

Enfield Zoning Board of Adjustment – Meeting Minutes
DEPT OF PUBLIC WORKS/ZOOM PLATFORM
July 13, 2021

ZONING BOARD OF ADJUSTMENT MEMBERS PRESENT: Ed McLaughlin (Chair),
Madeleine Johnson (Vice Chair), Cecilia Aufiero, Susan Brown, Mike Diehn (Alternate Member
– Voting Member for this meeting)

ZONING BOARD OF ADJUSTMENT MEMBERS ABSENT: Brian Degnan

STAFF PRESENT: Rob Taylor- Land Use and Community Development Administrator,
Elizabeth Austin – Recording Secretary (minutes re-recorded remotely by Whitney Banker –
Recording Secretary)

GUESTS: Rachelle Vanier, Dean Vanier, Richard Martin, Chris Bocash, David Bocash,
Richard Martin (via Zoom platform), Patrick Butman (via Zoom platform)

I. CALL MEETING TO ORDER:

Chair McLaughlin called the meeting to order at 7:00 p.m. and took a “roll call” of members
present for attendance. He noted that Mr. Diehn would be seated as a full voting member for this
meeting in place of Brian Degnan. Staff introductions were made by Mr. Taylor.

II. REVIEW MEETING MINUTES: June 9, 2021

***Mr. Diehn MOVED to approve the June 9, 2021 Minutes presented in the July 13, 2021
agenda packet as amended.***

Seconded by Chair McLaughlin.

Amendments:

Pg. 2, line 15-18 – semi-colon added for clarity

Pg. 2, line 25-26 – edit to “conscious of appearance”

Pg. 2, line 36 – manor changed to manner

Pg. 3, line 11 – edit “businesses” (to plural) and remove “would be”, change “affect” to
“effect”, adjust last name Cummings.

Pg. 3, line 27 – edit “discussion was had” to “there was discussion”, then, “the finding of
fact are as follows:”

Pg. 4, line 33 – no apostrophe needed

Roll Call Vote:

Ed McLaughlin (Chair), Madeleine Johnson (Vice Chair), Cecilia Aufiero, Susan Brown, Mike Diehn **all voting Yea.**

None voted Nay.

None Abstained.

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

III. MOTION FOR REHEARING:**Enfield Land Use Case Z21-06-01: Bocash Variance**

Chair McLaughlin introduced that this was not a public discussion, but only a discussion of the board to determine if they will have a rehearing. He noted that he would have a question for Mr.'s Bocash, and the board would review based on the information provided if they have adequate information to provide a rehearing.

Vice Chair Johnson asked for clarification on "hardship" – is it the land that creates a hardship? Is there some feature in the land that creates a hardship to follow the zoning ordinance, and not that it would create a hardship for the person? Mr. Diehn responded that there is one exception, in recent law which is basically a medical exception. If the person has a disability that prevents them from using the land in an otherwise acceptable manner, he board may approve a variance if a case falls into the category. Vice Chair Johnson noted that she now understood and was seeking clarification on the use of hardship in the particular case's letter. Chair McLaughlin noted the focus on hardship is in regard to the land. The hardship is the characteristics of the land, the area of the land, and the use of the land.

Mr. Diehn noted that before he board discusses whether they can have a rehearing, perhaps the board should discuss the conditions under which they are able to rehear a case. Ms. Brown circled back to a medical exception with approving a variance temporarily while household members who were affected resided there. Chair McLaughlin noted that this would be a special exception, not a variance which was not applied for. The variance which was applied for would follow the land, not individuals. Mr. Bocash asked – could we apply later on for a special exception? Chair McLaughlin noted that he would need to speak separately with Mr. Taylor about that as he could not provide any counsel.

Chair McLaughlin shared that the board could do a re-hearing if: the board had made a legal mistake, there was additional information that has come to light such as a change in the zoning ordinance (not a change from the property owner). No new information can be provided by the property owner to the board. If members of the board do not see any legal or changed factors that would be cause for a rehearing, there cannot be one. Chair McLaughlin asked Mr. Bocash to confirm that he understood. Mr. Taylor added for the board as well as Mr. Bocash, that the state's regulation used to be immediate repeal to superior court, but now goes to the Zoning Board of Adjustment (ZBA) one final time first. Mr. Bocash's letter that establishes grounds for

83 appeal which are the only grounds he may use going forward if in court. There can be no new
84 arguments brought up in court with reason for the ZBA to grant a variance. Chair McLaughlin
85 noted that if no rehearing is granted, Mr. Bocash's letter is the legal record that would be used
86 going forward in court.

87
88 Ms. Brown asked – if we were to deny the rehearing, can he start over again with something else
89 like a special exception? Chair McLaughlin noted that he did not feel the board could or should
90 provide any comment on that, and that Mr. Bocash would need to seek legal advice from a
91 lawyer, not the board. Mr. Taylor added that there is court precedence that required substantial
92 difference for subsequent cases. Mr. Diehn noted that the board would not see any new hearings
93 unless there was substantial difference. Chair McLaughlin clarified – with regard to a variance.
94 The board would not provide any guidance for other special exceptions. Mr. Diehn responded
95 that he felt if it were found that a special exception could be requested, that would mean
96 significant changes to the situation. Chair McLaughlin responded that he was not going to go
97 there.

98
99 Chair McLaughlin moved the discussion forward on a motion on whether to accept or reject the
100 appeal.

101
102 *A MOTION was made by Chair McLaughlin to reject the request for rehearing.*
103 *The MOTION was seconded by Ms. Aufiero.*

104
105 **Roll Call Vote:**

106 Ed McLaughlin (Chair), Madeleine Johnson (Vice Chair), Cecilia Aufiero, Susan Brown, Mike Diehn **all**
107 **voting Yea.**

108 **None voted Nay.**

109 **None Abstained.**

110
111 ** The Vote on the MOTION was approved (5-0).*

112
113 Chair McLaughlin noted that Mr. Bocash should contact Mr. Taylor after tomorrow for advice
114 and to discuss his future options. Mr. Bocash Sr. asked – if the board does not pass this, what
115 happens to the garage? The board noted that they would need to speak with Mr. Taylor. Mr.
116 Taylor stated that they have rights to appeal. He would be writing them a letter tomorrow and
117 will explain next steps in the outline. There are two paths forward: he may go to superior court,
118 the traditional system that has been in place or may also contact the NH Housing Appeals Board,
119 newly created as a three-member panel for this legislature and appointed by the Governor. The
120 appeals board is more of a civilian panel meant to go a route without using an attorney to
121 navigate the court system. Mr. Bocash and Mr. Bocash Sr. thanked the board and left the
122 meeting at this time.

IV. PUBLIC HEARINGS:

Chair McLaughlin opened the Public Hearings portion of the meeting.

Enfield Land Use Case Z21-07-01

Mr. Taylor invited the applicants, the Vanier's, to sit at the table. He then introduced their case:

Enfield Land Use Case Z21-07-01. Dean and Rachelle Vanier are seeking a variance to Enfield Zoning Ordinance, Article 4, Section 408.2 – to install an internal-lit sign with multi-colored LED bulbs (such as blue, red, and yellow) at a property located 492 US Rt. 4. Tax Map 15, Lot 8 in the Rt. 4 Zoning District. The property is owned by the Vanier's company NARJE, LLC. Mr. Vanier thanked the board and introduced their business and request. He noted that in the application they addressed the five major issues and focused on: literal enforcement of the ordinance would result in unnecessary hardship. He shared that he felt this is the biggest problem for not only his business on the Rt. 4 corridor, but several other businesses that he had spoken with in the area. He provided background information on both himself and his wife's upbringing, and their business background and experiences in another rural community and working with the town, etc. He also provided some historical details in business evolution, websites, and additional technological advances up to the 1991 adoption of the current Enfield zoning ordinance that allows white-lit signs only. He noted additional technological advances since that time period. Mr. Vernier then outlined he and Ms. Vernier's understanding of the importance of a small-town feel, but also the importance of serving their business clients. He noted the many modern technologies and their competition with walk-in business, web ordering, Alexa ordering, etc. He shared data suggesting that signage color does influence potential buyers of a product, and his feeling that it can affect business success. He shared that they have already made significant improvement to clean up the property, including the cost of tearing down a building. He shared that the unique property can allow for diverse uses, and the cost associated with signage updates would pose a burden to their company. He shared that a tasteful, economical, LED-colored sign with the capability to tell potential patrons what is going on with their business and what they have to offer – she shared several examples of language that could be used in certain situations to generate revenue. He noted that the outdated ordinance does result in unnecessary hardship – much like black and white television sets, it is outdated. He concluded noting that he and Rachelle hope to create something special and unique within Enfield. They have always had a great reputation working with previous municipalities and hope to continue that trend. He asked the board to grant the [variance] to the ordinance and consider helping other Rt. 4 business owners as well in doing so.

Ms. Brown asked – this is the Car Wash property? Mr. Vanier said no, this is the old Raphael's property, where Kate's Video, the Auction House, Rafael's Cucina etc. used to be. Ms. Brown asked, what are they planning to put there? Ms. Vanier noted that they are currently taking some time off after the business they ran in Charlestown NH. She shared that they took a previous

166 trailer park community and turned it into a manufactured home community and business. They
167 are now looking into Real Estate and are passionate about helping people with housing. They are
168 looking into potentially manufactured or modular homes as a business consideration. Mr. Vanier
169 noted that they are also considering food as an avenue for that location, given the size of the lot.
170 He shared that Mr. Sanborn of Cardigan Land Surveys, LLC was currently working with them
171 regarding the potential of the property. At this time, the Vaniers feel that modular home sales are
172 “much needed in the area” and they have registered UpperValleyHomeSales.com. Mr. Vanier
173 shared their hope of using the changing signage to display available home specs, etc.

174
175 Mr. Taylor projected the property on screen for all board members and guests to view the
176 location and size. Ms. Vanier noted again that the initial plan would be to do something along the
177 housing set. Chair McLaughlin noted that they would need to do a site plan review, to be sure
178 they were aware. The Vaniers responded that yes, they understood. Mr. Taylor added that he had
179 been meeting with them and had great conversations.

180
181 Chair McLaughlin asked the board for questions. Mr. Diehn noted – the only thing he sees in the
182 application that is directly related to the criteria is the claim that the property is unique. He
183 wonders if the Vaniers have ever dealt with NH ZBA before. He asked if they had a lawyer help
184 to prepare their application? Mr. Vanier asked to clarify – they were given five questions to
185 address, are those what Mr. Diehn is talking about? Mr. Diehn responded that they are not only
186 questions, they are criteria set forth in law. Only if they can prove that they meet each of those
187 criteria may the ZBA grant a variance. Mr. Diehn stated that the applicant must present facts that
188 prove they meet the criteria for the board to grant a variance. The burden of proof is on the
189 applicant. Mr. Diehn asked – how is the property unique in a way the distinguishes it from others
190 and that would require it to have an LED sign. There are other businesses in that area that do
191 “just fine” without an LED sign. Mr. Vanier disagreed that the ordinance is out of date. Mr.
192 Diehn noted that he did agree that technology has evolved, but that the ZBA does not have any
193 input on the law. He suggested if the Vaniers sought to change the ordinance, that they should go
194 to the Planning Board. Mr. Diehn asked again what would justify the Vaniers meeting all 5 of the
195 criteria? He does not believe that they do based on the application.

196
197 Ms. Brown asked – you don’t know what you are going to put there, you are talking about
198 housing in a commercial district, isn’t the sign request a bit premature? Mr. and Ms. Vanier both
199 clarified that they would be doing home sales, not housing where people would live. Ms. Brown
200 thanked them for clarifying.

201
202 Vice Chair Johnson asked, have we heard from abutters? Mr. Taylor noted that all abutters were
203 notified, and there were several other members of the public present (via Zoom platform). Mr.
204 Butman noted that he is an abutter on McConnel Rd., and asked was it the time for him to speak?
205 Chair McLaughlin noted yes. Mr. Butman noted – he did not see anything in the application,
206 such as a sketch, that would show what the sign would look like. He is trying to understand how

207 it would look, how bright would it be, would it be blinking, etc. He is also curious what this
208 would mean to other businesses along the corridor. Mr. Diehn noted the variance would be only
209 for this property. Chair McLaughlin went through the questions. One – in the application there
210 was a picture of a sign example that the Vaniers provided. Mr. Butman said, he saw the sketch in
211 the application, but confirmed there was nothing different. Chair McLaughlin noted that was the
212 only example. He then asked – Mr. Butman’s other concern is, will this impact other area
213 business signs? As well, what are the hours that the sign would be running? Mr. Taylor noted
214 that the Rt. 4 corridor is one of the only places in town that allows white backlit signs. He shared
215 the recent example of the Dunkin Donuts sign that was updated, is white backlit but through
216 colored facing. Mr. Vanier brought up the LED gas price sign that George’s recently upgraded
217 to, which is left on through the night, which Mr. Diehn noted was a problem for area residents.
218 Mr. Vanier noted that along the Rt. 4 corridor, there is not as much residential impact (with
219 respect to Mr. Butman).

220
221 Mr. Martin (via Zoom platform) added to the conversation – his business would like to upgrade
222 their sign for Shaker Valley Auto Body, Pellerin Auto Mechanic and Parts shops, etc. They are
223 in support of changes in signage for businesses in this area. He noted that there are several
224 residences across from his businesses, and so they are not looking to cause problems with
225 upgrading the sign. They hope to have a more modern, and clear sign to show all the businesses
226 that are now in the location. Particularly for the newer people who come through town and have
227 not been there before. He noted that they would hope for something that can be “toned down at
228 night” and reiterated that he supports the updated technology and figuring out what will work for
229 the community.

230
231 Vice Chair Johnson noted – the issue seems to be that something needs to be done about the
232 ordinance? Chair McLaughlin noted that yes, he had avoided discussing that until all parties had
233 a chance to speak. Ms. Brown asked – the houses on McConnel Rd, are they in the business
234 district or a different zone? Mr. Taylor responded that they are in the Rt. 4 zone. Chair
235 McLaughlin shared that he believed the business district was defined ~450ft back from the road.
236 Mr. Martin agreed, he noted he used to live on the other side of the Rail Trail in that area and
237 believed that it went almost to the Rail Trail. Mr. Taylor added that housing is actually allowed
238 in the Rt. 4 district. Upper floor residences are allowed by right, and first floor requests can be
239 made to the ZBA by special exception.

240
241 Chair McLaughlin asked for any further comments from abutters or applicants before they close
242 the public hearing to discuss. Hearing none, he closed the public hearing to move forward to
243 board deliberation.

244
245 Chair McLaughlin shared – the ordinance is black and white, and he believes that there are two
246 courses that can be taken: 25 signatures to put the change on the Warrant for the Town Meeting
247 in March 2022 or, go to the Planning Board and ask them to change the ordinance to allow for

248 updated signs. As it currently stands, the ordinance is white light. Ms. Brown asked – can you
249 put any type of sign you want on the physical building? Chair McLaughlin responded that no,
250 there were details within the ordinance regarding all signage (building, at street, etc.) Mr. Diehn
251 shared – the issue before the board is very specific. Ms. Aufiero added, I know we have to follow
252 the ordinance but one of the things we have to discuss is the purpose of the ordinance. She feels
253 that, in itself, is something that would keep Enfield’s environment [uniform] and provide safety.
254 The town does not want flashing signs as seen in some other, more populated areas. She noted it
255 is not possible with the current zoning ordinance. Mr. Diehn noted that from his perspective,
256 regarding the spirit of the ordinance as it is written currently, one element of the spirit is to
257 maintain a calm/sedate character of the town. With this as an attractive character of the town,
258 allowing colored lights would violate the spirit of the ordinance. With respect to – would
259 denying the variance injure the applicant more than allowing it and the benefit of the public
260 good. He feels as the ordinance is written today, it seems to be a wash. He agrees that portion of
261 the ordinance is outdated. He clarified, Ms. Aufiero was on the drafting committee for the
262 ordinance? Ms. Aufiero shared that yes, and that is why wrote the ordinance the way they did, to
263 not “light up the sky”. Chair McLaughlin shared the issue of granting a variance right now would
264 be hard – there are so many additional things within the ordinance that would have to be
265 addressed that he is not sure the board would manage that. Mr. Diehn noted that if the ordinance
266 is changed in the future, but a variance is granted tonight, the property owner would not have to
267 follow any new restrictions that are part of the updated ordinance. Vice Chair Johnson noted that
268 she felt the other board members were saying the things she was feeling. She circled back to an
269 earlier discussion during another case regarding the definition of “hardship”. That there seemed
270 to be there was no hardship that would make something different than the current ordinance
271 necessary for this business more than any of the other businesses in this corridor. Ms. Aufiero
272 added, regarding the general health and welfare of the community – trying to read more modern
273 signs can cause traffic problems and lead to accidents, etc.

274
275 Chair McLaughlin noted the issue with Rt. 4, and circling back to some of Mr. Martin’s
276 comments, that the business signs are so small that they are difficult to read. The businesses are
277 disadvantaged by now having clear, easily read signs. He noted that LED lights do allow for
278 more clarity. Vice Chair Johnson agreed that the energy savings was a pro as well for the LED
279 signs. Mr. Diehn shared that he felt the request violates the spirit of the ordinance. Chair
280 McLaughlin shared that he felt it violated the letter of the ordinance, not the spirit. Mr. Diehn
281 suggested it was both.

282
283 Ms. Brown asked – can we table this request to give both the ZBA, Mr. Taylor, and the Vaniers a
284 chance to bring the ordinance up to the Planning Board. She noted she remembered it coming up
285 previously, with Jake’s. Mr. Taylor asked to speak to Ms. Brown’s earlier comment during the
286 public session about the request being premature. Chair McLaughlin noted he may. Mr. Taylor
287 shared that he knows the Vaniers are aware of potential businesses interested in their land – the
288 sign would allow them to have a sign up and advertise the location “land available, business

location available” as an example. Ms. Brown noted, could the ZBA grant a variance with the condition that the light be white? Chair McLaughlin noted they also need to consider the spirit of the ordinance. He understands the business perspective and the importance of a visually pleasing sign that is flexible to be changed. He does not believe the ZBA can re-write the law. Mr. Diehn added – we can give you permission to break the law under very specific circumstances. Mr. Taylor asked to clarify the findings of fact. Mr. Diehn noted, not in the findings of fact, but separately the ZBA should recommend to the Planning Board a review of the wording of the ordinance.

Chair McLaughlin shared the findings of fact:

The variance is denied because of the following criteria:

- 1) The spirit of the ordinance would not be observed, the lighting allowed is only direct, white light. The white-light calm that is the focus of the business district would be lost.
- 2) There are no special characteristics of the use of land that would prevent use of the current sign ordinance, and that do not cause hardship or put the business at a disadvantage.
- 3) The ordinance would need to be re-written, which the ZBA is not allowed to do. ZBA may only interpret the law.
- 4) The impact on the Rt. 4 corridor would be significant.

Chair McLaughlin noted – since all parties there were present during the public hearing were still present, he would re-open the public hearing to allow Mr. Vanier to make a comment. Mr. Vanier commented – “just because [other business owners] are forced to follow a rule, it does not make it right”. The board agreed entirely. Mr. Vanier proceeded to provide examples of how improved, modern signage could be an advantage to other businesses in the area. Chair McLaughlin encouraged the Vaniers to work with Mr. Taylor in the area of community development and working to develop the warrant article that they would like to see approved. He asked for any further comments before he closed the public hearing again. There were none. Chair McLaughlin closed the public hearing once again.

A MOTION was made by Mr. Diehn to deny the variance request on the grounds that it violates the current spirit of the ordinance, and that there are no unique property aspects that justify a hardship.

The MOTION was seconded by Vice Chair Johnson and Ms. Brown simultaneously.

Roll Call Vote:

Ed McLaughlin (Chair), Madeleine Johnson (Vice Chair), Cecilia Aufiero, Susan Brown, Mike Diehn (Alternate Member) **all voting Yea.**

None voted Nay.

None Abstained.

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

Chair McLaughlin noted that the ZBA would work with Mr. Taylor to strongly recommend that the Planning Board consider revision to the ordinance, with controlled use to what the Vaniers are seeking. Controlled use so that both commercial properties and residential abutters would feel it is being used appropriately. The board thanked the Vaniers for bringing the issue to their attention so that, hopefully, action can be taken.

V. NEW BUSINESS:

Chair McLaughlin moved the board forward to new business to review associated with rules and regulations.

In 2019, a draft was made to make changes to the rules of procedure. The draft was never approved. Ms. Brown asked, can we put a motion to work on the 2019 draft version instead of the current 2016 version? Mr. Diehn noted that the 2016 rules are what the ZBA is currently operating under, which is what would need to be edited. Vice Chair Johnson asked, were there particular provisions or things that need to be addressed? Mr. Taylor noted, the Planning Board just did the same thing. He feels one of the things he feels they should consider is the fact that there are now hybrid meetings (in person and via Zoom platform). He spoke to the fact that the Planning Board required applicants be in-person, which he would suggest ZBA do as well if they would like. He also shared with respect to members via Zoom on the Planning Board – they may participate via Zoom only if there is a quorum in-person – which mirrors state law. He added that they also asked board members who can't make it or will join remotely to provide at least 24 hours' notice to the Chair and Mr. Taylor. Mr. Diehn suggested that he felt there was no difference between in-person or attending via Zoom and did not feel a quorum should be required. Chair McLaughlin noted that he agreed, unless the state said differently. Mr. Taylor reiterated that the state does say a quorum is needed. Chair McLaughlin noted he felt they should side with the state. Mr. Diehn suggested not clarifying in the ZBA regulations, but just letting the state regulations be for that. Ms. Brown noted she felt it important to have the atmosphere of communication in-person. Ms. Aufiero agreed that it is important for both a quorum and for the applicant(s) to be present. Vice Chair Johnson shared she felt the importance of having the personal relationship with applicants and the community, especially in difficult situations such as the recent one with Mr. Bocash.

Mr. Taylor asked for additional edits. Ms. Brown noted the timing of election (Chair, Vice Chair were different dates). The board agreed to not put in a particular month/date. The board agreed to change to: the next meeting following Town Meeting. Ms. Brown suggested two areas under Page 2, Quorum #2, D – change “less” to “fewer”. Both Mr. Diehn and Ms. Brown made markings on their pages and shared the remaining edits with Mr. Taylor. Chair McLaughlin asked for the other board members to make their changes and share them with Mr. Taylor as well. Mr. Taylor noted he would put all changes into a draft and send on to the ZBA for another review.

Chair McLaughlin asked for any other New Business. Ms. Brown noted, from the point of view of filing – always the applicant should be the owner, but they have had people who are the agent for the applicant there and the owner is not known. She noted she felt there should be a separate place on the form for the agent, but the owner should always be listed. She noted she would like to modify the form, so Owner and Applicant are first, and then a separate place for the Agent. The application has to be filed by the owner, so this is an important part. Vice Chair Johnson noted she would also like to see the Tax Map, Lot, and Book Number information on the application. Mr. Taylor noted it is on the agenda but should also be on the application.

VI. OLD BUSINESS:

Chair McLaughlin asked for any Old Business. He asked Mr. Taylor if he had heard anything further on the Pitello?? case? Mr. Taylor noted that he had not, they were hoping for further information “well before today”. There were some memorandums from multiple attorneys but no updates. Vice Chair Johnson asked, was with the Crystal Lake case? Mr. Taylor noted yes. Ms. Brown asked, “is she in terrible trouble”? Mr. Taylor noted she faces some consequences with the Department of Environmental Services (DES) with regard to wetlands and shorelands permits.

Ms. Aufiero noted there were wetlands at the back of the Vanier property. Mr. Taylor noted they are aware, there is a flood zone as well. Ms. Aufiero asked are they aware of the setbacks and the brook? Mr. Taylor noted again yes. Chair McLaughlin noted when the town considered buying the property that they discussed fill, so he felt they would likely see that coming up in the future.

Mr. Diehn asked about the “Roller Rink” and if there was any DES problem with that? Mr. Taylor noted no, not yet. Ms. Aufiero noted they put gravel [in the area]. Mr. Taylor noted an “intermittent stream” is not a wetland.

VII. NEXT MEETING: August 10, 2021

VIII. ADJOURNMENT

*A MOTION was made by Ms. Brown to adjourn the meeting at 8:36 p.m.
The MOTION was seconded by Mr. Diehn.*

Roll Call Vote:

Ed McLaughlin (Chair), Madeleine Johnson (Vice Chair), Cecilia Aufiero, Susan Brown, Mike Diehn (Alternate Member) **all voting Yea.**

None voted Nay.

None Abstained.

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

Enfield Zoning Board of Adjustment Minutes, July 13, 2021

414 Respectfully submitted,
415 Whitney Banker
416 Recording Secretary