



TOWN OF
BROOKLINE, NEW HAMPSHIRE
BOARD OF ADJUSTMENT

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BOARD OF ADJUSTMENT
MINUTES
Wednesday May 12, 2010

Present:

Peter Cook, Chair
George Foley, Vice-Chair
Marcia Farwell, Clerk
Webb Scales, Member

Absent: **David Beauchamp**, Member, **Joyce O'Connor**, Alternate & **Charlotte Pogue**, and Alternate.

ZBA Case 355, Jimeno, Russell and Michelle, 10 Halfyard Drive.

In attendance for this hearing: Michelle and Russell Jimeno (applicants) and Matt Desruisseau, (Abutter) 8 Halfyard Drive.

Peter read the hearing notice " This is an **application for a Variance**. The applicant, **Michelle & Russell Jimeno, 10 Halfyard Drive, Lot F-11-12** are requesting they be allowed to place a 10x20 shed 3 feet into the 15 foot side setback. In a Residential/Agricultural district as specified in the Brookline Zoning and Land Use Ordinance, Section: 603.02b."

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

Peter said you have the right to be heard by a five member board. Tonight we have only provided 4 members if you decide to go ahead you will need three votes in the affirmative to prevail. **Michele** said ok.

Michelle said they have lived at this residence for 1 ½ years. They have ordered a shed from Reeds Ferry. They are asking for a variance to allow the shed to be placed 3 feet into the side set back. Plans and photos provided were reviewed with the Board. **Michele** said they are asking for a total of 3 feet into the side setback two feet for the building and 1 extra foot for the concrete slab under the shed. This shed will be located at the end of the driveway. They would like the shed tucked back further toward the woods rather than sitting right at the end of the driveway. The contractor stated the extra 3 feet would allow for snow plowing in the winter. There is also a wooded buffer in between the home and the direct abutter's home. This was the only place to put it with half of the lot being unusable due to the drainage pond, the placement of the house, driveway, septic system, well, propane tank. We also have a swing set in the back yard and are planning to have a garden. **Marcia** asked how big the lot is. **Michele** said about 2 acres but there is a drainage easement and half of the lot is a drainage pond.

Peter said the assessment card states half the lot is swampy area. This was the only place to put it with half of the lot being unusable due to the drainage pond, and the placement of the house, driveway, septic system, well, propane tank. They looked at other areas but this would be the best place to put it. **Matt** said his only concern was the drainage. He wants to make sure the concrete slab would not affect the natural drainage. He said it would be better for drainage if the shed was on sauna tubes. **Peter** asked Matt if he would have the same concern if the shed wasn't going into the setback. **Matt** said yes he would. **Russell** said the drainage runs behind the shed and will continue to do so. **Michelle** said there is a wooded valley that runs between the two properties for drainage. **Marcia** said she thought the special condition of the property was the drainage pond. It

takes up half the lot and pushed the house, septic, well, propane tank, and driveway all to the same side of the lot.

Michelle said in the convenience they signed it stated they could have a shed but it had to be placed on a slab not blocks. **Matt** said he thought sauna tubes would be ok. **Michelle** said they are just trying to follow the rules and go about this the right way. **Webb** said you may want to rethink the having the slab a full foot around the building. When it rains it will splash up against the building and run under the shed and eventually start to rot the building. Typically you would hide the concrete slab under the building. **Marcia** asked if Michelle has discussed the drainage with the contractor. **Michelle** said not yet but she will to make sure the placement of this shed doesn't affect it. **Webb** asked how long Halfyard drive is after their driveway. **Michelle** said they are next to last house. **Peter** asked how far the house is from the property line. **Michelle** said about 50 feet. **Peter** said the ultimate reason for the setback is for safety reasons. **Marcia** asked if the setback is all trees and half are on Matt's property and half on your lot. **Michelle** said yes. **Peter** said if they agree to this, they will have to ensure to the abutter that the drainage will not be affected. **Peter** suggested they go through all the questions on the application. **Peter** read:

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

Applicant Answer: "Granting this variance would be in the best interest of the public. Our goal is to create a visually pleasing appearance and more useful location for a proposed shed. We have gone to great lengths to create a shed that will enhance our property and neighborhood. We have ordered a shed with extra large windows, upgraded trim, architectural roof shingles, coordinating siding and shutters, and a cupola. Following the 15' setback will make this shed visually crowd the driveway."

Peter asked if the Board had any issues with question 1.

George said he had no issues with question 1.

Marcia said she had no issues with question 1.

Webb said he had no issues with question 1.

Peter said he had no issues with question 1.

2. The spirit of the ordinance is observed because:

Applicant Answer: "The spirit of the ordinance is observed because there will still be a generous buffer of wooded area between the two properties along this property line and directly behind the proposed shed. Our proposal merely slides the proposed shed back and nestles it in an existing alcove created by the woods. Granting this variance will enhance the appearance of our property and our neighborhood."

Peter asked if the Board had any issues with question 2.

George said he had no issues with question 2.

Marcia said she had no issues with question 2.

Webb said he had no issues with question 2.

Peter said he had no issues with question 2.

3. Granting the variance would do substantial justice because:

Applicant Answer: "Granting the variance would not only be just but beneficial to the neighborhood. Pulling the shed out away from the woods the extra distance in order to meet the 15' setback would invite future residents to choose to store unsightly items behind the shed but in view of the adjacent neighbor."

Peter asked if the Board had any issues with question 3.

George said he had no issues with question 3.

Marcia said she had no issues with question 3.

Webb said he had can not find justice but not substantial so he will pass on 3.

Peter said he had no issues with question 3.

Webb said he can only see personal preference and convenience as a reason. They may also have a hard time plowing snow but it can still be done. **George** said with the woods behind the shed he is not seeing an issue with justice.

4. For the following reasons, the values of the surrounding properties will not be diminished:

Applicant Answer: "This variance will increase the property values of the surrounding properties because it will enhance the appearance of our property as well as diminish the temptation to store random items behind the shed. We would like to add the variance request is 3' instead of 2' so that if we choose we can set the shed on a concrete pad with a 12" skirt extending beyond the edge of the shed."

Peter asked if the Board had any issues with question 4.

George said he had no issues with question 4.

Marcia said she had no issues with question 4.

Webb said he had no issues with question 4.

Peter said he had no issues with question 4.

Peter said they will just need to reassure the neighbor that this will not affect drainage.

5. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

Applicant Answer: In this specific case and location the general public purpose is met with the 12' 0" setback. The woods will remain as a buffer between the two properties and the 3'-0" increase in open space between the woods and the proposed shed would merely become an invitation for unwanted/unsightly items."

b. the proposed use is a reasonable on because:

Applicant Answer: "This proposed variance is reasonable because this slight adjustment still leaves a substantial buffer (wooded) between the two properties.

Peter said we have to decide what is the special condition of your property as apposed to everyone else who has to follow this rule. Half of this lot is used for drainage and covered by an easement. **Marcia** said the drainage easement has pushed everything over to that side of the property. **George** said he didn't think anything was pushing the shed back into the setback. **Webb** said the special condition of this property doesn't require this violation. **Marcia** said she believes that this drainage easement has pushed everything into one side of this property. She believes this is the special condition and this should be allowed. **Peter** agreed. **George** said for himself he can't justify any special condition of the property that is forcing this shed into the setback. **Webb** asked if they had a walkout basement. **Michelle** said no just a door and a stairway to basement outside. **George** said all criteria have to be satisfied and a vote in the affirmative of at leases 3 members to grant this variance. **Webb** said he thought the house was placed where it is for esthetic reasons. **Russell** said the well and septic had to be so many feet from the drainage pond. **Michelle** said that is why they pushed the house to that side of the lot. **Marcia** said she thought if this variance they have to move this shed three feet closer to the driveway and she didn't think that would do substantial justice. **Peter** said some people on the board may think this is being requested for more esthetic reasons. **George** said you could slide it toward the front lawn. **Webb** said they could place it between the propane tank and the driveway or you could slide it more toward the street. **Matt** said he was concerned about the drainage but he likes where they want to put it. It would stick out like a sore thumb by the front yard. **Russell** said they tried not to impact the setback as much as possible. **Marcia** said it is very obvious the house was placed where it is because of the drainage pond. There is only 40,000 square feet of dry

land. This is the special condition of the property. **Peter** agreed. **George** said there is room for the shed just not where the home owners want it. **Peter** said two people agree that there is just cause and two people can not justify a special condition that would allow this.

Marcia made a motion to approve the Variance application and allow the Jimeno's to put the shed 3 feet into the setback. Peter Seconded. Vote 2-2. 2 Affirmative votes and 2 negative votes.

Peter said you need at least 3 to prevail. **George** said they can appeal. **Peter** said you could ask for a rehearing. **Michelle** said they appreciated your time and deliberation.

Mail

David Beachamp has given his letter of resignation from the ZBA. **Peter** said that letter has to be delivered to the Selectmen.

New Member

Peter said at this point if anyone shows interest they should be made an alternate. This way we can provide a five member board for cases.

Kristen said Kim Bent is interested in joining the ZBA. **Peter** said she should attend the next meeting.

Marcia motioned to adjourn the meeting at 9:45. Seconded by George. Vote yes 4-0.

Minutes submitted by Kristen Austin.

Peter Cook, Chair _____

George Foley, Vice Chair _____

Marcia Farwell, Clerk _____

Webb Scales, Member _____