



TOWN OF
BROOKLINE, NEW HAMPSHIRE
BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES

Wednesday, February 28th, 2007

Present:

Peter Cook, Chairman, **John Ganos**, Member **George Foley**, Member, **William Owens**, Alternate, & **Webb Scales**, Alternate.

Absent:

Charlotte Pogue, Vice-Chair, **Marcia Farwell**, Clerk, & **David Beauchamp**, Alternate.

Also present for the meeting: Steven Gay, Mr. & Mrs. Gay's son, Buddy Dougherty, Abutter at 11 Ruonala Road, and Alyson Hamilton and Vincent Tersigni, abutters at 4 Ruonala Road.

Peter said that it was at or about 7:30.

Peter said Marcia and Charlotte, two voting members were not here and they would have the alternates vote in their place for this meeting.

Case 333

Peter read the hearing notice. An application for a variance from Brookline Zoning and Land Use Ordinance, Article 2000, Section 2002.10. The applicants, Robert and Caroline Gay are asking the Board to permit a detached accessory dwelling unit (two car garage with living area above) on a 3.17 acre lot. The location is 5 Ruonala Road, lot B-20. **Peter** asked Kristen if the abutters have been notified and the fees had been paid. **Kristen** responded yes they had. **Robert** stated they wanted to put up a stand alone garage with living space on the second floor. They also want to demo the home that stands there now and rebuild which will improve the area. **George** asked if they were building a new house and garage from ground up. **Bob** said it wasn't feasible to repair the existing home. It would cost less to tear it down and rebuild. **Peter** asked if there were any wet areas on the lot. **Bob** replied there may be a small wet area down by Route 13. **Peter** stated the notice was incorrect, the Section was written as 2002.01 and the application states 2002.10. Notice should match the application. The Board agreed. **John** said if the garage was attached they wouldn't have an issue and only need a special exception. **Peter** said that is correct. **John** said there is no requirement as to lot size if it is an attached garage. **Peter** said yes as long as there is 80,000 square feet of dry land. **Bob** stated he doesn't want an attached unit. **Steven** stated if they attach the garage to the home the garage will overpower the house in size and look awkward. **George** asked what the size of the house and garage would be. **Bob** said it will be a 2 bedroom ranch. **Steven** said the apartment will be about 700 square feet. **John** asked who would be living in the apartment. **Bob** said his son Steven. **Steven** said they would like to build the garage and the apartment first, and move into the apartment then start construction on the new home. **Peter** said they need to consider what will happen to it in the future. The ordinance is designed to maintain a single family dwelling on one lot. **Steven** said that can be maintained. **George** read Section 2002.08 "Attached dwelling unit shall be designed to allow for re-incorporation into the principal dwelling unit. **Webb** said there is a stipulation to the doorways. You would need to provide 2 means of egress one leading to the main house. **Caroline** stated what if in the future there is something that states this property will not be out of the family. Section 2003 covers this. Which reads "If a property containing an approved accessory dwelling unit is conveyed and the new owner wishes to maintain the accessory dwelling unit, the new

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owner shall apply for a certificate of occupancy for the dwelling unit. The purpose of this section is to ensure that one of the two dwelling units is owner occupied.” **Webb** said we have ordinances for a duplex. **John** said that will still be two dwellings on one lot. **Bob** said it’s not two houses; it is a garage with separate living area. **George** said the next person who buys it could view it as having two dwelling units on one lot. **Caroline** asked what happens with places in town that are already set up like this. **Peter** stated that a few years ago there was an apartment amnesty and at that point all the apartments that had been built are now grandfathered and new ones are no longer allowed. **Peter** said there was one situation that they had put a cease and desist order was applied until the plumbing, etc. was detached. **Webb** read section 2005.01 “Accessory dwelling units constructed prior to the adoption of this ordinance without a building permit or certificate of occupancy shall apply to the Board of Selectmen for a determination of compliance with this ordinance. There shall be an amnesty period of 180 days from the date of adoption of this ordinance in which to make application for a determination and in which no penalty will be assessed for an illegal nonconforming accessory dwelling unit.” **Bob** asked when the ordinance was adopted. **Peter** stated that he thought it was about 4 or 5 years ago. We have heard cases on this before. **Bill** said he thought the Haight family was the first one on Milford Street. **George** had found it had been 7 years since the Ordinance had been adopted. **Webb** said it was on page 87 and read “year 2000 Section 2000 Accessory Dwelling units amended.” **George** stated they were just .5 acres shy of making the minimum lot requirements to do this. **Peter** said it has to be dry land only we don’t know what’s wetland and what is dry. **Bob** stated he didn’t want to sell it, and asked if there was any way they could stipulate so that it can’t ever be subdivided or sold to a non family member. **Caroline** said they don’t have enough land to subdivide. **Peter** asked if the abutters had anything to add. **Buddy** said he lives at 11 Ruonala Road. He stated that the home is on top of a hill and didn’t think the wet land would be an issue. He also stated that as neighbors they take meticulous care of both properties on Ruonala Road, and he supports them in their endeavor. **Buddy** asked if there was any way they could include a stipulation that states the garage can only be used for family only. After Steven moves out he could change it into an office. **Peter** stated that a variance would go with the property forever and a special exemption would not. The abutters from 4 Ruonala Road, Alyson Hamilton and Vincent Tersigni were here, they said they are new to the neighborhood and were just here to observe.

George said if we grant this it goes with the lot for hundreds of years. **Bill** asked if there was any way you could attach the garage. **Steven** stated the main house would be overwhelmed by the garage. **Webb** said the Board may not want to grant this. What if the Gay’s change their plans somewhere down the road. They are not stuck with this decision. **Peter** asked what the description of the apartment would be. **Steven** said it would be a studio apartment. **Peter** read though the points: see attached copy of application:

Point 1. **Peter** agreed it would not diminish the property values. The Board agreed.

Point 2. **Peter** stated that you can’t guarantee it will stay family owned forever. **George** asked what the land was like. **Bob** stated it sloped toward Route 13 and a little toward Ruonala Road. **Peter** read 2002.07 “An accessory dwelling unit shall not be considered to be an additional dwelling unit for the purpose of determining minimum lot size.” **John** said there has to be inside access to both units. **John** said the ordinance asks for temporary use as an in-law apartment and can be turned into a part of the home again. **Steven** asked how that prevents you from renting it out to someone else if it is attached. **George** said if it’s attached it is part of the primary house. Make it a second structure and people think it’s a 2 family lot. **Bill** said if you attached the garage you would only have to apply for a special exception. **Peter** asked how far apart the units would be. **Bob** said 65 to 70 feet apart. **Peter** asked if it would be a common drive. **Bob** said it would remain the same as it is now. **Bill** commented that the garage would be just off the driveway that exists now. **Bob** said yes it runs through from Route 13 to Ruonala Road. **Peter** continued on with the application.

Point 3. **John** said this is still two houses on one lot and it can’t be done. **Bob** said it will be an apartment not a house. **John** said it will be a second dwelling unit. **George** said you are doing everything right. The zoning just doesn’t allow it. **Webb** said there are at least two other avenues to explore. **George** read section 2002.10 “Detached accessory dwelling units are only allowable when located on a lot that has twice the minimum required lot size. A detached accessory dwelling unit cannot be converted to a principal dwelling unit.” **Webb** read section 2002.12 “The above grade gross living area of the principal dwelling shall not be reduced to less than 1200 square feet.” **Webb** read section 2002.13 “Attached

accessory dwelling unit shall occupy no more than 40% of the total heated above grade floor area of the principal dwelling.”

Caroline asked if it wasn't for the .5 acres, this wouldn't be an issue. It is the land that is the issue.

John said yes it is the land. **Peter** stated because of the 3.17 acres it can't be converted into a duplex or a second dwelling detached. **John** said it is in the ordinance not to allow a second dwelling detached.

That's why they are here. **Peter** said it doesn't seem to constitute a hardship. The board agreed. **Steven** said it isn't a hardship but would you want to live in a house that is very unappealing. **George** said if they grant this and then find it was done illegally that only puts you in a bind. **Webb** said there were two other avenues that would meet the rules. Acquire another .5 acres or to attach the garage would be the two avenues they could explore. **Peter** asked if the audience had any questions. **Buddy** asked why this meeting wasn't televised. **George** said this is not the usual meeting week and that there was a school meeting being broadcast.

Peter motioned to Grant the Variance allowing the Gay's to put up an accessory dwelling unit above a detached garage on a 3.17 acre lot according to Article 2000 Section 2002.10. Motion

withdrawn in absence of a second. **Peter** said he wanted to see if there were any supporting members.

John stated they should go through the rest of the points on the application: **Peter** started again with point 3.b.; he said the general purpose restriction is the size of the lot. **John** and **Webb** both agreed that it was very specific. **Webb** said Zoning includes a standard that applies to putting two dwelling on one lot.

Requires double the acreage for a subdivision and double the acreage for two dwelling units on one lot.

Peter read point 4. **Webb** said this answer is set up to meet the needs of the applicant. **Peter** went on to the final point on the application and read 5. **George** asked if they need to have two septic systems. **Bob** said he did the research and found that they could both use one septic system. **Peter** stated that point 2 and 3 are what will kill this request. **George** read Section 603.4”Only one dwelling unit shall be permitted per individual building lot, except as provided in Section 2000.00, Accessory Dwelling Units. A two-family house shall require two times the minimum land area.” **Bob** stated that he would be allowed to put up four detached garages on that lot but can't have an apartment above one of them. **John** said yes you can put as many detached garages as you would like as long as it meets the set backs. You can't put a dwelling unit above a detached garage that would make it two dwelling units on one lot with only 3.17 acres. **Buddy** asked if the open space lots are 1.2 acres right. **John** said yes but that doesn't mean they can build on it. **John** moved to make a motion.

John motioned, Peter seconded, to Grant the Variance allowing the Gay's to put up an accessory dwelling unit above a detached garage on a 3.17 acre lot according to Article 2000 Section 2002.10.

Vote 0-5 not in favor of granting.

George Motioned to Deny the application in regards to fact Two, Three and Five of his application for a Variance to allow for a detached garage with living area above on a 3.17 acre lot in accordance with to Article 2000 Section 2002.10 of the Brookline Zoning Ordinance. The board said they would vote if favor only if he removed point 5 out of the motion. **George** agreed and withdrew his original motion.

George Motioned, John Seconded, to Deny the application in regards to fact Two and Three of his application for a Variance to allow for a detached garage with living area above on a 3.17 acre lot in accordance with to Article 2000 Section 2002.10 of the Brookline Zoning Ordinance. Vote 5-0 in favor of denying the application.

Caroline and Bob asked Kristen, if they were to come back with an application for a special exception and a plan to attach the garage, what would we need to bring to the next meeting. **Kristen** thought just a sketch of the land and where the house and attached garage would sit. **Kristen** confirmed with Peter and he agreed it didn't have to be a professional sketch as long as the board knew what they were planning on doing by looking at the sketch.

The board went thought the mail.

The minutes from the previous meeting were approved and signed.

George motioned, Bill seconded, to adjourn the meeting at 9:15.

Minutes submitted by Kristen Austin.

_____ **Peter Cook, Chairman**

_____ **John Ganos, Member**

_____ **George Foley, Member**

_____ **Webb Scales, Alternate**

_____ **William Owens, Alternate**