

# **Enfield Zoning Board – Meeting Minutes**

## **ZOOM ONLINE MEETING PLATFORM**

### **October 13<sup>th</sup>, 2020**

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

**BOARD MEMBERS ABSENT:** Ed McLaughlin

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

**GUESTS:** Theresa and Andrew Pettola-Applicant, Dawn Harland, Ed Bingham, Keith and Athena Nicholson, Barry Schuster, Esq., Shirley and Glyn Green, David Fracht, Greg Hookway-Contractor, Peter and Barbara Goehrig-Applicant

#### **I. CALL MEETING TO ORDER**

Chair Lenihan called the virtual ZOOM meeting to order at 7:06 p.m. He took a “roll call” of members present for attendance. Chair Lenihan appointed Tom Blodgett as a regular member for the meeting.

#### **II. PUBLIC HEARING**

**A. Land Use Case #Z20-10-01,** Hans Peter and Barbara Goehrig (Trustees, Goehrig Family Rev. Trust) request a variance to Enfield’s Zoning Ordinance (Article IV, Section 401.2, Sub-section L) to construct a garage on their property within the prescribed 20 foot setback to a lot boundary and within the prescribed 30 foot setback to the street (Hawley Drive) in the R3 Residential District. Subject property is located at 26 Hawley Drive (Map 47, Lot 16).

Mr. Taylor read the case and told the Board that the abutters had been notified of this hearing. Mr. Goehrig gave his presentation on wanting to build a garage on a piece of property that they own across the street from their house. They need the garage for storage for personal home items as well as outdoor items used to maintain their property.

Mr. Taylor shared his computer screen to show the Board the drawings for the garage and placement on the property. Chair Lenihan commented that DES had granted the Goehrighs a shoreline permit.

Chair Lenihan asked if there was any public comment. There was none.

Chair Lenihan asked the Board if they had any questions for the Applicants. Ms. Brown asked if the Lot were a buildable lot that could be sold to build a house on? Mr. Goehrig said the Lot was not sold to them with any guarantee that a house could be built on it. The property currently has the leach field for the house they own across the street from that Lot.

Mr. Blodgett asked what the rationale was to have only a 10-foot set back from Lot 17? Mr. Goehrig said after looking at the property they felt that would be the best place for the garage to be set. It would not interfere with the septic or drainage off the lot.

Ms. Johnson asked if DES expressed any opinions or gave any guidance about potential runoff or impervious surfaces? Mr. Goehrig said they did not give any opinion on the drainage situation, and they were within their limits for impervious space. Mr. Hookway, contractor for the Goehrigs, said the plan would reduce the shape of the existing driveway. They are trying to place the garage out of the way of the natural drainage of the field to the culvert on the roadside.

Mr. Diehn asked how this application solved the hardship criteria? Mr. Goehrig said that the land is such that water flows down the hill, and they did not want to interfere or excavate the sewer system. Their hardship for wanting to build the garage was because of a lack of storage space and winters in New Hampshire. At their age they felt they would need a garage at some point. Mrs. Goehrig also pointed out that there was a damp area in the middle of the field which would not be a good place to put a garage on.

Ms. Brown asked what their plans were for the garage? Mr. Goehrig said it would be 2 stories, with dry storage upstairs. Chair Lenihan clarified that putting the garage in the middle of the field would not work because it was very damp there and that the Goehrigs were currently paying for storage and with this new garage they could stop doing that. Mr. Taylor also pointed out that their leach field pipe was going across the street to the property and pumping up hill.

Mr. Diehn explained that he still was not seeing a hardship being shown to approve the variance request. Mr. Hookway said the reason for the placement of the garage was because it was directly across the street from the Goehrig's home. By making this placement it prevents the Goehrigs from having to back out into the road and would not put the garage up on a hill, in the middle of the field. That could become a difficult thing for the Goehrigs in the future.

Chair Lenihan closed public commenting and opened discussion with the Zoning Board. Most of the Board said they felt that the garage did not go against the public interest and that the spirit of the ordinance was being observed. The Board also felt that substantial justice was being upheld since the neighbors had the same situation when building their garage. Chair Lenihan said he did not feel like there would be a diminishing of property values if the variance was granted.

Discussion was had by the Board members about the hardship criterion being met. Ms. Brown said she felt it would be a hardship to the Goehrigs if the Board denied the variance. Mr. Diehn asked if there was an easement in the deed for the septic to be on the lot across the street? Mr. Goehrig said he believed there was one.

***Susan Brown MOVED that the Zoning Board grant the request by Hans Peter and Barbara Goehrig for a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, Sub-section L) to construct a garage on their property within the prescribed 20 foot setback to a lot boundary and within the prescribed 30 foot setback to the street (Hawley Drive) in the R3 Residential District. The subject property is located at 26 Hawley Drive (Map 47, Lot 16). Land Use Case #Z20-10-01***  
***Seconded by Mike Diehn.***

**Roll Call Vote:**

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

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

**B. Continuation of Z20-08-01 from September 1, 2020,** Theresa and Andrew Pettola's request for a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, Sub-section M) to construct a 12 foot by 6 foot deck on their residence within the prescribed 50 foot 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 there were some submissions that the Zoning Board received. He had the first four exhibits from the last meeting already marked and was adding some more. A letter from Frank J Barrett, Jr., architect, dated September 17<sup>th</sup>, 2020 was marked as Exhibit 5. A letter from Ed Bingham and Dawn Harland, dated October 2<sup>nd</sup>, 2020 was marked as Exhibit 6. A letter from Ed Bingham and Dawn Harland, dated October 7<sup>th</sup>, 2020 was marked as Exhibit 7. A letter written by Attorney Schuster to the Conservation Commission asking for them to withdraw their objections, dated October 1<sup>st</sup>, 2020 was marked as Exhibit 8.

Attorney Schuster spoke about Mr. Frank Barrett's letter. Mr. Barrett has been an architect for many years, he was the Town of Hanover's Code and Zoning Administrator for a number of years and is currently on the Select board for the Town of Fairlee and he was Chair of the Planning Commission and member of the Zoning Board of Adjustments for the Town of Fairlee as well. Mr. Barrett went and inspected the property and the only place that he could find to put a stairway, 6 feet in width, was on the back section of the garage. Attorney Schuster said he believed that the stairway would secure safety from other dangers or relieve panic for the Pettola family as intended by the ordinance. The other purpose of the ordinance was to promote health and general welfare. Granting the variance for the stairway would

provide for that section of the ordinance as well. He believed that the stairway would be in harmony with the general purpose and intent of the zoning ordinance and in fact, furthers the general purpose and intent. The stairway would only be in place so long as the particular person had a continuing need to use the premises. Attorney Schuster wanted to know what the difference was between having a variance for a garage and having a variance to help someone who had seizures? Attorney Schuster also addressed the question as to why the son could not be somewhere else in the house. He said that Mrs. Pettola was already being accommodated because of potential seizures as is the Pettola's other son. He explained that he realized the Board was trying to protect the lake but that the stairway would have no effect on the lake. He also spoke about a letter he sent to the Conservation Commission that was not forwarded. He was disappointed by that and never had a chance to speak with the Conservation Commission. He believed that the Pettola's application does meet all the conditions for a variance far better than a garage because it is temporary and for a particular purpose and that the stairway goes back further than the neighboring property.

Chair Lenihan asked Attorney Schuster how the Pettolas would meet the requirement of the statute he is citing that says the person has to regularly use or reside at the premises? Attorney Schuster responded that the statute says "to reside in or regularly use the premises", so whether they are regularly using the premises every weekend or once a month, but certainly throughout the year, the Pettola's son would be there on a regular basis. The Pettolas are not there now because of the inability to care for their son if there is an emergency. Chair Lenihan pointed out that the Pettolas indicated that their son was not at the premises all summer this year. Attorney Schuster said he would not be there without an emergency exit.

Mr. Pettola said that the stairway in the house was no better than the one in the garage. They are both spiral staircases. They use a baby monitor above the garage, so they know exactly what is going on with their son. They have kept their son away from the property because of the safety issue. Chair Lenihan asked how much total time the Pettolas think they stay at the property. Mr. Pettola said it would be hard to quantify this year because of Covid-19, but that they do spend an inordinate amount of time there, usually.

Mrs. Johnson asked about the temporary nature of the stairway and moderating the use of it. She pointed out that Attorney Schuster said that the stairway would be temporary until there was no longer a need for use of the premises. What does continuing use mean to the family? Chair Lenihan explained the background of the provision. Attorney Schuster said that the Board could render a ruling that would then get recorded in the book of deeds.

Commenting was opened to the public. Mr. Keith Nicholson believed that the stairs could have been put in the garage. He understood that it would have cost more money and be inconvenient, but he thought it would have been the right thing to do. Mr. Nicholson questioned the health concern over the Pettola's son since he believed that the son had started driver's education and did not think a person with seizure disorders would be allowed to

drive. Mrs. Pettola explained the rules and law as far as driving and seizures were concerned. She also said that her son will have seizures and be on medication for the rest of his life.

Mr. Bingham said he thought the Pettola's son could stay in the main house and not need to stay in the apartment above the garage, therefore the stairway would not be needed. Mr. Pettola said that even though Mrs. Pettola had been seizure free for a long time, she still could have seizures and that is why she was in the first floor bedroom and that their son could not reside in the upstairs bedroom in the house since to get to that room was by way of a spiral staircase as well.

Ms. Shirley Green, who is a member of the Enfield Conservation Commission, spoke about the importance and value of the lakes in Enfield. She asked the Zoning Board to keep in mind the 50-foot building boundary from the lake.

Mrs. Athena Nicholson asked if the Pettolas had a special permit from DES with the State of NH? Chair Lenihan said the Pettolas were not required to have that permit before they came before the Zoning Board.

Chair Lenihan made clear the specific statutory requirement that would allow the Pettolas to not have to prove a hardship requirement for the permit. The statute is RSA 674:33, V, Paragraph IA2 which states, "any Zoning Board of Adjustment may grant a variance from the terms of the zoning ordinance without finding a hardship arising from the condition of a premises subject to ordinance when reasonable accommodations are necessary to allow a person, or persons with a recognized physical disability to reside in or regularly use the premises provided that...". He made it very clear that the statute says that the Board "may" grant the variance, not "shall" do it.

Attorney Schuster thanked the Board for their time and consideration in the matter. Mr. Pettola said that they were not trying to do anything nefarious with the building of the stairway and apologized for the way they handled the construction. They take extremely good care of their property on the lake and take pride in their ownership of it. He asked the Board to look at the situation from their point of view as parents, not as neighbors or as a statute, but to look at it as a family versus a statute.

Mr. Bingham said he felt that Statute 674.33 did not apply to this situation and that the Pettola's son could reside at the property if he wanted to. He felt that all 5 variance criteria do apply to the request including the hardship criteria.

Chair Lenihan closed public commenting. The Zoning Board went over and discussed the 5 criteria to grant the variance. Discussion was had about public interest, spirit of the ordinance, substantial justice, and value of the surrounding properties not to be diminished.

Chair Lenihan spoke to the Board about finding of fact on the son's disability. He believes that will need to be decided first by the Board before they could discuss the hardship criterion. He put the question of whether there was a disability that qualified for RSA 674.33, V, Paragraph IA2 to a vote, before the Board could decide whether to apply the exception or the hardship criterion. He proposed a Finding of Fact that the Pettola's son has a seizure condition that is a recognized disability. Ms. Brown voted no. Mr. Diehn, Mr. Blodgett, Ms. Johnson, and Mr. Lenihan said yes. There was a Finding of Fact that the Pettola's son does have a disability.

**Mike Diehn MOVED that the Zoning Board consider the variance under NH RSA 674:33 V so that they do not require the normal hardship criteria.**  
***Seconded by Tom Blodgett.***

Discussion on the motion was had between the Board members.

**Roll Call Vote:**

**None voted Yea.**

**Mike Diehn, Tim Blodgett, Susan Brown, Timothy Lenihan, Madeleine Johnson all voted Nay.**

***\* The Vote on the MOTION Failed (0-5).***

There was discussion among the Board members on the hardship criterion.

**Susan Brown MOVED that the Zoning Board deny the variance for Land Use Case #Z20-08-01, Theresa and Andrew Pettola's request for a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, sub-section M) to construct a 12 foot by 6 foot deck on their residence within the prescribed 50 foot 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.**

***Seconded by Mike Diehn***

Discussion was had among the Board members on amending the Motion. A vote was taken to amend the Motion to the following:

**Susan Brown MOVED to AMEND her Motion that the Zoning Board deny the variance because the applicant failed to convince the Board that such a denial would create an unnecessary hardship for Land Use Case #Z20-08-01, Theresa and Andrew Pettola's request for a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, sub section M) to construct a 12 foot by 6 foot deck on their residence within the prescribed 50 foot setback to Crystal Lake. The subject property is located at 360 Crystal Lake Road (Tax Map 46, Lot 16) and is owned by Theresa and Andrew Pettola.**

***Seconded by Mike Diehn***

**Roll Call Vote:**

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

**None voted Nay.**

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

Discussion was had on the amended Motion.

***Susan Brown MOVED that the Zoning Board deny the variance because the applicant failed to convince the Board that such a denial would create an unnecessary hardship for Land Use Case #Z20-08-01, Theresa and Andrew Pettola's request for a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, sub section M) to construct a 12 foot by 6 foot deck on their residence within the prescribed 50 foot setback to Crystal Lake. The subject property is located at 360 Crystal Lake Road (Tax Map 46, Lot 16) and is owned by Theresa and Andrew Pettola.***

***Seconded by Mike Diehn***

**Roll Call Vote:**

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

**None voted Nay.**

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

The following are the Findings of Fact:

- The subject property is not a primary residence
- Construction of the deck and staircase were initiated without a building permit
- The Building Inspector told the homeowners to cease construction
- Construction continued until the Pettolas were notified of the zoning violation
- The construction infringes upon the 50-foot shoreline setback
- No DES permit has been applied for
- The Conservation Commission opposes the variance
- Several abutters oppose the construction
- There is a great deal of animosity between the property owners and abutters
- The Pettolas requested that the hardship criteria be waived in accordance with NH RSA 674:33 V
- The Pettola's teenage son has a seizure condition that he was diagnosed with in the last year

- A determination on his ability to drive has not yet been made in his home state of Connecticut
- Applicant's architect stated that the current construction is the most convenient for the applicant

**III. APPROVAL OF MINUTES: July 14<sup>th</sup>, 2020, August 11<sup>th</sup>, 2020, and September 1<sup>st</sup>, 2020.**

***Ms. Susan Brown MOVED to approve the July 14<sup>th</sup>, 2020, August 11<sup>th</sup>, 2020, and September 1<sup>st</sup>, 2020 Minutes as amended below and presented in the October 13<sup>th</sup>, 2020 agenda packet.***

***Seconded by Mr. Lenihan.***

Amendments:

**July 14<sup>th</sup>, 2020:** None

**August 11<sup>th</sup>, 2020:**

Page 1, Line 40, Change "personal" to "personnel"

Page 2, Line 62 and throughout the minutes, Change "Neely" to "Neily"

Page 2, Line 69, Change "rational" to "rationale"

Page 2, Line 80, Change "here say" to "hearsay"

**September 1<sup>st</sup>, 2020:**

Throughout the minutes correct the spelling of the last name of the applicant to "Pettola"

Page 1, Line 14, Change "Ayelsworth" to "Aylesworth"

Page 2, Line 53, Change "in" to "it"

Page 2, Line 59, Change "was" to "were"

Page 2, Line 72 and throughout the minutes, Change "Neely" to "Neily"

Page 3, Line 125, Change "obsolences" to "obsolescence"

**All were in favor of the Motion.**

**IV. ADJOURNMENT:**

***A MOTION was made by Ms. Susan Brown to adjourn the meeting at 9:45 PM.***

Respectfully submitted,

Barbara Higgins

Recording Secretary