



TOWN OF
BROOKLINE, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES
Wednesday September 14, 2022
7:30pm

Present: **Peter Cook, Chairman**
 Archer Batcheller, Vice Chairman, (Via Zoom)
 Webb Scales, Member, Clerk
 Dan Marcek Jr., Member
 Marcia Farwell, Member

Absent: **Dave Partridge, Alternate and Charlotte Pogue, Alternate**

Peter read the rules of the hybrid meeting.

- Any meeting attendees participating via Zoom are asked to activate the “mute” function until called upon by the chair
- Meeting attendees via Zoom must use the “raise hand” function under the “reactions” tab to participate in the meeting – and will be permitted to comment once and if called upon by the chair.
- Anyone providing comments during the meeting must first identify their name and address
- The “chat” function for Zoom participants will be disabled by the meeting administrator or otherwise not addressed; “chat” items will not be part of the public meeting/record
- Meeting attendees via Zoom will not be listed as attendees in the minutes (except Board members)
- The meeting’s physical location is the official meeting room. Should technical difficulties arise with the remote portion, the meeting will continue at the physical location.

Case 443

In attendance for this hearing Jay Chrystal (Applicant), Randy Haight (Meridian Land Services), Anthony Tochiko (abutter at 30 Main Street), Tom Quarles (Abutter at 32 Main Street)

Peter read the hearing notice “Applicant Chrystal, Jay is requesting a Variance from Section 1806.00 of the Brookline Zoning Ordinance to permit access for in excess of 4 lots by one common driveway by allowing a shared driveway to service 17 units and a Club House. For Lot H-42 consisting of 15.50 acres, located at 23/25 Main Street.”

Peter asked if the fees have been paid and abutters notified. **Kristen** said yes to both.

Randy said originally this was a 15 acre lot and they have since completed a lot line adjustment with the town and the Nissitissit River Land Trust, this site is now 13 acres. They are here tonight because they had originally asked for a road with a common driveway off that which will access the 12 units. That was granted at the April meeting case number 439 a.

Emergency Services, the Fire Department and the Planning Board thought it would be better for this to be a private way with a marker that shows the shape of the driveway and all the units. Right now, they have Monius Lane and Monius Road for the common driveway. The Planning Board has suggested that they come for a variance to allow the private way. The entire road system will then become the burden of the Housing for older persons development. They are asking for access to 17 units off one private way. Originally it was going to be a town road servicing a driveway. **Archer** asked what the different is from the last meeting. We approved this in the last meeting. Randy said at the last meeting you approved the driveway to access 12 units and now they will be accommodating the 17 units. Originally, they proposed a town road then a driveway. Now they are proposing a driveway only. **Randy** said it was suggested by the Planning Board and the town attorney that this be a driveway only instead of a town road and then a driveway off of that. **Jay** said they will not change the road design that is on the plan that was presented. It will be a private driveway. **Webb** said this is one lot and you are talking about a driveway servicing the houses on one lot. You don't need special permission for that but under most of the ordinances they don't allow multiple houses. **Archer** said he agrees this is a public road that is connected to Main Street and no special permission is needed. **Randy** said that is fine.

Jay said the Planning Board asked Town Council to review this application and it was suggested by Town Council that the best thing to do is go to the ZBA and get a variance to put all the units off a common driveway. **Randy** said Town council wrote to the Planning Board and stated that they could apply for a variance to allow all the units off of 1 driveway. **Webb** stated that they still need to decide if a variance is required. **Marica** said it was suggested by Town Council that they apply for a variance. **Webb** said most of the time the reasoning for a variance is obvious and this time it is not quite so obvious. This is s a single lot and has plenty of frontage. Is a unit a lot as Peter had questioned earlier. **Webb** stated the original proposal was for 3 common driveways each serving four units coming off a public road. That was a reasonable argument because there was a public road involved. This is a request for a driveway be allowed to access all the units and the homeowner's association would maintain the roadway and the grounds. **Archer** said he would be content to continue with this application acknowledging the ambiguity in the ordinance.

Randy read through the application:

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

Applicant Answer: the variance would replace the proposed public road with a common driveway and maintain the circular driveway previously granted variance case number 439. The common driveway would begin at Main Street and continue to and attach to the circular portion at the end. The actual road configuration would be completed as specified within the current plan submitted under review of the planning board.

Randy read:

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

Applicant Answer: the variance would greatly simplify emergency response to the development, enhance winter maintenance and deicing, and provide better control of environmental contaminants, thus providing a safer more efficient access way to the entire

ZBA Minutes
September 14, 2022

development.

Randy read:

3. Granting the variance would do substantial justice because:

Applicant Answer: the proposal for the shared driveway was presented to the planning board and preferred unanimously by members. The director of the Brookline DPW has submitted a record to the Planning Board with the preference to the private ownership of the development access Rd. Due to the unique demographic of a housing for older persons development, the community will need better control of winter snow removal and deicing, where the town may not have the ability to provide more frequent trips to the development. Emergency services will have better access to the development. The development association will be able to assure the use of the environmentally friendly deicing chemicals. Granting this variance will allow the applicant to address the concerns of the planning board, DPW and emergency services.

Randy read:

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

Applicant Answer: allowing this common driveway with the loop at the end will maintain better traffic flow, proper signage for a building identification to all units. Maintenance of the road being performed by the association will reduce the cost burden to the town and protect the groundwater supply by using chloride free deicing chemicals. This variance would provide the best configuration for the development and thus would not diminish the property value of the surrounding properties.

Randy read:

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 applicant could proceed with the common driveway, public road configuration that meets the current regulation: however strict compliance with the regulation would result in confusing road names(one named way and the other a lane), where emergency services has requested one name, DPW plowing schedules would not meet the unique demographic needed to clear the roads during the storm events, in the use of the chloride based deicing in the environmentally sensitive area may create irreparable environmental damage. The unnecessary hardship is created from attempting to create a road access that is part public and part private. Granting the variance will shift all of the liability for maintenance to Community Association allow for the control needed to properly number the houses, maintain the road access and place the sign but

the house number layout in the best position for all 17 units and the clubhouse.

and:

ii. The proposed use is a reasonable one because:

Applicant Answer: The intended design is a reasonable one because it satisfies all of the requested objectives of all involved parties including Community at Village Brook, Planning Board, Brookline DPW and emergency services. The actual physical road construction of the road will not change from the current design proposed to the planning board. The variance will actually enhance the use and control of the road.

b. Explain how, if the criteria in a sub 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.

Applicant Answer: the unnecessary hardship in this instance is created by strict compliance to the ordinance. The HOPD is already unique to a standard development and meant to be a contained community. The Community at Village Brook can not properly address all of the needs for the traffic flow, driveway and road maintenance, storm water and other environmental controls needed to properly manage the facility. It would violate the spirit of the regulation by limiting the ability to manage and maintain the road access without granting this variance the property would be splitting liability for maintenance with the town, thereby creating situations where snow is only removed from half of the roadway in the time frame necessary for this unique demographic, chloride based deicing chemicals used could damage the drinking water and surface waters on the property, and signage has to be placed at the loop rather than the beginning of the road hampering emergency response.

Tom Quarles (Abutter) said he was here at the April 2022 meeting in opposition to one of the two variance requests that night. His opposition was to the variance request to allow them not to have to build the Community Center. He is not opposed to the owner wanting to develop this land. They could do a 7 lot residential unit subdivision on this lot. He is opposed to putting 17 units on this lot which doubles the applicant's profit. This is not necessary, and it is not consistent with the downtown character of Brookline, The Housing for Older Persons ordinance, or the ordinance in general.

He has been to all these meetings, and he was at the meeting where the Planning Board said this was an option to go to the ZBA for a variance. The Planning Board is not stating that this needs to be granted. This Board needs to go through this application on its own merits. It must meet a test, and, in his mind, it is contrary to the public interest, it does not meet the spirit of the ordinance, and no one knows what substantial justice means. He would ask that you consider the change that this will make to the downtown character of Brookline. The traffic that this will generate and that this site will be completely striped of material.

Webb said the only question in front of the Board is what the driveway will look like. **Tom** said the two obvious things to the Planning Board and not to the Zoning Board is the traffic and

the amount of material they will be removing from this lot. They are going to be removing the knoll and bringing this lot down to the level of Route 130. **Tom** said the last test is the unnecessary hardship. The RSA states “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. 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, The proposed use is a reasonable one.”

There is nothing special about this property. They could have simply done a 7 lot subdivision and been done with it, but they have chosen not to do that. This proposal doesn't meet the variance standard, and you should not grant this variance. **Marcia** said this knoll is all gravel and could easily be taken down. **Randy** said yes it has nothing to do with the variance, but they would like to keep the grade of the lot as subtle as possible. These houses will be about 30 feet apart and you don't want any water to shed off onto Route 130. **Marcia** suggested that that is a special condition of this lot. **Anthony Tochko** (Abutter) said it was just stated that taking that hill down should be easy. At the last Planning Board meeting the applicant stated it would take 5,000 trucks for a least 4 and a half months. This intersection will be at the bottom of the hill with a curve. He just wanted to explain that this is not going to be an easy thing to do. **Marcia** said she only meant that it is not ledge but gravel on this lot. **Webb** stated that there should be excavation paperwork filed with the town and the town will be getting some sort of recompence for the gravel that will be removed.

Archer said the hybrid that is approved right now was not agreed upon by the Planning Board and DPW. **Marcia** said they need to take the advice of the departments that they work with. **Webb** said he believes that the common driveway solution is a better design all around. It allows the entire surface to be maintained by the homeowner's association, this is a design that will have less pavement on the lot, and more straight forward access for emergency management. He believes that it meets the spirit of the ordinance. **Webb** said he believes for the same reasons the spirit of the ordinance would be observed, this will do substantial justice, and it will not diminish the surrounding properties. As for the unnecessary hardship, he believes the special condition of the property is that there will be 17 dwellings placed on this lot. This driveway layout is more efficient. **Dan** said earlier the applicant said they proposed a road with 4 common driveways that accessed all the units. The number of units has never been a problem. **Randy** said yes that is correct the issue was the 4 common driveways was not agreeable by emergency management.

Dan said so this is more about making this a safe development. This driveway design is more effective. **Archer** said the applicant's current proposal is an improvement over the previous case that they approved because it accommodates the feedback from the town departments.

Peter made a motion that the Board finds that granting the variance application would enable the applicant to have a safer and more effective driveway, having incorporated input from the Emergency Management Department, Fire Department, Planning Board, and Brookline Public Works Department to a plan that has been accepted by the Planning Board. Webb seconded. Vote yes 5-0.

Marcia made a motion to grant the variance from section 1806.00 of the Brookline Zoning Ordinance to permit access for in excess of four lots by one common driveway, by allowing a shared driveway to service 17 units for Lot H-42 consisting of 13.15 acres, located at

23/25 Main Street. Peter seconded. Vote yes 5-0.

Tom Quarles (abutter) stated that an accepted plan is not an approved plan.

Peter said your request for a variance has been granted. You will be receiving a written notice of this decision in a few days, and it will be available tomorrow. You, the Select Board, the abutters, and anyone directly affected by this decision have the right to request that the Board hold a rehearing on this case. A request for a rehearing must be submitted in writing in the Town Offices no more than 30 days from today and must fully explain why the Board should grant a rehearing. A request for a rehearing is a necessary precondition for appealing the Board's decision to Superior Court. In the absence of a request for a rehearing, the decision will become final and unappealable.

Minutes

Webb made a motion to approve the August 10, 2022, minutes. Dan seconded. Vote yes 4-0.

Rules of Procedure

Peter made a motion to accept the rules of procedure. Marcia seconded. Vote yes 5-0.

Adjourn

Marcia made a motion to adjourn at 9:00pm. Webb seconded. Vote yes 5-0.

Peter Cook, Chairman, _____

Archer Batcheller, Vice-Chairman, _____

Webb Scales, Member, Clerk, _____

Marcial Farwell, Member, _____

Dan Marcek Jr, Member, _____

Minutes submitted by Kristen Austin.

ZBA Meets when needed on the second Wednesday of the Month.