 25.6 acres. The existing zone line will still run through the middle of the new 25.6 acres lot so that the Industrial/Commercial Zone is the west half of the lot and the Residential/ Agricultural zone is on the east half. In order to develop the easterly side of lot A-6 with a residential home and new driveway, steep slopes and a wetlands crossing would need to be traversed in order to access the buildable area of the lot. We are proposing with this application to locate a proposed residence on the Industrial/commercial side of the parcel in order to have less impact on the surrounding environment. This proposal would also allow the owner of the timber processing business to construct a building where he could run his business out of the bottom and not only reside at his home on the second floor but also be able to watch over his business from a security standpoint. Hardship is the configuration of this lot and wetlands. Not many lots in town are residential and commercial. Also, prime wetland #9 is located on this lot and they are trying to stay away from that. **Nick Burbee** (Owns Burbee Firewood located on lot A-6) said he has already gone to the Planning Board and the commercial building has been reviewed by the Planning Board and agreed upon for commercial purposes. **Dave** said he is in favor of not impacting the wetlands, for him to grant this variance he would want some assurance that this lot wouldn't be split again and developed. **George** said if it isn't permitted in our zoning it isn't allowed. **George** read from the Zoning Board of Adjustment Handbook page II-12 last paragraph that states “However, When the ordinance contains a restriction against a particular use of the land, the board of adjustment would violate the spirit and intent of the ordinance by allowing that use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be of doubtful legality. Again, the board cannot change the ordinance.” **Mike** said there are cases in town where a residence is located in a commercial zone. **Marcia** said they are not a precedent setting board. **Webb** said those cases would hold no weight here. **Nick** said this would be for personal need and security of his business the building would be going up regardless. **Dave** said in the future if you move out it would still be a residence.

Nick said they are a unique case you can't see my business from the road and it's not open to the public. **Clarence Farwell** (abutter) stated anything that generates revenue for the town is good thing. He doesn't see an issue with this request. **Marcia** said if they grant this variance maybe the Planning Board will see that they should allow this and change the ordinance to accommodate. **Marica** said its also unique because the lot is 112 acres and it would also be nice for the business owner to be able to protect his property and business. **George** said they can vary an ordinance, but they cannot add something to an ordinance. **Marcia made a motion to grant the variance for lot A-6. Kevin seconded. This motion was defeated, 1 vote in the affirmative, 3 no votes, and 1 abstention.**

David made a motion to deny the request for a Variance from section 502 of the Brookline Zoning Ordinance. This request was to allow a residence above a proposed commercial building to be constructed for the existing wood business on Lot A-6 Located at 101 North Mason Road consisting of 112 acres. Vote yes 4 - no 1.

Marcia left at 8:50pm

Webb agreed this is a unique lot. **George** said our zoning doesn't allow residential use on a commercial lot. **David** said the law is clear that we couldn't grant this variance request. **David** said maybe they should talk to the Planning Board to see if they can get a warrant article in for town meeting that would allow for this. **Mike** said he is having a hard time wrapping his head around this why couldn't they grant this variance. If has been allowed in other cases in town does that mean all the other ones in town are illegal. **George** said adding a use to the ordinance is not an acceptable way to grant a variance. Section 502 doesn't state a residence can be allowed on a commercial lot. The Zoning Board cannot add a use to the commercial section in the Ordinance.

Minutes

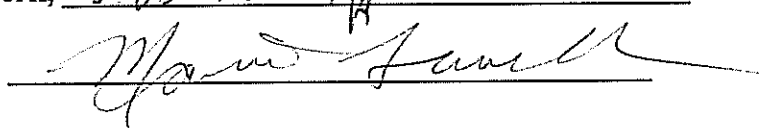
Webb made a motion to approve the minute of October 2, 2019 as written. Kevin seconded. Vote yes 4-0.

Adjourn

Dave made a motion to adjourn at 9:00 pm. Kevin seconded. Vote yes 4-0.

George W Foley III, Chairman, 

Webb Scales, Member, Clerk, 

Marcia Farwell, Member, 

Kevin Visnaskas, Member, _____

Dave Partridge, Alternate 

Minutes submitted by Kristen Austin.