



Town of Brookline NH
P. O. Box 360, Brookline, NH 03033-0360
PHONE (603) 673-8855 FAX (603) 673-8136

NOTICE OF DECISION

ZONING BOARD OF ADJUSTMENT
TOWN OF BROOKLINE, NEW HAMPSHIRE

Case No: 410

The Zoning Board of Adjustment has made a finding that in order to avoid being detrimental to the neighborhood the business only take access from Route 13.

The application of 364 Route 13 LLC, C/o Edward & Joan Delage for a Special Exception under Section 2600 b of the Brookline Zoning Ordinance has been granted by the affirmative vote of all five Zoning Board Members that attended this hearing. Lot B-20-1 located at 364 Route 13 consisting of 0.76 acres.

George W Foley III, Chairman
Board of Adjustment

Date: 3/21/2018

NOTE: The Selectmen, any party to the action or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at www.gencourt.state.nh.us. This notice has been placed on file and made available for public inspection in the records of the ZBA on **March 22, 2018** and posted at the town hall. Copies have also been distributed to the applicant, the Planning Board, Selectboard, Assessors, Conservation Commission and the Building Inspector.



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BROOKLINE, NEW HAMPSHIRE**

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NOTICE OF HEARING

BROOKLINE BOARD OF ADJUSTMENT

Notice is hereby given that a hearing will be held at or about **7:30pm** on **Wednesday, March 21, 2018** in the Town Hall meeting room. Applicant **364 Route 13 LLC, c/o Edward & Joan Delage** is requesting a **Special Exception** under **Section 2600 b** of the Brookline Zoning Ordinance to allow a "family-operated" ice cream shop in the residential zone. Lot B-20-1 is located at 346 Route 13 consisting of 0.76 acres.

Webb Scales, Clerk
Zoning Board of Adjustment.
Case # 410



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NOTICE OF HEARING

BROOKLINE BOARD OF ADJUSTMENT

Notice is hereby given that a hearing will be held at or about **7:30pm** on **Wednesday, March 7, 2018** in the Town Hall meeting room. Applicant **364 Route 13 LLC, c/o Edward & Joan Delage** is requesting a **Special Exception** under **Section 2600 b** of the Brookline Zoning Ordinance to allow a "family-operated" ice cream shop in the residential zone. Lot B-20-1 is located at 346 Route 13 consisting of 0.76 acres.

Webb Scales, Clerk
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*Rescheduled
March 21, 2018*



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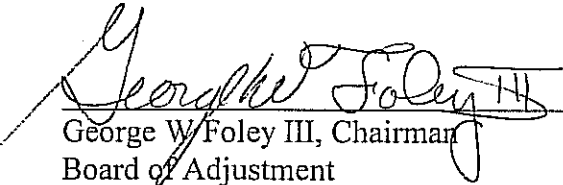
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George W. Foley III, Chairman
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copy P.B.

**BOARD OF ADJUSTMENT
MINUTES**

Wednesday, February 14, 2018

Present: George Foley, Member, Chairman
Peter Cook, Member, Vice-Chairman
Webb Scales, Member, Clerk
Kevin Visnaskas, Member
Jill Adams, Alternate

Absent: Marcia Farwell, Member, and Charlotte Pogue, Alternate

Case 409

Applicant 364 Route 13, LLC c/o Edward & Joan Delage, is requesting a Variance under Section 602 of the Brookline Zoning ordinance to allow a family operated ice cream shop in the residential zone. Lot B-20 is located at 346 Route 13, and consists of 0.76 acres.

Also present for the case: Francis (Buddy) and Cindy Lou Dougherty.

George ask the applicant to present the case and explain why the 5 criteria should be granted. **Joan** presented the 5 points:

1. Granting the variance would not be contrary to the public interest because:
"We are taking this vacant property and opening a family owned and operated business. The property has been vacant/unoccupied for 9 years."
Any non-conforming use, not use for 1 year needs a variance, regardless of previous uses.
2. If the Variance were granted, the spirit of the ordinance would be observed because:
"Our goal is to improve the property and the building to attract and encourage development and growth."
The Board asked if the applicant had a septic system design capable to support the proposed business. **Joan** said that they have a new design that has been approved by the State.
Regarding the "spirit" of the ordinance, it was noted that the Office of Energy and Planning states that the Zoning Board of Adjustment should not change the Ordinance. **George** said that the Board cannot change the ordinance but our ordinance provides for it.
3. Granting the variance would do substantial justice because:
"We are taking this property that has been vacant for 9 years and investing to improve the curb appeal. We have no intention of disrupting the property values; giving purpose to the lot."
4. If the variance were granted, the values of the surrounding properties would not be diminished because:
"The surrounding properties will not diminish because the proposed improvement will complement the town's values. If anything, this will improve the surrounding properties."
It was noted that the lot next door is even smaller with 2 building on it.
5. Unnecessary Hardship
 - a. i.

"As the property stands with no plumbing, no heating and a leaking foundation a variance is needed to improve the property."

a. ii.

"In order for the property to be useful, it needs to have these improvements done. Once the work is completed the property will provide for all involved, the town, the community and families."

Gorges went over criteria 5 in the "Guide for the ZBA" regarding how to demonstrate hardship. The Board discussed other similar or home businesses located in the area.

Peter said that there is a good chance that the variance would not be granted because there is no demonstration of hardship, but told the applicants they may have to come back another night.

Webb suggested finishing the presentation. Then the applicants have the option to withdraw, or the Board could take a vote to approve or not approve it. If would be a "not" we can have a discussion about next steps.

Joan said that they bought the property on the assumption it was a commercial lot. **Webb** said that the applicants need help with 5.a.i. because he has trouble finding that the ordinance is unfair and there is not ground for challenging the zoning on your lot.

Buddy said that the property has always been a business, has never been a residence. **George** said that Buddy was correct but the grandfather status lapsed 8 years ago.

Joan took the advice of the Board and withdrew the application.

The Board next discussed Section 2600 (b) of the zoning ordinance and suggested that the applicant fills out a new application for a Special Exception.

Because of the upcoming annual meeting, the Board will meet on Wednesday March 7th (instead of the 14th).

Appointment / reappointment of Members and Alternates

Webb, seconded by **Jill**, moved to make a recommendation to the Selectboard to reappoint the following Members and Alternates:

- Kevin Visnaskas, Full Member, until March 2020
- Peter Cook, Full Member, until March 2021
- Webb Scales, Full Member, until March 2021
- Jill Adams, Alternate Member, until March 2021

Minutes

Jill moved to approve the Zoning Board minutes of December 13, 2017 as written. **Webb** seconded. Voted YES 5-0.

Peter moved to adjourn at 8:50 pm. **Webb** Seconded. Voted YES 5-0.

George Foley, Member, Chairman

Peter Cook, Member, Vice-Chairman

Webb Scales, Member, Clerk

Kevin Visnaskas, Member

Jill Adams, Alternate

Minutes submitted by **Valérie D. Rearick**



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Peter Cook, Member, Vice-Chairman
Webb Scales, Member, Clerk
Kevin Visnaskas, Member
Jill Adams, Alternate
Charlotte Pogue, Alternate (voting for Marcia)

Absent: Marcia Farwell, Member

George asked Charlotte to vote for Marcia. Charlotte agreed.

Case 410

George read the hearing notice.

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In attendance for this hearing Joan and Edward Delage.

Also present for the case: Abutter

George said fee have been paid and abutters notified.

George read section 2600.00 b. *Permit in the Residential-Agricultural District an industrial or commercial use which a public hearing demonstrates that it can meet the requirements of Section 500, paragraphs 502 (v) and 503 and is not otherwise detrimental to the neighborhood.*

George read section 502 v. *Any commercial use which does not offend by emission of smoke, dust, gas, noise, odor, or fumes*

Joan said the only noise that they may have is from kid that may be there.

George read Section 503.01 Frontage. Every building lot shall have at least 150 feet of frontage.

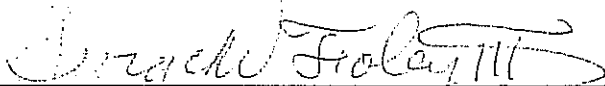
Webb made a motion to Grant the Special Exception in the case of 410 from Section 2600 b of the Brookline Zoning Ordinance. Seconded by Peter Vote yes 5-0.

Minutes

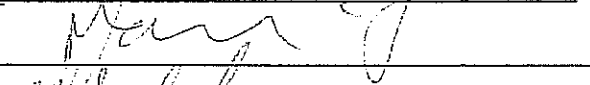
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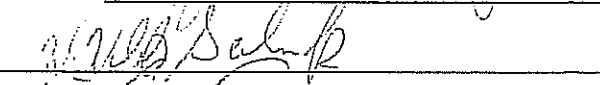
George Foley, Member, Chairman



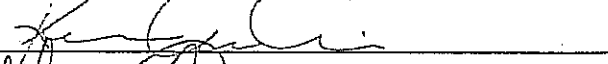
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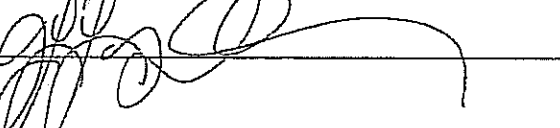
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Jill Adams, Alternate



Minutes submitted by Kristen Austin.



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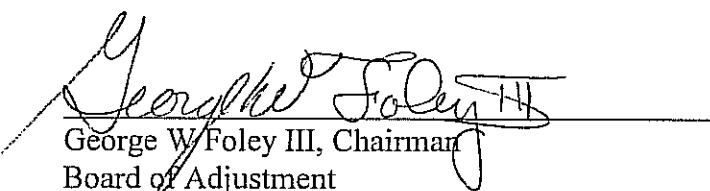
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Minutes submitted by Kristen Austin.