



TOWN OF
BROOKLINE, NEW HAMPSHIRE
ZONING BOARD OF
ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES
Wednesday July 12, 2023
7:30pm

Present: Peter Cook, Chairman
Archer Batcheller, Vice Chairman
Dan Marcek Jr., Member
Marcia Farwell, Member
Charlotte Pogue, Alternate (Voting for Webb Scales)

Absent: Webb Scales, Member, Clerk and Dave Partridge, 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 451

In attendance for this hearing Gerald Michaud and Riley Walters (here to speak to this request) **Peter** read the hearing notice “**Applicant Gerard Michaud** is requesting a **Variance from Section 603** of the Brookline Zoning Ordinance to permit the subdivision of **lot H-86** into one or more lots which do not conform to the dimensional requirements of the zone, for the development of a single family dwelling with frontage on Sargent Road. **Lot H-86** is located at **40 Main Street**, consisting of 2.40 acres.”

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

Riley Walters is here to represent Gerald Michaud in this case. **Riley** stated he is looking to subdivide the lot the only criteria they may have an issue with is the hardship. **Marcia** asked Riley for more information about himself. **Riley** stated he is a real estate advisor from Hudson NH. **Riley** stated this will be a first time home buyer situation where he would like to split the lot into two lots and sell off a building lot to help with the purchase of the home. **Gerald** said

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he is the third or fourth largest lot in this area so building a house there would be feasible. **Riley** stated they are looking to subdivide the lot the only criteria they may have an issue with is the hardship. **Peter** asked if there were any wetlands. **Riley** said he doesn't believe there are. Marcia stated the plans were submitted with this application are dated 2007 with test pit information. **Marsha** pointed out that they had a plan from 2007 that includes test pit information. **Riley** read all three proposals:

“Proposal 1:

Property is divided into two lots of which 40 Main Street will become a parcel at approximately 40,174 square feet and the remaining 2 acres (87,120 square feet) will be sold and will permit the development for a single family dwelling with more than 200 feet of frontage on Sargent Road and with the backlot ending at Main Street. This adheres to 603.00 Lot Requirements under the Town of Brookline Zoning and Land Use Ordinance for the new proposed lot.

Proposal 2:

Property is divided into two 1.45 acre lots side by side with equal frontage on Main Street with the proposal of a single family dwelling in the empty lot to the right of 40 Main Street. This does not adhere to either the 200 feet minimum frontage nor the two acre minimum lot size requirement for new parcels.

Proposal 3:

(Most desired) Property is divided into three lots on which 40 Main Street will become a 20,087 square foot lot with the proposal of a 20,087 square foot lot to the right of 40 Main Street and the proposal of a 2 acre lot with over 200 feet of frontage on Sargent Road providing for the development of two new single family dwellings. This does not adhere to the minimum lot size requirements nor the 200 feet frontage requirement for the proposed dwelling on Main Street.”

Dan said he is confused by the three proposals he thought that they were supposed to be just one request the request in the hearing notice is permit the subdivision of lot H-86 into one or more lots which do not conform to the dimensional requirements of the zone for the development of a single family dwelling with frontage on Sergeant Road. So, proposal two and three are not mentioned in the hearing notice. **Peter** said that is correct because the first two proposals were not noticed only the third one was. **Riley** said does Gerry have the right to conform to the new standards when all the lots around him are smaller lots. **Archer** said that would not be grandfathered, all the other smaller lots around him are grandfathered.

Chris Adams (Abutter) 10 Sargent Road stated he agrees with the Zoning Laws and that they have put in place for a good reason. Is the applicant looking to subdivision and have a 2 acre building lot. **Peter** said yes. **Chris** stated that there are wetlands on the other side of Sargent Road they will want to consider. The prime wetland setback is 200 sf. They have also had a lot of well issues in the town. He asked what they proposed frontage on Sargent Road would be. Riley said there will be 200 sf on Sargent Road.

Peter read the letter from Abutter Jan Watts.

“Dear Ms. Austin, Mr. Scales, and Brookline Zoning Board of Adjustment Members,
My name is Janice Watt, owner of lot H-111. My lot abuts lot H-86, the subject of a variance request to subdivide the 2.4 acre lot into one or more lots which do not conform to the dimensional requirements of the zone.

I wish to lodge my firm opposition to a variance. The proposed subdivision would result in lots that fall far below the required current minimum lot size. In this rural neighborhood we appreciate woods and open fields nearby and wish to keep that character intact by adhering to minimum lot size requirements.

I will be out of state in a location in which I cannot rely on internet connectivity or bandwidth to attend the July 12th hearing by Zoom, so please take this letter into consideration as you review the variance.”

Peter said the Selectboard had the Town Attorney write a letter to the Zoning Board for tonight's meeting, he read the last paragraph of the letter and stated these are all previous issues and they have no bearing on the case in front of us. He asked the Board if they thought he needed to read the letter into the minutes or continue on with this case as each case stands on its own. **Marcia** said not knowing what was in the letter and she doesn't know if it is relevant or not. **Peter** stated he would like the Board to vote on whether or not to read it into the minutes of this case. This letter was emailed out to the ZBA this morning. **Marcia** said the Selectboard paid to have the Town Attorney write up this letter and believes it should be read. **Marcia made a motion to have Peter read the letter the Selectboard had the Town Attorney write to the Zoning Board of Adjustment for tonight's meeting into the minutes. Seconded by Dan. The vote was 4 – 1 in the affirmative.**

Peter said the letter states:

“Re: 40 Main Street – Variance Application

I have been asked to provide some background as to the previous litigation relative to the above referenced property (the “property”).

On July 9, 2018, the Town through a duly executed administrative inspection warrant inspected the property and discovered building code, life and safety, and zoning violations. A notice of violation was served upon the property owners (both individually and the living trust) who subsequently failed to comply with the notice of violation. Consequently, the town then brought a code enforcement action in Superior Court alleging the following (excerpts from the 2019 complaint):

1. “The[property owners], in contravention of **BZ O -general provisions- §602.00 and §200.00** [continue] to allow **more than 5 persons not related by blood or marriage** at the premises in the capacity of occupants and, considered as a ‘... single non-profit housekeeping unit...’.
2. The July inspection yielded several zoning and building code violations.
3. The [property owners are] utilizing the above-described property as a multi-family dwelling in contravention of applicable Zoning regulation.
4. Overall the town observed (6) bedrooms, with a total of 9 (9) beds for sleeping, that all include doors that could be locked from the outside and, indeed, some rooms were locked from the outside during the July inspection.
5. Furthermore, the numerous building code violations observed are endangering the health and safety of the unlawful occupants.
6. It is evident that there are unlawful number of occupants residing at the premises, that the nature of the living arrangements irrespective of the number of occupants, does not conform to any use permitted in this zoning district.
7. The use being made of the property exceeds the permissible size and scope of the design parameters of the approved septic system. As such, it is inadequate for the number of occupants currently residing at the premises and the number of bedrooms permitted by the current approved subsurface sewage disposal system.

8. Additionally, it is evident that the construction and renovations exceeded the scope of work authorized under any permit(s) issued to the property owners.”

The litigation and endured many delays due to the various litigations’ scheduling needs, COVID, and the court rescheduled the matter once due to its own scheduling.

In the early 2023, a document was discovered where a previous Brookline building inspector in 2007 had inspected the property and made note of a number of occupants in essentially acquiesced to their presence. In 2007, the presence of these occupants did not offend the definition of “family” under the Brooklyn zoning ordinance as the definition was changed to its current language in 2010. Consequently, the town was forced to withdraw that complaint of the complaint and agree that the ‘use’ of allowing a number of occupants that offends the current “family” definition is a pre-existing nonconforming use. However, that did not excuse the remaining violations. Council for the property owners did not dispute the allegations as to building code or fire code/life and safety allegations. Therefore, a compromise was struck where the town entered into a court sanctioned agreement (see attached) and agreed to withdraw the zoning violation relative to the number of occupants while the property owners stipulated to the remaining building code and fire code\ life and safety violations. Here's the property owners failed to comply with the agreement, then the town may pursue an action for contempt. The 90 (90) days that the agreement afforded the property owners to comply has recently elapsed and town officials are due to perform a follow up inspection to ensure compliance with the agreement.

The remaining violations that need to be rectified are:

- A. Smoke detectors need to be put back up and properly interconnected.
- B. A continuous handrail for the stair leading to the bed room above the garage. Currently, this room is used as a bedroom but is approved only as storage.
- C. The unpermitted makeshift room in the basement cannot be used as a rental unit, unless and until, it can meet three requirements of the code. The most significant issue is the lack of egress, no closet, and no window.
- D. The replacement Bannister to the second floor in the main house does not meet code.
- E. The town records state that the premises currently has a septic system designed and approved for the anticipated daily flow for a four (4) bedroom building. As such, the septic system will need to comply and correspond with how many lawful and code compliant bedrooms the premises will have, as well as comply with any applicable NHD ES regulations. CNH RSA485-A; 38.

It should be noted that while the town had to withdraw the alleged zoning violation relative to the number of occupants that does not alleviate the requirements to the life and safety of said occupants. For example, the unpermitted room really referenced above in paragraph “C” is not suitable for occupation and the septic must still comply with local and state law with respect to the number of lawful bedrooms regardless of the property owners right to allow the number of occupants.

In conclusion, the Selectboard wanted you to have this information as background relative to this property and its owners. My understanding is that the variance request for the Honorable ZBA's review is for a subdivision of this property and I will not opine as to the merits of that case since each case stands on its own.

As always, it is a privilege and an honor to represent the Town of Brookline and should you need anything else from me please do not hesitate to ask.”

Riley stated that every problem that was just read he would like to solve.

The Board agreed to go over the application:

Peter read through the application:

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

Applicant Answer: welfare, will not lessen or increase traffic, will not overcrowd or overdevelop the area, altar aesthetics of the neighborhood, change natural environment or impact wetlands.

Dan stated that there are a number of neighbors that have spoken against this tonight that shows it is contrary to public interest. The Board agreed that this would be contrary to the public. **Marcia** said she agrees that this is contrary to public interest. **Gerry** said he has one of the largest lots on Main Street with a well and septic. Another septic system wouldn't have an adverse impact on the neighborhood.

Peter read:

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

Applicant Answer: It is within my best interest, will not have any adverse effect to the public or surroundings, the new lot adheres to the current zoning ordinances under 603.00, the remaining lot will become the same size as the home across the street and will become proportionate to all of my surrounding neighboring properties and the majority of the lots on my street which are smaller and also grandfathered in.

The Board agreed the spirit of the Ordinance would not be observed if this was granted.

Peter read:

3. Granting the variance would do substantial justice because:

Applicant Answer: I will be relieved of both my physical and financial burden, 40 Main Street will become the same size as the majority of my surrounding neighboring properties on my street, the two acres being sold will be utilized providing a new construction home to a new family.

The Board agreed no substantial justice would be done.

Peter read:

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

Applicant Answer: A new construction single family dwelling will be built in a secluded wooded area next to, across from and also surrounded by properties that were also granted variances. A new build would only increase the surrounding home values.

Marcia said no

Peter 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 surrounding neighboring properties on Main Street are all much smaller and also grandfathered in.*

The Board disagreed.

-and-

- ii. The proposed use is a reasonable one because:

Applicant Answer: *It meets the current zoning ordinances for new lots under section 603.00, the two acres of land will be put in use for a good cause providing a family at home.*

- 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.

The Board disagreed.

Applicant Answer: *An unnecessary hardship would be deemed if my property was not permitted to conform to the surrounding grandfathered in property sizes and I was left with the burden to upkeep of the land and my elderly and incapable state and stage of life.*

Peter stated this property is being used in a reasonable manner right now that does conform with zoning.

Peter said noted at the bottom of the application:

"I have suffered from various debilitating illnesses the past few years and this has resulted in a severe financial hardship including over \$20,000 in delinquent property taxes and numerous medical bills and I would like to sell some of my land to bring more financial stability to my life."

Peter said this property is being used in a reasonable manner right now. That does conform with zoning.

Marcia said we can't consider money when they are looking into the hardship.

Riley asked where all of the no vote would stand if they were able to conform to the Zoning Ordinance.

Peter said if you were able to acquire a couple more acres from neighboring lots and could conform to the Zoning Ordinance you could have a lot big enough to subdivide without coming in for a Variance.

Peter made a motion that the Board finds that none of the criteria for a variance have been met. Marcia seconded. Vote yes 5-1.

Marcia made a motion to deny this Variance. Dan seconded. Vote yes 5-0.

Peter said your request for a variance has been denied. You will be receiving a written notice of decision in a few days, and it will be available tomorrow. You, the Selectboard, the Abutters, or anyone directly affected by this decision has 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 precaution for appealing the Board's decision to Superior Court: in the absence of a request for a hearing, the decision will become final and unappealable.

Minutes

Dan made a motion to approve the June 14, 2023, minutes. Marcia seconded. Vote yes 5-0.

Adjourn

Marcia made a motion to adjourn at 8:45pm. Archer seconded. Vote yes 5-0.

Peter Cook, Chairman, _____

Archer Batcheller, Vice-Chairman, _____

Marcia Farwell, Member, _____

Dan Marcek Jr, Member, _____

Charlotte Pogue, Alternate, _____

Minutes submitted by Kristen Austin.

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