

Town of Enfield Zoning Board of Adjustment Meeting Minutes – December 10, 2019

Board Members & Staff Present: Mike Diehn, Chair; Ed McLaughlin, Vice- Chair; Tim Lenihan, Member; Susan Brown, Member; Rob Taylor, Land Use and Community Development Administrator

Board Members Absent: Tom Blodgett, Member

Public Present: Michael and Hannah Santaw, David and Katie Santaw, Sandra Allard, Joan Demers, Roger Hewett, Dan and Elizabeth Jette, Colin and Jean Fay, Ryan Aylesworth

Meeting was called to order at 7:03 pm by Mike Diehn, Board Chair. Chairman Diehn asked for a show of hands of how many in attendance had never been to a ZBA meeting. There being many hands up, he took the opportunity to explain the workings of a ZBA and the process for hearing applications for zoning variances to those that were unfamiliar. The Chair explained that the process for variances involves evaluating each case (Hearing) against a set of 5 variance criteria as established by case law and the State of NH legal system.

Administrator Taylor informed the applicants that they were entitled to a full board of five total members. As there were only 4 members present at this meeting, it was the applicant's right to have their hearings delayed/ continued until all five members were present. There would be no additional cost for the continuation; however a delay would be necessary to get to a meeting with all five members. Neither applicant wished to wait for a full five member board.

1. Z19-12-01 Michael Santaw requests a variance to Enfield's Zoning Ordinance (Article IV, Section 401.3) to operate an automobile repair business in the R5 Residential – Agricultural District (zone) at 261 Methodist Hill Road (map 2, lot 8).

Mike Santaw appeared with his father to request a variance from Enfield's zoning ordinance. Mr. Santaw presented opening statements outlining his case. Elements of his presentation included: the fact that there are other businesses on his road including directly across the street from him, he purchased his property from his grandfather and it has been in his family since the 1970s, he is unable to purchase another property for his business, his road (Methodist Hill) is a busy through road between Rt, 120 and I-89 and it is convenient for potential and current customers, he did not feel there would be a noticeable impact on traffic on the road.

Administrator Taylor reminded the board that he had sent Mr. Santaw a letter in October informing him that his automobile business was in violation of Enfield Zoning ordinance. Specifically that his use was not allowed in the R5 residential-agricultural district. To his credit, Mr. Santaw immediately came in to see the Town Land Use administrator to discuss his options. Taylor also described the unique characteristics of Mr. Santaw's lot. It sits on the Town Line with Plainfield and he confirmed that there are currently at least 2 legally operating businesses in operation on the Town of Plainfield side of Methodist Hill Road.

Chairman Diehn read aloud some of the Zoning ordinance “Use Restriction” regulations for the Commercial/ Industrial or C/I zone. Member Brown expressed concerns that the maps provided were not detailed enough and she expressed concerns that the applicant should have known that permits and approval were required for this business. Member McLaughlin disagreed stating that it was an honest mistake and was easy to make. There were more discussions about an “after the fact” zoning approval request. The board gave Mr. Santaw an opportunity to explain his mistake in not getting the proper approvals ahead of opening a business. Mr. Santaw said that he had gone to the Town Clerk who he said did not advise him to call the Land Use office. He also said that he was unfamiliar with Enfield’s land use regulations.

At this point the Chair asked if there were members of the public present to speak for or against the proposal. Mr. Dan Jette, an abutter at 245 METHODIST HILL ROAD, distributed a letter that he had prepared in opposition to this business (see Exhibit #1 below). The board granted everyone some time to review the letter. Dan Jette then summarized his points, these included: he feels the business use would compromise the rural character of the neighborhood, he feels the applicant would/has increased traffic in the area including tow trucks, environmental issues including tires being stored outside (fire hazards and mosquitoes). Mr. Santaw indicated that he has a “lean to” where the tires could be stored. Mr. Jette also had concerns about spilled fluids such as oil, as he is downhill from the subject property and his well is in proximity to the site. A question was asked about the historic use of the property. The Santaws indicated that the site has been a single family home where they had raised some chickens and pigs in the past. Mr. Jette then brought up the response times for emergency services. He had referenced the Enfield actual response times for a previous fire that occurred on the property, which he felt was longer than average. Chairman Diehn indicated that many of the issues raised by Mr. Jette were Planning Board related matters.

Jean and Colin Fay at 32 Atherton Road spoke next. They expressed that they were okay with the business as a part time operation, but had reservations about it being a full time use. They too were concerned about fire and oil spills and noise.

Joan Demers of Plainfield spoke next and referenced another business up the road that has logging trucks. She was generally in support of the project.

A question was asked by Member Brown if the zoning variance should be tabled to go to allow Mr. Santaw to go to planning board review. Administrator Taylor felt that the project was being taken up in the correct order. The first question is “can he do this”? (zoning). If the answer is yes, the planning board would be next with “how” can he do it?

Chairman Diehn confirmed with Mr. Santaw that his garage was indeed built as a residential garage. Member Brown inquired as to the distance between the garage and the house. There was general agreement that 15’ was the approximate distance. The garage is 24’ by 24’ in dimensions.

Findings of fact:

- Concerns were raised about emergency response time to this site as it is a long way from emergency service facilities.

- Site has two driveways, one is 40' (primary) and one is 90' (secondary).
- There are 3 other businesses in the neighborhood and across the street.
- Neighboring businesses referred to above and in the application are not in Enfield, instead are in the Town of Plainfield.
- No new construction is planned.
- Tires are presently being stored outside.
- An automobile repair business is currently in operation (since April) in violation of zoning regulations (a "zoning violation" letter was sent on 10/16/2019 via USPS Certified Mail by the Enfield Land Use Administrator)
- Business is being operated in a garage built for residential use.
- Both abutters in attendance expressed serious concerns about having this use next door in their residential neighborhood. One abutter stands in strong opposition.
- Garage is approximately 15' from the residence.
- Garage is 24' by 24' and is a two car garage.
- Garage meets setbacks of the R5 zone.
- Previous use (historic) was as a SFH and they kept poultry as an allowed use in the zone.
- A sign on site for "Santaw Automotive" is 2' by 2'.

At this time, the board began review of the application against the 5 variance criteria. There was general agreement among the board that the R5 residential – agricultural district was meant to be a rural zone and not to be where businesses are located.

- The variance will not be contrary to the public interest;
- The spirit of the ordinance is observed;
- Substantial justice is done;
- The values of surrounding properties are not diminished;
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

There was agreement of the board members that the application did not meet all of these criteria, particularly the "unnecessary hardship" criteria.

A motion was then made by Ed McLaughlin to deny Michael Santaw's request for a variance to Enfield's Zoning Ordinance (Article IV, Section 401.3) to operate an automobile repair business in the R5 Residential – Agricultural District (zone) at 261 Methodist Hill Road (map 2, lot 8) because the applicant failed to meet all the criteria for a variance as outlined in Enfield's zoning ordinance (section 505). The motion was seconded by Tim Lenihan. Chairman Diehn asked that it be specifically called out in the record that board members variously pointed out that they believe that the applicant did not demonstrate "unnecessary hardship" and that that there is a fair and substantial relationship between the ordinance and its application to this property and that it would be against the public interest to allow this use on this land. The motion passed by a unanimous vote (4-0) of the board. A question was then raised by Katie Santaw about the next options available to the applicant. It was suggested that Mr. Santaw reach out to the Land Use Administrator (Mr. Taylor) the next day to discuss his options.

A short break of 10 minutes was called for by the Chair. Hearing #2 (Z19-12-02) opened at 8:36 pm.

2. Z19-12-02 David and Sandra Allard request a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, sub-section L) to construct a garage within the prescribed 20 ft. setback to a lot boundary in the R3 Residential District (zone). Subject property is located at 30 Hawley Drive (map 47, lot 17).

Sandy Allard of 30 Hawley Drive was present to meet with board. Her application was reviewed. She and her husband desire to construct a 2 car garage on a lot that they own across Hawley Drive from their residence. Currently there is a "temporary" structure (tube frame and fabric tarp top) on the lot. The garage location proposed would be closer to the street and to the neighboring lot than allowed by the Town's R3 zone regulations. As outlined in section 401.2, sub-section L, sets the setback to the street at 30' and 20' to any other lot boundary. As proposed, the distances that the Allards have proposed would be 19'6" to Hawley Drive and 7'4" to the southern abutting property owned by the DARMSTAEDTER Living Trust. Member Brown commented that the maps provided should be of a higher quality than what has been presented at this meeting. There were some concerns and questions about lot line measurements raised by board members, but clarity was soon arrived at. Mrs. Allard made a presentation outlining the entire project (see attached Exhibit #2 below). At this time, the board began review of the application against the 5 variance criteria. The board felt that the project met all five criteria.

No abutters were present and no negative communications on the application were received.

A motion to approve the Allard's application (Z19-12-02) was made by Mike Diehn because the application meets the 5 variance criteria as outlined in the Enfield zoning ordinance (section 505). It was seconded by Susan Brown. The motion to approve the variance request was approved by a unanimous vote (4-0) of the board.

MINUTES: The board reviewed the September 10, 2019 meeting minutes and without objection, Chairman Diehn declared them approved as presented.

Administrator Taylor offered to post ZBA membership opening on Enfield's LISTSERV service. The Board felt that that would be a good idea.

Tim Lenihan moved to adjourn; it was seconded and unanimously supported.

The meeting adjourned at 9:15 pm.

Submitted by,
Rob Taylor, Land Use and Community Development Administrator

Dan and Elizabeth Jette letter- exhibit #1

Input to Town of Enfield Zoning Ordinance Variance Request Z19-12-01

We have lived at 245 Methodist Hill for over 23 years and have stayed there due to the rural nature of the area and do not feel that the variance proposal is reasonable as it will significantly change the character of the neighborhood. We are requesting that the Zoning Board disapprove the variance request.

Based on the Enfield Zoning Ordinance the boards first three purposes is to "lessen street congestion", "secure safety from fires and other dangers" and to "promote health and general welfare".

- Mr. Santaw is currently working his automotive repair business on a part-time basis, a full-time basis would increase traffic by approximately 40 cars per day (based on his estimation of working on 10 cars per day with a morning drop off and afternoon pickup)
 - There is not parking enough for more than a few cars, private functions at the residence (with approximate 8-10 cars) usually has several cars parking on the road.
- Tow truck drop offs/pickups at the property block traffic on the road, which is a big safety concern for people coming down the hill. Due to the natural contours of the road it is difficult to see a vehicle in the road until you are almost upon it.
 - The average length of a tow truck is 40 feet, the driveway of the residence in the variance request is approximately 40 feet leaving the tow truck in the road.
- Mr. Santaw makes reference to two businesses on Methodist Hill, both of which have been there since before we moved in. Both businesses are in the Town of Plainfield and have driveway space so as not to impede the flow of traffic on the road at any time. Traffic to and from the businesses is very limited and most days (sometimes weeks) there is none.
- Noise will be a factor when the weather is nice, currently we are able to hear conversations from the property when our homes windows are open.
- The storage of tires, old parts and fluids is a serious health concern. Old tires are a breeding ground for mosquitoes and currently tires are stacked up outside of the garage even though Mr. Santaw indicated in his variance request that "all product, material and craftsmanship will be stored and occur inside the standing garage structure".
 - The NH Department of Environmental Services has specific requirements on the storage of tires due to the significant fire threat and trapped water that provides breeding sites for mosquitoes that can transmit disease.
 - Our private well is located about 300 feet from the property. Based on how the water flows we are very concerned about possible contamination from leaks, spills and parked cars that might be leaking fluids.
- Response time in the event of fire is approximately 12-15 minutes based on the actual Enfield fire log from 2011 when the original house burned at this address; the house was a total loss. Lebanon Fire Department was on scene first and portable water pools had to be utilized as there are no fire hydrants; trucks were on scene for about 14 hours. With the addition of tires and flammable liquids any fire would again be catastrophic and difficult to extinguish quickly.
 - Water run off from such an event could cause possible well contamination and air quality from flammables (including tires) is a concern.
- We feel that the value of our property will be impacted as individuals looking for property in a rural area would be disinclined to want to purchase a property next to an automotive shop.

- Disapproval of the variance does not in our opinion cause an unnecessary hardship, Mr. Santaw is currently employed full-time; it simply would not allow him to become self-employed at his place of residence. Due to the remote rural location Enfield residents would not significantly benefit from his services at this location.

Other Safety Concerns to Consider

1) How is the facility heated and ventilated?

- National Fire Protection Agency (NFPA), Standard 211, Chapter 13,
 - Paragraph 13.2.3 states "solid fuel burning appliances shall not be installed in any location where gasoline or any other flammable vapors or liquids are present".
 - Paragraph 13.2.4 states "solid fuel burning appliance shall not be installed in any garage commercial or residential".
- NFPA, Standard 31, Chapter 4
 - Paragraph 4.3.5 states "oil burning appliances shall not be installed or located where combustible dusts, liquids, or vapors are normally present".
 - Paragraph 4.3.5.1 states "return air for warm air furnaces cannot be taken from such areas".
- NFPA, Standard 70, Chapter 5 outlines specific requirements for special occupancies such as automobile repair shops it requires dust proof and explosion proof lighting fixtures and wiring to be protected by flexible or rigid metal conduit.
- Occupational Safety and Health Agency (OSHA) indicates as a general rule of thumb the minimum required air changes per hour in a repair garage or workshop (500 square feet or bigger) should be 20 to 30 times per hour.
- International Fire Code, Section 406.8 Repair Garages
 - 406.8.2 Ventilation. Repair garages shall be mechanically ventilated in accordance with the International Mechanical Code. The ventilation system shall be controlled at the entrance to the garage.
 - 406.8.3 Floor surface. Repair garage floors shall be of concrete or similar noncombustible and nonabsorbent materials.
 - 406.8.4 Heating equipment. Heating equipment shall be installed in accordance with the International Mechanical Code.
 - 406.8.6 Automatic sprinkler system. A repair garage shall be equipped with an automatic sprinkler system in accordance with Section 903.3.9.1.

2) Enfield's commercial zoning addresses requirements for automotive repair businesses in a commercial zone; will those same type of requirements be met/required if outside of a commercial zone?

- Noise, traffic, lighting, public health, safety and welfare

Daniel and Elizabeth Jette
245 Methodist Hill Road

Presentation by Sandra Allard- Exhibit #2:

Good Evening – my name is Sandi Allard and thank you for considering our zoning variance request this evening. My husband Brian is out of town tonight, so I am here representing our request.

We purchased our property at 30 Hawley Drive in October of 2017, moved in the following month and have resided there full-time as our primary residence for the past 2 years. We anticipate enjoying the property for many years to come.

The first winter there we did a lot of shoveling of snow and clearing off our vehicles. After that first winter we realized we did not want to do that again the following year having always had a garage at our past residences. In 2018 we erected a “temporary” garage – metal frame with canvass top which you should have a photograph of. While the “temporary” garage has served a purpose, our preference would be to erect a permanent garage structure (in the same footprint). This would allow us not only to park our vehicles out of the weather, but also to store our garbage cans and meet any other storage needs we may have and generally keeping our “stuff” out of view of our neighbors and area visitors. And most importantly, it would provide a more attractive option for our property and the neighborhood in general.

As you probably know, Hawley Drive is a private dirt road off Lockhaven Road. There are currently 19 homes on the road. Of those 19 homes, 11 of them are currently being used as the primary residence for the owners and lived in year-round.

Of the 19 homes on the road, 8 of them currently have either attached garages, detached garages or attached carports (some of which do not meet setback requirements). Because these properties are served by a private road, and we are proposing to better our property value, we do not believe the variance will be contrary to the public interest.

Two of the lot lines for the proposed garage meet the required setbacks. The road setback should be 30’, however due to the location of the leach field, the setback distance we could achieve is 19’6”. Because this is a private road and it is maintained by our road association, we believe this setback is adequate and does not hinder any repairs, maintenance or plowing activities of the road. One side setback is only 7’4” from the abutting property. The abutting property is a small undeveloped lot owned by the Darmsteadters, who are residents of Hawaii. Mr. Darmstadter grew up in Enfield and this property (and the lake side parcel across the street) has been in their family for close to 40 years I believe. When they were here visiting the area this past summer, we showed them the location of where we would like to build a garage. They verbally told us they had no issues with a garage being built at that distance from their property. Just as a side note, when they, their family and friends are here for 2 weeks in every summer accessing Crystal Lake via their undeveloped property, we open up our driveway to them to park their vehicles in while they are here during the day.

We believe the addition of a garage to our property adds value not only to our property but enhancing the surrounding properties. In the past 3-4 years, 4 properties on Hawley Drive have undergone or are undergoing major renovations and resulted in higher property values. A wood built permanent garage would be an enhancement to our property and its value as well as provide a major convenience to our family.