



TOWN OF  
BROOKLINE, NEW HAMPSHIRE  
BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT  
MINUTES

Wednesday, November 12, 2008

Present:

Peter Cook, Chair  
George Foley, Vice-Chair  
Marcia Farwell, Clerk  
David Beauchamp, Member  
John Ganos, Member.

Absent:

Webb Scales, Alternate and Charlotte Pogue, Alternate

Peter opened the meeting at 7:30.

Case 348,

In attendance for this hearing Randy Haight (Meridian Land Services), Suzanne McInnis (Applicant).

**Peter** read the hearing notice “This is an application for a Special Exception to allow an Accessory Dwelling Unit on a 3.1 Acre lot. Brookline Zoning and Land Use Ordinance, Article: 2002, section 2002.1 thru 2002.18. The Applicant Joseph E McInnis Trust c/o Suzanne McInnis Trustee is requesting a Special Exception for the property located at 133 Route 13 in the Residential /Agricultural district Lot F-85.”

The fee’s have been paid and abutters notified.

Randy handed out photos of the property, a letter from the Fire Department stating that the last inspection done in October 2008 and there are no issues. **Randy** said there is only one driveway entrance off Route 13. They can fit two cars in the driveway and there is plenty of room to turn around. **Randy** said this in-law apartment has been in existence since the late 1960’s. **Marcia** asked about the acreage of this lot. **Randy** said it will be 3.1 acres we have State subdivision approval and we have conditional approval contingent upon this application for a special exception. **Randy** said they pulled a building permit in 2006 to do some work in the in law apartment and the Building Inspector and Fire Department have inspected everything with no issues. **Randy** read through the application points:

*2002.01 Accessory Dwelling Units shall be secondary and accessory to a principal single family dwelling unit.*

**Randy read the Applicants answer:** 780 square foot In-Law Apartment (ILA) is secondary and accessory to the 2230 square foot single family Principal Dwelling Unit (PDU) located at 133 Route 13.

2002.02 *In granting a special exception, the Board of Adjustment must find that the secondary unit is developed in a manner which does not alter the character or appearance of the principal dwelling unit as a single family residence.*

**Randy read the Applicants answer:** The ILA was developed in a manner, which does not alter the character or the appearance of the PDU.

2002.03 *Only one accessory dwelling unit shall be allowed per principal dwelling unit and/or lot.*

**Randy read the Applicants answer:** Only one ADU is proposed for lot F-85.

2002.06 *Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.*

**Randy read the Applicants answer:** The ILA has a front and rear doorway entrance exclusive of windows.

2002.09 *Attached or detached accessory dwelling units shall have tow (2) means of egress, other than a window, shown on a plan that shall be submitted and approved by the Fire Department and the Building Inspector prior to filing an application for special exception with the Zoning Board of Adjustment.*

**Randy read the Applicants answer:** The ILA has two means of egress approved by the Fire Department and is to be approved by the Building Inspector.

2002.11 *The gross living area of an accessory dwelling unit shall not be less than 350 square feet or not greater than 1,000 square feet.*

**Randy read the Applicants answer:** The ILA gross living area of 780 square feet meets the required window of between 350 & 1000 square feet for this ordinance.

2002.12 *The above grade gross living area of the principal dwelling shall not be reduced to less than 1200 square feet.*

**Randy read the Applicants answer:** The above grade 2230 square foot PDU meets the minimum required 1200 square foot size requirement.

2002.14 *A building permit for an accessory dwelling unit must be approved and issued prior to the construction. An attached accessory dwelling unit shall have an interconnected fire alarm system.*

**Randy read the Applicants answer:** The ILA has existed for more than 40 years and has the benefit of an acted upon building permit (2006-179) for the alteration and repair of 133A Route 13.

2002.15 *The Emergency Management Director shall determine the house number for the accessory dwelling unit at the time of building permit application.*

**Randy read the Applicants answer:** The PDU has an assigned street # of 133 and the ILA has an assigned street # of 133A.

2002.17 *The driveway shall be designed to appear as a driveway of a single family residence, and no new curb cut from the street shall be constructed. Adequate off-street parking shall be provided to support the vehicles of the primary and accessory units.*

**Randy read the Applicants answer:** The PDU and the ILA have the benefit of a single curb-cut driveway from Route 13. the PDU has a two car garage for vehicle parking and the ILA has two parking spaces to the left hand side of the existing paved driveway.

2002.18 *The existing, replacement or proposed septic system must be certified by a licensed septic designer or engineer as adequate to support the accessory dwelling unit in accordance with New Hampshire RSA 485-A:38 and the Town of Brookline septic regulations.*

**Randy read the Applicants answer:** Lot F-85 has an existing septic system in good working order together with the benefit of a NHDES approved septic system design (CA2008094904).

**George** asked if the existing septic system passes. **Randy** said yes were are just showing that it can be replaced if and when it is needed. **John** said the septic isn't failing but it isn't up to today's standards. **Randy** said correct.

**John** said the house has been a duplex for years and now because you are making this lot size smaller it needs approval for an ADU. **Randy** said yes. **Marcia** said their will not be family living in this house and will be rented out as it always has been. **Peter** said because of the way the ordinance is written they just have to meet the requirements of section 2002.01 thru 2002.18 and not what is stated in the purpose. **Randy** said their would have to be someone to enforce that as well. **John** said as it stands right now this functions as a non owner occupied but if sold it has to be an owner occupied with an ADU. **Peter** said yes.

**David moved to grant the Special Exception to allow an accessory dwelling unit on a 3.1 acre lot, located at 133 Route 13 Lot F-85. Seconded by George. Vote yes 5-0.**

#### Case 349.

In attendance for this hearing Paul Andres (owner/applicant), Dee Walker (for David Farwell Construction).

**Peter** read the hearing notice "This is an application for an Area Variance by David Farwell Construction, for owner Paul Andres, to allow the construction of a 6 x 24 square foot mechanical room within the front setback. Brookline Zoning and Land Use Ordinance Section 503.02.a. The property is located at 106 Route 13, Big Bear Lodge, in the Commercial / Industrial district Lot G-53-1."

The Fee's have been paid and abutters notified.

**Paul** said they have drilled a new well at this location, they drilled down 500 feet. The water test said the water is hard. Skillings and Sons are going to install a filtration system. They need to build a utility room 5ft wide by 20ft long to house this system. **George** asked if the property line on the sketch was accurate. **Paul** said he wasn't sure. **George** said if we don't know where the property line is we can't make a ruling. **John** said if the State thinks it is in the 50 ft state setback they will have you remove it, it would be in your best interest to find out for sure where the property line is. **Marcia** said that would require a survey and she didn't feel we need to ask Paul to have his property surveyed for a 2 foot variance. **Peter** said the existing building is non-conforming. They would have to receive a variance anyway. **David** suggested that Paul modify the building to meet the setback. They could move the utility room addition down the side of the building as to not affect the setback. **George** said without knowing were the property line is you still will not know if you're intruding into the setback. **Peter** said in the zoning ordinance,

section 800.03 (see attached) you are requesting proposal a (see attached) which requires a Special Exception. **David** asked **Paul** if he wanted to proceed tonight with the current application or hold off till the next meeting. **Paul** said he would rather proceed with the application submitted. **George** said he thought proposal c from Section 800.03 (see attached) is what **Paul** is applying for. **John** said he agreed that proposal a from section 800.03 (see attached) was what they are proposing. **Dee** said they could make sure they do not go over the 50ft state setback. **Peter** said this was noticed as a variance and it is unclear to me if we can grant this without knowing the property line, a special exemption doesn't require us to know where the property line is. **David** asked if they are using the well now. **Paul** said yes they are. **David** said this is a health and safety issue now. **Peter** said they should read down the application to get a strong idea what everyone's opinion is.

**Peter** said they should go through the application:

*1. The proposed use would not diminish surrounding property values because:*

Applicant answer: The current building already encroaches 8ft into the front setback and the addition would only encroach 2 more feet.

**Marcia** agreed it would not diminish the surrounding properties. **David** agreed, **John** agreed, **Peter** agreed, and **George** abstained.

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

Applicant answer: The addition would only encroach 2 more feet.

**Marcia** said she thought it would not be contrary to the public. **David** agreed. **Peter** agreed. **John and George** both agreed that it can't be determined if it is in the set back so they are not sure if it is contrary to the public interest.

*3. Denial of the variance would result in unnecessary hardship to the owner because:*

*a. the zoning restriction as applied to the property interferes with the reasonable use of the property, Considering the unique setting of the property in its environment such that:*

Applicant answer: The well had to be replaced and the new well won't tie into the old piping. This new building is needed to service the well and electrical components.

**Marcia** agreed. **David** agreed. **John** agreed. **Peter** agreed. **George** agreed.

*b. that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property because:*

Applicant answer: The well is already there.

The Board agreed.

*4. Granting the variance would do substantial justice because:*

Applicant Answer: The current water supply is in an office and if access is needed it is extremely difficult if not impossible.

**David** agreed. **Marcia** agreed. **John** agreed. **Peter** agreed. **George** abstained.

*5. The use is not contrary to the spirit of the ordinance because:*

Applicant Answer: The addition is not to increase the size of the restaurant. It is for utility housing only and access to it is necessary.

**David** agreed. **Marcia** agreed. **Peter** agreed. **John** agreed. **George** said it is a good place to put it but we still don't know where the property line is.

**Peter** asked Paul if he would be ok with it if the variance was granted with the condition of not further exacerbating the set back. **Paul** said that was fine. **John** said this puts onus on the owner to make sure it doesn't encroach into the state setback. **George** asked how they will know if this has been done. **Peter** said the building inspector will have our findings and wil make sure this is done. **Dee** said we will not have to come back to the ZBA. **Paul** said no, just redesign the building and go to the Building Inspector.

**Peter moved to grant the Area Variance with the condition that the utility room to be constructed will not further exacerbate the existing Route 13 setback. Seconded by John. Vote yes 5-0.**

The minutes from the previous meeting were signed.

**John motioned to adjourn the meeting at 8:45. Seconded by George. Vote yes 5-0.**

**Minutes submitted by Kristen Austin.**

\_\_\_\_\_ **Peter Cook, Chair**

\_\_\_\_\_ **George Foley, Vice-Chair**

\_\_\_\_\_ **Marcia Farwell, Member**

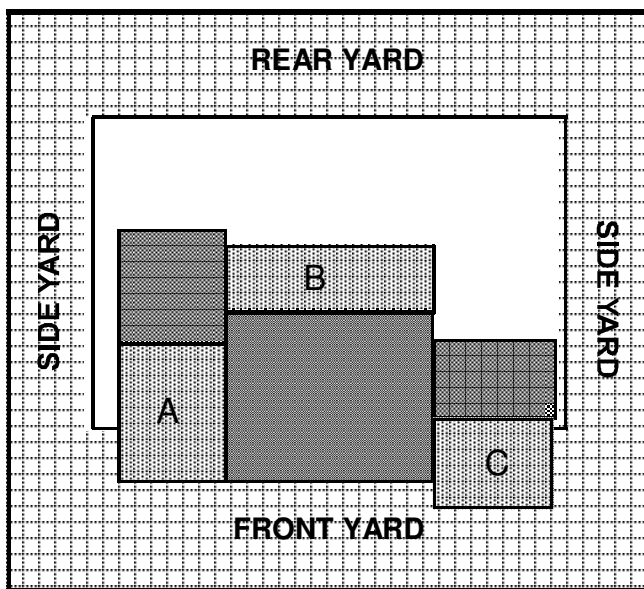
\_\_\_\_\_ **David Beauchamp, Alternate**

\_\_\_\_\_ **John Ganos, Alternate**




800.03 Nonconforming Structures

*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 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.*

**Expansions of structures with nonconforming setbacks**  
(not drawn to scale)



***STREET***

-  Existing Structure
-  Proposed Additions
-  Minimum Required Setbacks

***Explanation:***

Proposal “A” requires a special exception;  
 Proposal “B” requires no action by the Board of Adjustment;  
 Proposal “C” requires a grant of variance by the Board of Adjustment, provided, however, that in addition to meeting the legal standard for a variance, the proposal also meets the general criteria for a special exception found in this Ordinance;  
 Accessory structures that can meet the setbacks do not require a special exception