



TOWN OF
BROOKLINE, NEW HAMPSHIRE

BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES

Wednesday, May 9th, 2007

Present:

Peter Cook, Chair, **George Foley**, Vice-Chair, **Charlotte Pogue**, Member, **Marcia Farwell**, Clerk, **John Ganos**, Member, **William Owens**, Alternate, & **Webb Scales**, Alternate.

Absent:

David Beauchamp, Alternate.

Also present for the meeting: Steven Gay, Robert Parodi, Robin Oininen, and Charlie Corey.

Peter called the meeting to order and recused himself from the first case.

Case 334

George as the Chairman, read the Public hearing notice "Notice is hereby given that a hearing will be held at or about 7:30 p.m. on Wednesday, May 9th, 2007 in the Town Hall meeting room concerning a Request for a Special Exception as specified in the Brookline Zoning and Land Use Ordinance, Article: 800, Section 800.02 and 800.01(c). The applicant, Peter & Judy Cook, requests permission to construct an attached garage on a non-conforming lot with 0.4 acres. The proposal contains no further aggravations of any set backs." **Kristen** said the fees have been paid and the abutters have been notified. **George** said there was some discussion as to who the abutter were. **George** read the email from earlier in the day "Charlie Corey was in today and was requesting that the Cook hearing be canceled for tonight because the Corey's were not notified of this hearing. In 2004 the Corey's came to the Board to add the front porch. Charlie thought he had to notify Peter and Judy Cook. I directed Charlie to attend tonight's meeting. In further research of the Corey case in 2004 I did find that the Cooks were on the list of abutters but because they were not direct abutters their name was crossed off the list and they were not notified. Peter was at the meeting because he sat as the Chair at that time." **George** asked Charlie if he was ok with this. **Charlie** said he was. **George** instructed Peter to state his case. **Peter** said he had a not to scale sketch for the Board to look at. **Peter** said he gave this to the Building Inspector and it was denied on the fact it has no road frontage and it is a non-conforming use. **Peter** said he is looking to satisfy the requirement and put an attached garage which will expand the foot print of a non-conforming use. **Bill** asked Peter what made him a non-conforming use. **Peter** said he doesn't conform. **Marcia** said she thought Peter did conform. **Peter** read Article 800.01(c) "Any alteration, expansion or change of a nonconforming use or structure shall only be permitted by special exception by the Zoning Board of Adjustment." **Bill** said Peter's lot is a residential use inside a residential area. **Peter** said he is expanding a non-conforming lot. **Webb** said his use is conforming. **Charlotte** read 800.02(a) "A nonconforming lot that has been developed with a structure may continue in its present use; however any alteration or expansion, shall comply with Section 800.01 c. **John** said Peter's argument is that it's a non-conforming use, and he is trying to meet the stipulation in Article 800.01 C. **John** said he didn't think this was a non-conforming use. **George** said in the application it says there will be no further encroachment on any setbacks. **Bob Parodi** Read 800.03 "Any lawful nonconforming structure existing at the time of adoption of this Ordinance, may be occupied, operated and maintained; however, any alteration, expansion or change

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of the structure that further aggravates a front, side or rear setback shall only be permitted by special exception in accordance with Section 800.01 c and the diagram below. Proposal "B" requires no action by the Board of Adjustment." **Marcia** said she didn't think Peter shouldn't have been denied the permit and shouldn't be here at all. **Peter** said because he sits on the board he wanted to make sure he went through the proper channels and be conservative. **Bill** said Peter was just trying to go by the book. **Peter** said yes. **Bill** asked why this permit was denied in the first place, because of the lot size. **Charlie** asked if it was because he is not 50 feet from the wetlands. **Webb** said under Article 800.01 (c) this meets all the criteria and we can grant it. **Webb** said we can say this is a non-conforming structure. Not enough land and not enough frontage. **Bob** read definition 1103.06 "Preexisting Uses. This Ordinance shall not prohibit the continuation of a legally preexisting use in the Wetland Conservation District; however, the use may not be expanded without a special exception granted by the ZBA. **George** asked Peter how far away he is from the water. **Peter** said about 25 feet, the proposed structure will be set back further from the water than the house is. **George** asked if the garage floor would be concrete. **Peter** said yes. **George** said he was just considering the oil or something that could go through the ground and seep into the water; this will not happen if the garage floor is concrete. **Peter** then read through the points: Criteria #1. Use will not change. It will still be a single family home. **Webb** and **Bill** agreed. #2. Design and construction will be in keeping with that of the neighborhood. #3. There will be no increase in the heated living space and it will remain that way. **Peter** said Article 800.01 (c) is not applicable. **Marcia** didn't think the building permit should have been denied. **Peter** said he told the Building Inspector that he had a good case for denying me; I sit in judgment on this board and I shouldn't be above reproach. **Bill** said this is a lawful non-conforming lot. **Bill** said he knows Peter is being super safe but there was no reason to deny this permit. **Marcia** said they should make a motion that the ZBA take no action under Article 800.03 Proposal B, Article 800.02 still applies, and Article 800.01 doesn't apply because it is not a non-conforming use. It is a non-conforming lot. **Bob** said you should also add that the Building Inspector is authorized to issue this permit. **Webb** motioned that this is a non-conforming structure and not a non-conforming use and needs no action from the Zoning Board of Adjustment under Article 800.01, and also authorize the Building Inspector to issue a permit and this structure must conform to Article 800.02. Seconded by **Bill**. Vote Yes 5-0.

Case 335

Peter, as Chairman, read the hearing notice "Notice is hereby given that a hearing will be held at or about 8:00 p.m. on Wednesday May 9th 2007 in the Town Hall meeting room concerning a request by Robert & Caroline Gay for an Area Variance concerning the construction and occupancy of a detached accessory dwelling unit on an approximately 138,000 square feet, 3.17 acre lot. Article 2000.00 section 2002.10 of the Brookline zoning ordinance. The applicant proposes to construct and occupy a detached accessory dwelling unit on a lot of approximately 138,000 square feet." **Kristen** said the fees have been paid and the abutters notified. **Robin** said there was an error in the application. It said one stall garage. It is actually a two stall garage. **George** asked if the old house will be torn down. **Robin** said yes and pointed out where the new house will be. **Webb** asked if they were going to build the detached dwelling unit first then the main house. **Robin** said yes. **Robin** read through the points of the application:

1. Will not diminish the surrounding property in value. The older structure will be torn down and will be replaced by two new single family structures.
2. Not contrary to the public interest because this will allow two new structures.
3. This will not result in unnecessary hardship. It is an allowable use.

Robin stated this is a reasonable use. **Robin** said this is a comparable lot to those in the neighborhood. The lot to the south is a .76 acre lot and abuts both Route 13 and Ruonala Road with a convenience store on it. **Robert** said the special conditions are the properties around it. There is almost 1000 feet of frontage for this lot. **Webb** asked if the garage with the ADU will be near the principle dwelling unit. **Robert** said Mr. & Mrs. Gay would like at least 60 feet between the home and the detached garage with the ADU above it. **Robert** said this will also look better than what is there now. **Webb** said they should discuss allowable use separate from how unique the lot is; the uniqueness of a lot doesn't support an ADU. **Robert** said according to the Vigeant case this is an allowable use. **Webb** said section 2000, 7, 6, 9, & 12 are all about in law apartments. **Robert** said both attached and detached are allowed in this zone with the properly sized lot. **Webb** said an attached ADU enables them to reincorporate the ADU back into a principle dwelling again, temporarily creating a space for someone to live. **Charlotte** read section 2002.09 "At least one (1) common interior access between the principal dwelling structure and the accessory dwelling unit shall be maintained. A second means of egress from the accessory dwelling unit shall be provided for in accordance with the provisions of Section 2002.03." **Robert** said that is for attached only. **Marcia** said we are here to decide whether or not to vary five tenths of an acre to allow this. **Peter** said an attached ADU is not a license to have 2 residences. **Robert** said they have typed up a caveat which will be

recorded at the registry of deeds that states when this property is sold to a new owner they will have to apply for a certificate of occupancy for the dwelling unit if they wish to continue its use. This will ensure that at least one of the two dwelling units are owner occupied. **Robin** said this will also ensure that they follow section 2002 and 2003 of the Brookline Zoning Ordinances. **Robert** said when they do a title search for this lot, the new owner will be aware of this. **Marcia** said this is more protection for the town. **Peter** agreed. **Bill** said none of the abutters seem to be complaining. At the last hearing Buddy Dougherty was here encouraging this. **Bill** said if they had 4 acres they would be able to do this; it is a reasonable use. **Bill** said this board is here to adjust, this is not a precedent setting Board. **Charlotte** asked if there was anything on point from the Vigeant case. **Robert** said this is allowable because of the Vigeant case. **Peter** asked Robin to continue with the points. **Robin** went on to

4. This is a reasonable use of this land.

5. Not contrary to any ordinances. **Marcia** said the only thing contrary to the ordinance is the size of the lot. **Peter** asked if he could get a vote from the Board on each one of the points.

Peter read: 1. Will not diminish surrounding property values. Vote 4 yes - 1 no.

2. Will not be contrary to the public interest. Vote 3 yes – 2 no.

3. Denial of variance would result in unnecessary hardship to the owner. Vote 4 yes – 1 no.

Vote 3 yes – 2 no.

5. Use is not contrary to the spirit of the ordinance. Vote 3 yes – 2 no.

Robert asked if the Board was going to put on conditions. **Peter** said the caveat should be a condition. **Webb** and **Charlotte** both agreed that section 2002.09 should be waived.

George moved to grant the area variance for an accessory dwelling unit with the requirement of 160,000 square feet is varied down to 138,000 square feet subject to the requirements of Section 2000 in the Brookline Zoning Ordinances. With the condition that the caveat written by Robin M Oinonen be recorded with the Registry of Deeds and section 2002.09 should be waived. Seconded by Marcia. Voted Yes 3-2.

Case 336

Peter read the hearing notice “Notice is hereby given that a hearing will be held at or about 8:30 p.m. on Wednesday, May 9th 2007 in the Town Hall meeting room concerning a request by Robert & Caroline Gay for a Special Exception concerning the construction and occupancy of a detached accessory dwelling unit on an approximately 138,000 square feet, 3.17 acre lot. Article 2000.00; section 2002.10, of the Brookline zoning ordinance.

Applicant proposes to construct a single family home plus a 1 stall attached garage with a detached accessory dwelling unit with a 2 car garage below.” **Kristen** said the fees have been paid and abutters have been notified. **Robin** went through the criteria section 2002.01 Accessory dwelling unit shall be secondary and accessory to the principal single family dwelling unit. 2002.02 The secondary unit will be developed in a manner which does not alter the character or appearance of the principle dwelling unit as a single family residence. **George** said there will be a second building. **Peter** asked if there were any drawings. **Steven** said they didn’t have any drawn up because they weren’t sure if they would be able to build. **Robin** read 2002.03 Only one accessory dwelling unit will be built on the lot. 2002.04 The owners will reside in the principal dwelling. **George** said when the construction is finally done this will be met. **Robin** said yes. 2002.05 Lot will still appear as a single family residence. **George** said the purpose is to appear as a house and garage. **Robin** read 2002.06 Any additional entrances or exits will be located to the side or rear of the building. **Steven** said the door to the living space will be located on the side of the building. **Robin** said 2002.07, 2002.08, and 2002.09 are both not applicable. **Robert** said there are about 5,000 square feet of wetlands on Route 13. **Webb** said they should waive 2002.08; ADU should be designed to allow for re-incorporation into the principal dwelling unit. **Webb** said 2002.09 should also be waived; At least one common interior access between the principal dwelling structure and the ADU shall be maintained. A second means of egress from the ADU shall be provided for in accordance with the provisions of Section 2002.03. **George** asked if there would be two forms of egress for the ADU. **Steven** said yes. **Robin** read 2002.10 an area variance has been granted for this. **Robin** read 2002.11 the ADU will be approximately 800 square feet. 2002.12 The living area of the principal dwelling will be approximately 2000 square feet. **Robert** said 2002.13 does comply with the zoning. The ADU will not be more than 40% of the principal dwelling unit. **Robin** read 2002.14 interconnected fire alarms should not be a problem. 2002.15 house numbers will be determined before issuing the permit. 2002.16 There will be adequate off street parking. 2002.17 Adequate provisions will exist and be made for ingress, egress and turning vehicles within the site. 2002.18 The septic will be certified before the issue of a building permit. **Charlotte** asked if they were replacing the

existing system. **Robin** said yes. **Robin** continued to read Section 2003.00 Accessory dwelling unit certificate of occupancy. **Robin** said the caveat was created and will be registered if the property goes up for sale. The new owners will be aware of the caveat. **Robin** read 2004.01 all plans submitted with any application for an ADU building permit should denote, describe and/or identify the intended accessory dwelling unit area as such. **Robin** said this is all on the plan. **Marcia motioned to grant the special exception to allow the accessory dwelling unit and waive section 2002.09. George Seconded. Vote yes 5-0.**

9:55 PM

Peter stated they had a letter from Charlotte stating she would like to resign from the ZBA and would like to be considered for an alternate’s position. **Peter motioned to accept, with regret, the resignation of Charlotte and to go before the Board of Selectman and have Charlotte considered as an alternate. Seconded by Jon. Vote yes 5-0.**

Peter said they have to replace the full board member position. **Marcia** said she has a problem with a Planning Board member being a member of the ZBA. **Charlotte** said she thinks it’s a good idea; sometimes you need an interpretation of the regulations. **John** said he didn’t think people should be allowed to sit on two boards. **Peter** said David Beauchamp isn’t on any other Board. He could be a full member. We should vote at the next meeting.

The minutes from the previous meeting were approved and signed.

George motioned, Marcia Seconded, to adjourn the meeting at 10:15 PM.

Minutes submitted by Kristen Austin.

_____ **Peter Cook, Chairman**

_____ **George Foley, Vice-Chair**

_____ **Marcia Farwell, Clerk**

_____ **John Ganos, Member**

_____ **Charlotte Pogue, Member**

_____ **Webb Scales, Alternate**

_____ **William Owens, Alternate**