

Enfield Zoning Board – Meeting Minutes

ZOOM ONLINE MEETING PLATFORM

September 1st, 2020

BOARD MEMBERS PRESENT: Timothy Lenihan (Chair), Mike Diehn (Vice Chair), Ed McLaughlin, Susan Brown, Madeleine Johnson, Tom Blodgett (Alt.)

BOARD MEMBERS ABSENT: None

STAFF PRESENT: Rob Taylor- Land Use and Community Development Administrator, Barbara Higgins-Recording Secretary

GUESTS: Theresa and Andrew Pettola-Applicant, Dawn Harland, Ed Bingham, Ryan Aylesworth-Town Manager, Keith and Athena Nicholson, Barry Schuster, Esq., Linda Jones, Mike and Elaine Oleniak, Shirley Green, David Fracht, Linda Jones, Erik Russell

I. CALL MEETING TO ORDER

Chair Lenihan called the virtual ZOOM meeting to order at 7:00 p.m. He took a “roll call” of members present for attendance. Ed McLaughlin recused himself from this meeting. Chair Lenihan appointed Tom Blodgett as a regular member for the meeting. Madeleine Johnson also made the Board aware that she has worked with and hired Barry Schuster in the past and wanted to put that on the record.

II. PUBLIC HEARING

Continuation of Z20-08-01 from August 11, 2020, Theresa and Andrew Pettola request a variance to Enfield’s Zoning Ordinance (Article IV, Section 401.2, sub-section M) to construct a 12’ by 6’ deck on their residence within the prescribed 50’ setback to Crystal Lake. Subject property is located at 360 Crystal Lake Road (Tax Map 46, Lot 16) and is owned by Theresa and Andrew Pettola.

Chair Lenihan explained that the minutes and video from the August 11, 2020 hearing will be made part of the record for tonight’s hearing. The Zoning Board of Adjustment had also received the application and amendment from Attorney Barry Schuster on behalf of the Pettolas as well as attachments on the medical status of their son.

Attorney Schuster presented his case on behalf of the Pettolas. He went over the criteria for deciding on a variance including public interest, altering the essential character of the neighborhood, and if it would endanger the health, safety and welfare of anyone. He also went over substantial justice and explained that the balancing test was whether a denial

would cause a greater harm than granting the request for variance. Attorney Schuster also went over NH Statute 674.33 which pertains to giving a variance where there is a special disability involved. He went on further to explain that the deck and stairway would be used for an emergency entrance and exit only. The Pettolas would not have parties on the deck, a grill or music playing there. When the Pettolas sell the house, the stairway would come down. If the son recovers from his medical disability the stairway would come down. This stairway and deck would allow him access to all areas on the property.

Chair Lenihan wanted to point out that the statute being cited also says that any variance granted under that paragraph shall be in harmony with the general purpose and intent of the zoning ordinances. He also wanted to clarify that the proposed order that Attorney Schuster sent in cited the construction on the deck and stairs as proposed when it has already been constructed. Attorney Schuster acknowledged that was the case and the Pettolas are asking for permission to maintain the deck and stairs.

Vice Chair Diehn asked Attorney Schuster if the son could live anywhere else on the property beside the apartment above the garage? Attorney Schuster said the son would not be able to go to that portion of the house, ever, if the deck and stairway were not allowed to be built. Mr. Pettola explained that the same spiral staircase was inside both the house and the garage.

Ms. Brown said she believed that the house had a handicapped bedroom in the main house. She asked why the son was in the apartment above the garage? She wondered about the truthfulness of the Pettolas. Attorney Schuster responded that truthfulness was not a criterion for granting the variance.

Ms. Johnson asked if the structure which was already built that the Pettolas were asking for a variance had to be that particular structure? Was there another option to solve the problem at hand that had not been looked at? Attorney Schuster said that putting the structure on other sides of the building would not have been the best alternative for the neighbors or the visual appeal to the property and that a letter written by Mr. Neily did explain that.

More questions were asked of Attorney Schuster by the Board. Chair Lenihan asked if the Pettolas had ever tried to get a permit in the Town of Enfield before? Mr. Pettola said they have owned 2 properties on the lake and has never applied for a permit before. Chair Lenihan asked if the Pettolas were able to use the deck and stairway over the summer? Mr. Pettola said they were not able to use the stairway, the construction was not finished, the slider allowing entrance into the apartment had not been put in yet.

Chair Lenihan marked the medical records of the Pettola's son as Exhibit 1. He also read a letter from the Chairman of the Enfield Conservation Commission, Alan Strickland, into the record. The letter stated that the Conservation Commission was unanimously in favor of

denying the Pettolas request for a variance to add a deck and stairs on Crystal Lake. It is within the 50-foot buffer zone of Crystal Lake. He marked the letter as Exhibit 2.

Chair Lenihan asked to hear from the abutters of the property next. He asked if Mr. Labounty, who did the construction work on the deck and stairway, was present at the meeting. Mr. Taylor said he was not present, but he had heard from Mr. Labounty. He would not be at the meeting; he did not want to be in the middle of a neighborhood dispute, and he felt that the Pettolas should have been the ones to apply for the permit.

Mr. Bingham voiced his concern that if this variance is approved it might lead to more requests for variance to be approved for the same reason. He believed it was in the interest of the Town to protect the shoreline of Crystal Lake and to protect the greater good of the lake.

Other abutters spoke out against the deck and stairway being built. They believe there may be other options to satisfy the owners of the property and the lake community.

Chair Lenihan marked the letter that Mr. Bingham wrote as Exhibit 3. He also marked text messages sent into the Board by Mr. Nicholson as Exhibit 4.

Chair Lenihan expressed to the Board that any personal disputes and police actions between the neighbors really have no bearing on the variance decision.

Mr. Pettola responded to the Board by saying that Mr. Phil Neily, Building, Health and Fire Inspector for the Town of Enfield, came out to look at the deck and stairway and said it was not feasible to put the stairway anywhere else on the garage without changing the structure and functionality of the garage.

Mr. Taylor read Mr. Neily's letter to the Zoning Board of Adjustment that was dated August 21, 2020. Chair Lenihan marked the letter as Exhibit 5. He also marked the cease and desist letter by Mr. Taylor to the Pettolas from May 20th, 2020 as Exhibit 6.

Ms. Green from the Conservation Commission spoke and said that she strongly supported the decision by the Conservation Commission's recommendation to deny the request for variance by the Pettolas. The deck and stairway are within the 50-foot buffer zone of the lake.

Attorney Schuster believed the notion that granting this variance will force the granting of all other future variances is not true. The Zoning Board of Adjustment takes each case one at a time.

Mr. Pettola said that Mr. Neily also said that it was not a feasible alternative to place the stairway inside the garage due to how it was set up. If they put the stairway in the garage it would create a functional obsolescence..

Attorney Schuster asked Mr. Pettola if they would like to get an architect that could review the building and come back with suggestions or alternatives on whether there are or are not other options that could be considered. Attorney Schuster also suggested that they ask to continue this hearing to get that information from an architect.

Discussion continued among the Board members, Attorney Schuster and Mr. Pettola. Public commenting was closed.

Mr. Pettola requested a continuance to allow an architect or engineer to come out to the property in Enfield and look at the feasibility of where the deck and stairway is currently located versus a different proposed location which he will then submit to the Zoning Board for review before their next meeting.

**Vice Chair Diehn MOVED to continue this hearing.
Seconded by Mr. Blodgett.**

Roll Call Vote:

**Mike Diehn, Tom Blodgett, Timothy Lenihan and Madeleine Johnson all voting Yea.
Susan Brown voted Nay.**

**** The Vote on the MOTION was approved (4-1).***

Mr. Taylor said the next Zoning Board meeting was currently scheduled for October 13th, 2020 at 7:00PM.

III. APPROVAL OF MINUTES: July 14, 2020 and August 11, 2020

The minutes from July 14th, 2020 and August 11, 2020 will be carried over to the next Zoning Board of Adjustment meeting for approval.

IV. COMMUNICATION AND MISCELLANEOUS:

Chair Lenihan went over e-mails and explained that if an e-mail is sent out to all the Zoning Board members, they should not hit reply to all when responding. When this is done it creates a quorum and therefore a meeting.

Chair Lenihan said that the Board has one person possibly interested in becoming an alternate on the Zoning Board. His name is Glen Green, and he is currently the President of the Crystal Lake Association.

Chair Lenihan also said he is going to follow the Town of Enfield's lead as to when the Board will have their first in person meeting since going to Zoom due to the pandemic.

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Ms. Johnson and Chair Lenihan both had some procedural questions and concerns for the Pettola hearing. Mr. Taylor will e-mail the Municipal Association with the questions that the Board had.

V. NEXT MEETING: October 13th, 2020

VI. ADJOURNMENT:

A MOTION was made by Chair Lenihan to adjourn the meeting at 8:56 PM.

Roll Call Vote:

Mike Diehn, Tom Blodgett, Timothy Lenihan, Susan Brown and Madeleine Johnson all voting Yea.

None voted Nay.

** The Vote on the MOTION was approved (5-0).*

Respectfully submitted,

Barbara Higgins

Recording Secretary