

Town of Enfield Zoning Board of Adjustment (ZBA) Meeting Minutes – January 14, 2020

Board Members & Staff Present: Mike Diehn (Chair), Tim Lenihan, Susan Brown, Rob Taylor, Land Use and Community Development Administrator

Board Members Absent: Ed McLaughlin (Vice Chair) and Tom Blodgett

Public Present: Jim Bonner (The Enfield Channel), Robert Dietel- Esq., Lisa Rogak, Anne Dontonville (abutter), Mathew Dow (contractor)

Meeting was called to order at 7:03 pm by Mike Diehn, Board Chair. Chairman Diehn asked for a show of hands of those in attendance that had never been to a ZBA meeting. There being a few 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. He described the ZBA as a “quasi-judicial board.” Next the chair informed the applicant that they were entitled to a full board of five total members. As there were only 3 members present at this meeting (still a quorum), 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. Administrator Taylor pointed out that a vote of 2-1 either for approval or denial of the application was not considered by case law to be a decision. The applicant did not wish to wait for a full five member board and opted to proceed after a brief consult with her attorney.

Z20-01-01 Alex Ishii and Lisa Rogak request a variance to Enfield’s Zoning Ordinance (Article IV, Section 401.3, Sub-section M) to construct a garage within the prescribed 50 ft. setback to a wetland in the Rural Residential – Agricultural District (R5 zone). Subject property is located at 84 Lewin Road (map 50, lot 128).

Robert Dietel, an attorney representing the applicants, presented an overview of the application. He highlighted important information contained in the packet of materials submitted to the board for consideration. The applicants are seeking to construct a garage within the wetlands setbacks and Mr. Dietel indicated that this application is a “classic hardship” that would require variance relief. There is only a small area of developable land next to the house where the septic system is currently located and the topography is limited in nature. Therefore the next best place is across Lewin Road from the home.

Tim Lenihan inquired about the space above the garage. Lisa Rogak indicated that the space would be used for storage and not as a residence.

Mr. Dietel indicated that a large portion of the proposed building site is already impervious surface. He also indicated that almost the entire lot is encumbered by the wetlands setback. A wetlands scientist indicated that the site is mostly “poorly drained soils.” Chairman Diehn

inquired about the status of the seasonal stream on the site. Ms. Rogak described the stream as heavily flowing after a storm but otherwise not containing much flow in the summer.

Chairman Diehn inquired about the setback requirements to the street (Lewin Road). The applicant's attorney indicated that this parcel is considered to be one lot even though it is bisected by the private road. The parcel is not two separate lots, therefore the town's setback requirements would not apply here as it clearly says in the definitions in the zoning ordinance, that the setback applies only to "lot lines contiguous to the street" and not simply the setback to the street.

Mr. Dietel summed up the situation before the board by asking: "do you want to have an intense development closer to the lake and right up against the neighbor's property? Or do you put it in the logical spot on the other side of the road where it is nice and flat and there is existing impervious surfaces, and place it as far away from the pond?"

Member Brown inquired about the location of the well and the septic system. Ms. Rogak described their location for the board.

Chairman Diehn expressed some reservations about the size of the structure and its proposed location. Member Lenihan noted that the increase in non-pervious surfaces would be nominal and that the other possible location for the structure on the site would be less desirable for the neighborhood. He also noted that the garage would increase the taxable value of the property.

Chairman Diehn asked the applicant if they intended to build a garage on this property regardless of ZBA approval, essentially asking if they would they build elsewhere on the property?

Abutter Anne Dontonville (28A Lewin Road) spoke in favor of the proposed project. She and her husband have lived on Lewin Road for 20+ years and are very familiar with the site and the road. They feel that the project will work well as proposed.

Tim Lenihan made the following motion: The board approves the variance application as applied for by Alex Ishii and Lisa Rogak. Mike Diehn seconded the motion and offered the following findings of fact that he had prepared.

Findings of Fact:

- No NH-DES will be required.
- Project's proposed location is 3' from the wetland delineation line and is 13' from Lewin Road.
- Almost all of the lot in question is in the wetlands set-back.
- The house was built in 1987, the year before zoning was implemented in Enfield.
- Lewin Road passes through the property and does not bisect it.
- Sokolowski (Wetland Scientist #127) reported the soil type as "poorly drained," the "least wet" type.
- Reducing the size of the garage would leave the need for additional parking.
- The applicant intends to build elsewhere (where they would be allowed) if the ZBA declines the application.

- The increase to impervious surface as proposed would be ~840 sf.
- The ZBA opines that the proposed location is the best one on the lot and disturbs that lake/pond the least.
- Lewin Road is a private road.
- This private road does not create lot lines as it would if it were a Town road.

After some lighthearted discussion about maintenance of the road and snow plowing, Chairman Diehn called the question. The vote was 3-0 in favor of approval of Tim Lenihan's motion to approve the variance.

At this point Chairman Diehn closed the public hearing.

The board reviewed the meeting minutes from the 12/10/2019 meeting and Chairman Mike Diehn declared the minutes approved with one correction on line 48 to replace the word "known" with "knows".

Chairman Mike Diehn declared the meeting adjourned at 8:07 pm.

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