



**TOWN OF
BROOKLINE, NEW HAMPSHIRE**

BOARD OF ADJUSTMENT

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**BOARD OF ADJUSTMENT
MINUTES**

Wednesday, June 13, 2012

Present: Peter Cook, Chair
George Foley, Vice-Chair
Webb Scales, Clerk
Marcia Farwell, Member
Charlotte Pogue, Alternate, (Voting for Kim Bent)

Absent: Kim Bent, Member.

Minutes

Webb made a motion to approve the Minutes of May 9, 2012 as written. Charlotte seconded. Vote yes 5-0.

Peter asked Charlotte to vote for Kim tonight. **Charlotte** agreed.

Case 365

In attendance for this hearing; applicant Ron and Kathy Pelletier and Randy Haight of Meridian Land Services, Inc.

Peter read the hearing notice:

“This is concerning a request for a Variance. Applicant 28 Proctor Hill Road, LLC, Ron Pelletier, is requesting to be allowed to create two lots both with 80,000 non-contiguous square feet of dry land. This concerns Section 603.03 of the Brookline Zoning Ordinance. Lot H-140 is located at 28 Proctor Hill Road in the Residential Agricultural district.”

Peter asked if the fees have been paid and the abutters notified. **Kristen** said yes.

Randy said they had started this subdivision project in October of 2009. They would like to take lot H-140 and create two buildable lots. It was started with a dredge and fill permit, with the approval if the Brookline Conservation Commission, and then the State Subdivision approval. The economy stopped this project from moving forward and then in March of 2012 the Zoning Ordinance Section 603.03 changed to “Land area: each building lot shall have at least 80,000 contiguous square feet, excluding wetlands.” adding in the word “contiguous” to the section.

George asked if this case has gone before the Planning Board yet. **Randy** said no, but now with the zoning change made in March 2012 they need a variance to go any further.

Peter asked Randy if they would need a variance or even need to come to the Zoning Board of adjustment if Section 603.03 of the Brookline Zoning Ordinance hadn’t been changed in March 2012. **Randy** said they would have met every criteria and would have just gone to the Planning Board.

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Ron said he has spoken with the abutters, they have seen the plans, and are aware of what he is trying to accomplish.

Randy said Ron had also pursued an access easement from Mr. Connolly lot H-37-1 for the benefit of access to this subdivision. The whole process has been done so far. **Peter** said seeing as Ron is on the on the Planning Board do you have any insight as to why this ordinance was changed. **Ron** said not speaking for the Planning Board but he believes it was a reaction to the Work Force Housing Ordinance when they had 1 acre lots and the ordinance didn't mention the exclusion of wetlands in the buildable area. **Marcia** said do you think they will revisit this again next year. **Ron** said again not speaking for the Planning Board but yes he said he will bring it up in the next discussion. **Peter** read through the application.

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

Applicant Answer: This project was started in June 8, 2010 conforming to the existing zoning of 80,000 of non-contiguous square feet of upland soil and this project has received NH DES subdivision approval and is consistent with area lot development.

The Board agreed that granting the variance would not be contrary to the public interest. With no abutters in attendance they assume there are no issues with this proposed subdivision.

2. If the variance were granted, the spirit of the ordinance would be observed because:

Applicant Answer: This would allow the completion of a project started in 2010 which has received NH DES subdivision approval, NH DES wetlands non-site specific permit and revises a non-conforming lot (H-139) into a conforming lot and it's in keeping with the surrounding lot development.

All but Webb agreed with this.

George said other lots in the area also don't conform.

3. Granting this variance would do substantial justice because:

Applicant answer: This project was started in June, 2010 complying with existing zoning & subdivision regulations and would allow this project to complete the review process with the Town's Planning Board.

Peter said substantial justice would have been done in March of 2012 by voting no on this proposed Ordinance change. Now that the change has been made substantial justice would be done here. **Charlotte** agreed granting this would just allow them to move forward with the project that was almost complete.

4. If the variance were granted, the value of the surrounding properties would not be diminished because:

Applicant answer: the proposed lots would be larger than most of the surrounding lots within the area.

Charlotte said she did think this would affect the surrounding property values. **George** asked what the frontage of the two lots will be. **Randy** said one will have 200 feet of frontage and the second will have 60 feet of frontage.

5. Unnecessary Hardship

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

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Applicant answer: A substantial amount of time and effort has been done to bring this project forward since its

June, 2010 beginning, conforming with the zoning ordinance in place at that time, even though Rocky Pond Brook crosses the project.

ii. The proposed use is a reasonable one because:

Applicant answer: It is consistent with existing surrounding lot development.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Applicant answer: This property has the special condition of Rocky Pond Brook running through the site which negates conforming with article 603.03 and creates an unnecessary hardship to compete this project started in June 2010.

Peter said he thought the Brook was the special condition of the property. **Webb** said that is also why they changed the Ordinance Section 603.03. **Webb** said we wouldn't be here tonight if this was brought to the Planning Board before they changed the Ordinance at Town Meeting. **Randy** said yes but this project was started in 2009 that's the hardship. **Webb** said he doesn't find Rocky Pond Brook that unique. **Charlotte** agreed with Peter that the Brook was the special condition of the property. **Webb** said the ordinance was designed to create this hardship and if the Board intends to grant this variance he is not comfortable with it.

Marcia made a motion to grant the variance and allow the Pelletier's the creation of two lots out of Lot H-140 both with 80,000 of non-continuous dry land. Charlotte seconded. Vote yes 4-1.

Marcia left at 8:25pm.

Minutes

Webb made a motion to approve the Minutes of May 9, 2012 as written. Charlotte seconded. Vote yes 4-0.

Webb moved to adjourn at 8:35 pm. Charlotte Seconded. Vote yes 4-0.

Minutes submitted by Kristen Austin.

Peter Cook, Chairman _____

George Foley, Vice-Chairman _____

Webb Scales, Clerk _____

Marcia Farwell, Member _____

Charlotte Pogue, Alternate _____