

Enfield Zoning Board of Adjustment – Meeting Minutes
DEPT OF PUBLIC WORKS/ZOOM PLATFORM
September 14, 2021

ZONING BOARD OF ADJUSTMENT MEMBERS PRESENT: Ed McLaughlin (Chair), Madeleine Johnson (Vice Chair), Brian Degnan, Cecilia Aufiero, Susan Brown, Mike Diehn (Alternate Member)

ZONING BOARD OF ADJUSTMENT MEMBERS ABSENT:

STAFF PRESENT: Rob Taylor- Land Use and Community Development Administrator, Whitney Banker-Recording Secretary

GUESTS: Scott Sanborn (Cardigan Mountain Land Surveys, LLC), Kurt Gotthardt, Janet Carroll, Dave Alexander, Nicole Sipe, Gary Bergeron, Francine Lozeau, Steve Kovacs, Susan Lowry (Attorney, Upton & Hatfield, LLP), Madison Hawkins (via Zoom platform), David and Judy Crate (via Zoom platform), Nancy Kuemmerle (via Zoom platform).

I. CALL MEETING TO ORDER:

Chair McLaughlin called the meeting to order at 7:01 p.m. and took attendance of members.

Chair McLaughlin asked for guests to be sure they signed in on the sheet at the door. He provided a brief overview for guests of the way the meeting hearings would work.

Ms. Brown MOVED to move the review and approval of the July 13, 2021 and August 10, 2021 minutes presented in the September 14, 2021 agenda packet to later in the meeting, after the public hearings and other business.

Seconded by Vice Chair Johnson.

Roll Call Vote:

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

None voted Nay.

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

II. EXECUTIVE SESSION:

Chair McLaughlin introduced a follow up to a court case now that the public session was open and said they would move to a separate chamber with the attorney to discuss further. The remainder of the minutes from the executive session exist as a separate document titled: 2021-09-14 Zoning Board of Adjustment Executive Session Minutes.

III. PUBLIC HEARINGS:

Chair McLaughlin said that Mr. Diehn, Alternate Member, had now joined the board (for the benefit of guests).

Land Use Case #Z21-08-02: continued from August 10th meeting

Janet Carroll requests a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, subsection L) to construct a pole barn on her property within the prescribed 20' setback to a lot boundary in the R3 Residential District. Subject property is located at 13 Beckwith Lane (Tax Map 45, Lot 10) and is owned by Janet Carroll.

Mr. Taylor provided a copy of the maps to board members for review. He also briefly explained the case to guests.

Mr. Alexander said that they had provided the map as suggested at the last meeting and reiterated from the prior meeting the proposed location is the only flat area they have on the property, other than where their septic system is located, without cutting trees and land work. He said that on the application they stated they will be within 10' of the boundary, and if it is possible, they plan to be further than that. Chair McLaughlin said that he recalled from the prior meeting Dr. Theis had stated that the Conservation Commission had no objections to the proposal. Ms. Brown asked some clarifying questions regarding the location to orient herself looking at the map. Mr. Taylor projected the tax map and provided a brief explanation of the lots to the ZBA. He said that there are some structures on the map that do not currently exist – the town of Enfield's online map is outdated somewhat.

Vice Chair Johnson asked: have we heard from abutters? Mr. Taylor said they were all notified. Mr. Alexander stated that they are the primary abutter (they own the next-door lot). Chair McLaughlin said that the conservation commission had suggested the planned location is the best spot on the land, the only flat spot that is not part of the septic system. Mr. Alexander confirmed.

Chair McLaughlin asked for comments from the public.

Mr. Gotthardt stated for clarification, this is not only the best spot, but the best spot without having to do land work. Mr. Alexander confirmed.

Chair McLaughlin asked for any further questions or comments from the public.

The ZBA reviewed the five criteria for approving a variance:

- 1- The variance will not be contrary to the public interest.

Ms. Aufiero asked: what about the setback for the other landowners that are behind them? Mr. Alexander stated that they are following all the abutter boundaries except their own (lot 12). Ms. Aufiero asked: how close the proposed pole barn would be to their lot 12 boundary. Mr. Alexander stated they planned for no closer than 10' and will put it

83 even further if the land allows. The estimate of 10' is to give them extra space just in case
84 it is needed. Chair McLaughlin stated that when the board previously heard from the
85 Conservation Commission, they had suggested approving the variance would be more in
86 the public interest than having to cut down trees and do land work on another part of the
87 property.

- 88 2- The spirit of the ordinance is observed.

89 Chair McLaughlin said that the applicants had looked at things that accommodate
90 conservation, and it does seem to be within the spirit of the ordinance.

- 91 3- Substantial justice is done.

92 Chair McLaughlin said it does not hurt others if they do this.

- 93 4- Value of surrounding properties are diminished.

94 The board all felt that no, they would not be. Ms. Brown asked: is it not possible to
95 merge the lots, because they have two separate houses? Vice Chair Johnson said yes this
96 was previously discussed. Ms. Aufiero asked: how big is the garage? Mr. Alexander said
97 it is proposed to be 25'x25'.

- 98 5- Literal enforcement of the provisions of the ordinance would result in unnecessary
99 hardship.

100 Ms. Aufiero asked: could it not go closer to the house? Mr. Alexander said that they
101 hoped to leave enough space between the barn and the house to accommodate drainage,
102 water runoff, etc. Ms. Brown stated that she had driven up there and it is very steep.
103 Chair McLaughlin said the characteristics of the land mean the location does not change
104 runoff, etc. Mr. Alexander confirmed that yes, this is true. Ms. Aufiero stated that this
105 would be allowing a zoning change to the regulations. She stated that it bothers her as it
106 sets a precedent for someone else in a similar situation. Chair McLaughlin said in the
107 prior discussion, and with Ms. Brown having looked at the land as well, the
108 characteristics of the land have a steep slope in many areas. Putting the garage in the
109 proposed location would not change runoff, erosion, etc. Ms. Aufiero asked: does it have
110 to be in this location, could it be somewhere else? Mr. Alexander stated they could, but it
111 would require a lot of land work and environmental impact. Vice Chair Johnson asked: is
112 there any reason it could not move closer to the opposite lot line? Mr. Alexander said
113 doing so would require cutting trees and excavation. He explained the proposed location
114 is already flat, but no others are. Vice Chair Johnson said that the map did not accurately
115 depict the clearing in which the house was situated. She asked for the satellite map. Mr.
116 Taylor said the satellite map and showed the projected barn location. Vice Chair Johnson
117 asked for Mr. Taylor to measure the distance between lot lines: 66'. He then showed
118 where the 25' mark would be (in the center of the suggested barn location). Mr. Degnan
119 said he did not know why there was still discussion, it seems that everyone has done their
120 due diligence. He said the purpose of the zoning board is to grant variances and set
121 precedents. He did not agree with Ms. Aufiero's objection(s). Ms. Aufiero asked: did the
122 Conservation Commission provide anything in writing? Chair McLaughlin stated, only
123 the record of minutes from the last meeting.

Chair McLaughlin asked for any further comments. Ms. Brown stated that based on the information they had presented, what the applicants want to do made sense to her.

Chair McLaughlin MOVED to approve the request for variance to construct a pole barn at the site and size per application.

Seconded by Ms. Brown.

Roll Call Vote:

Ed McLaughlin, Madeleine Johnson (Vice Chair), Susan Brown, Brian Degnan **all voting Yea.**
None voted Nay.

*** The Vote on the MOTION was not complete due to a Question from Ms. Aufiero.**

Ms. Aufiero asked for a change in the motion to specifically mention the variance is within the 20' setback by 10'. Chair McLaughlin withdrew motion.

Chair McLaughlin MOVED to approve the request for variance to construct a pole barn within the 20' setback at the site and size per application at no closer than 10' to the common property line (between lots 10 and 12).

Seconded by Ms. Brown.

Roll Call Vote:

Ed McLaughlin, Madeleine Johnson (Vice Chair), Susan Brown, Cecilia Aufiero, Brian Degnan **all voting Yea.**
None voted Nay.

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

Land Use Case Z21-09-01: Nicole Sipe will request a special exception to Enfield's Zoning Ordinance (per Article IV, Section 403, sub-section 3, paragraph P) to allow for Commercial Equestrian activities on subject property located at 672 Bog Road (Tax Map 1, Lot 3) in the R5 – Rural Residential-Agricultural Zoning District and is owned by CRATE PROPERTIES, LLC.

Ms. Sipe said it would be a facility for boarding/training/lessons. There would be about 10 horses on site, and additional stalls for temporary housing for training.

Mr. Taylor said a map of the property on screen and explained the location and a brief history of the land. Ms. Sipe said the proposed location based on the projected map. Mr. Taylor said the location on the map where there was previously a residence, and Ms. Sipe said she plans to put a house there, but it is not relevant to the special exception. Mr. Taylor stated it appeared Mr. Crate had joined the meeting via Zoom if the board has any questions for him.

167 Chair McLaughlin asked: would this encompass the entire area of the gravel pit? Ms. Sipe said it
168 would encompass most of the current open pit site. Mr. Taylor said that Ms. Sipe had filed a
169 reclamation plan with the town and provided an overview of the guidelines around that. She has
170 filed the plan, and a site visit was recently done as well. He added that the Crates had also done a
171 portion of reclamation, which had been ongoing.

172
173 Chair McLaughlin asked: the only thing the ZBA needs to review is the special exception?
174 Everything else will go through the Planning Board? Mr. Taylor stated that a major site plan
175 review would go through the Planning Board at a later date.

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177 Ms. Brown asked: how long has it been since the Crates were using the gravel pit? Mr. Taylor
178 said it is currently an operating pit. Ms. Aufiero asked: why did you choose this site? Ms. Sipe
179 said she had been looking at many parcels of land for over a year, she found several that could
180 suit her needs, but she genuinely liked this land the most. Vice Chair Johnson asked: are we
181 currently discussing that this is a commercial activity? Chair McLaughlin answered yes. Ms.
182 Brown asked: isn't it agricultural? Chair McLaughlin stated that the way the ordinance reads,
183 commercial equestrian is the part that the ZBA would need to approve for the R5 zone, non-
184 commercial equestrian activities are already allowed in this zone.

185
186 Mr. Degnan stated he was surprised the gravel pit was not already a commercial operation?
187 Chair McLaughlin stated that it is, but the ZBA would need to approve the commercial
188 equestrian activity. He believed the Crate's commercial use pre-dates Enfield zoning.

189
190 Ms. Aufiero said her concern is the prime wetlands and she would like to see them protected.
191 Ms. Sipe said none of the areas where the horses would live or be riding would be near the 50'
192 setback.

193
194 Vice Chair Johnson asked: if this is an exception, will it be permanent? Chair McLaughlin stated
195 it would be permanent, but they can put conditions in to specifically say Commercial Equestrian.

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197 Chair McLaughlin asked for public comments.

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199 Mr. Gotthardt asked if the board could read the criteria for a special exception, as it differs from
200 a variance. Mr. Taylor projected the ordinance on screen. Ms. Brown read "In appropriate cases
201 and subject to appropriate conditions and safeguards listed in Section 403, the Zoning Board of
202 Adjustment has the power to hear and decide applications of exception as provided for in this
203 Ordinance. In acting upon an application for exception, the Zoning Board shall take into
204 consideration the appropriateness of the specific location for the proposed use and its probable
205 effect upon the district as a whole, its wildlife, soil, streams and ponds, forests, and other
206 recreational and environmental qualities. It shall permit the exception only when it finds that, in
207 view of these considerations, it is consistent with the spirit of the Ordinance to do so."
208

Ms. Aufiero said again that she would like to see protection of the prime wetlands. She said the Bog Rd. wetlands map. Chair McLaughlin said that he does not disagree, but that is for the Planning Board and their site plan review. The ZBA is deciding only if they will allow the special exception for use of commercial equestrian. Ms. Aufiero said given the definition of the special exception, she does not see why the ZBA can't state it be protected. Ms. Brown stated that the site is on a hill. Vice Chair Johnson said the question is "can there be commercial equestrian here"? If they say yes, the wetlands etc. have to be assessed by the Planning Board. Chair McLaughlin said this was his understanding as well. Vice Chair Johnson said, the question is, is this an appropriate activity for this site? Ms. Brown said to Ms. Aufiero that if she drives out there, she can see the proposed site is not anywhere near the edge of the brook.

Chair McLaughlin said the findings of fact:

- 1- The proposed use is a reasonable one that improves the quality and value of the land around it.
- 2- It enhances the agricultural aesthetics of the area.
- 3- The commercial business is in line with the Master Plan of Enfield.

Chair McLaughlin said he would now close the hearing if there were no further comments from the public. There were none. The board moved into deliberation.

Ms. Brown said she felt it is a great plan, a great idea, and would be an improvement to the town. Vice Chair Johnson agreed.

Chair McLaughlin MOVED to approve the special exception to allow for Commercial Equestrian activities in the R5 zone at 672 Bog Rd, Tax Map 1, Lot 3, as per the application.

Seconded by Mr. Degnan.

Roll Call Vote:

Ed McLaughlin, Madeleine Johnson (Vice Chair), Susan Brown, Cecilia Aufiero, Brian Degnan
all voting Yea.
None voted Nay.

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

Chair McLaughlin reopened the public hearing for the next case.

Land Use Case# Z21-09-02:

S. R. Kovacs requests a variance to Enfield's Zoning Ordinance (Article IV, Section 401.2, subsection L) to allow for a garage to be within the prescribed 20' setback to a lot boundary in the R3 Residential District. Subject property is located at 429 Lockhaven Road (Tax Map 16, Lot 12) and is owned by the S. R. KOVACS TRUST.

Mr. Sanborn (Cardigan Mountain Land Surveys, LLC) and Mr. Kovacs introduced themselves.

Mr. Sanborn said they are not asking to build a structure, but instead asking to not have to move or demolish a structure. Mr. Taylor projected the property map on screen. Mr. Sanborn said that Mr. Kovacs plans to apply for a two-lot subdivision. A house exists on the proposed lot 1 of that subdivision, Mr. Kovacs said a brief history of the existing structures to establish their historical significance. He said that he has no plans to demolish the house or structures given their history. Ms. Brown said it appeared what Mr. Kovacs planned to do was putting in access to the remainder of the property (the proposed lot 2 of the subdivision).

Mr. Sanborn said they were establishing that this was an old homestead that predates zoning. He said the proposed subdivision that Mr. Kovacs has planned, with a 12-acre lot around the existing homestead. He said the location of the existing garage, as well as the proposed location of the only viable point of access for the remaining 163+/- acres of the proposed lot 2. He said there is no impact on neighbors. The garage would be within the setback of the proposed lot 2 of the subdivision. There is no impact on the neighborhood. Potential future owners would know that the garage is closer to the boundary than zoning permits. There exists a 50' right of way. The lot has a unique feature of limited class V road frontage to the lot (Lockhaven Rd), and the remainder of the frontage is on a class VI road (Mud Pond Rd). Using the class VI road would require permission from the Selectboard in order to improve it for access to proposed lot 2. Mud Pond Brook also runs through this area and cuts off the majority of the 163+/- acres from being accessed by Mud Pond Rd.

Ms. Brown asked: why bother to subdivide it? Is it buildable? Mr. Sanborn said with ~163 acres, there would be buildable area. He said he believes Mr. Kovacs hopes to separate the homestead area of the property. Mr. Kovacs said that he has several large properties that are tree farms, and the plan would be for this larger lot as well. Ms. Brown stated that historically the proposed access to the proposed back lot makes sense.

Ms. Aufiero said her concern for prime wetlands. Mr. Sanborn said the map that outlines the subdivision shows where the variance is being asked for and that the wetlands associated with Mud Pond are ~1/2 mile from where the proposed access is planned.

Chair McLaughlin asked: the subdivision is not approved yet? Mr. Sanborn said correct they wanted to come to the ZBA first. He asked: is the 50' access a requirement? Mr. Sanborn said it is an unwritten requirement, and if it were ever to be divided into multiple lots the 50' access would be required. Chair McLaughlin asked: what is the plan for back lot? Mr. Kovacs said he planned to have the land surveyed.

Chair McLaughlin asked: you are asking for a variance for a lot line that does not exist? Mr. Sanborn said they are asking for permission to ask for a subdivision that includes a structure within 50' of the lot line. Chair McLaughlin said some confusion about the case coming to ZBA before Planning Board. Vice Chair Johnson said, it seemed important to understand if there

would be a single lot in the back section or multiple planned? Mr. Sanborn said if any future lots are within zoning regulations, it would not be an issue. Ms. Brown said that even if there were only 2 further subdivided back lots, they would need the 50' access.

Chair McLaughlin asked why are we considering setbacks from a property line that does not exist? Mr. Taylor stated that there was a proposed subdivision, which is why they were doing it. Mr. Sanborn said he would ask for a motion that approves the variance with the condition that the subdivision is approved. Mr. Taylor clarified, the variance approval could be worded to say that it would be available if a subdivision is approved. Vice Chair Johnson asked: we would be stating we grant the variance in the case that the subdivision is approved? Mr. Sanborn and Mr. Taylor agreed, if the subdivision was not approved the variance would not exist.

Chair McLaughlin asked for further public comments.

Ms. Lozeau said she is an abutter; she has no objection. Ms. Hawkins had no comment. Mr. Gotthardt said from the Planning Board perspective, if Mr. Kovacs asked for the subdivision, they would ask he first go to ZBA. Chair McLaughlin asked for Mr. Gotthardt's comments as an abutter. Mr. Gotthardt had no objections.

Chair McLaughlin closed the public meeting and moved to board deliberation.

Ms. Brown said she was in support of approving the variance.

Chair McLaughlin said the findings of fact:

1 – literal enforcement would result in unnecessary hardship based in tearing down an existing structure. And, due to the physical characteristics of the land this is the only reasonable access point that will cause the least disturbance of the area.

2 – It is in the interest of Enfield to have more housing available.

Chair McLaughlin MOVED to approve the request for variance in Land Use Case# Z21-09-02 to allow for a garage to be within 2.6' into the 20' setback from a proposed property line, pending approval of the subdivision by the Planning Board.

Seconded by Ms. Brown.

Roll Call Vote:

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

None voted Nay.

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

Chair McLaughlin called a five-minute recess.

IV. NEW BUSINESS

None.

V. OLD BUSINESS

None.

VI. ZBA RULES OF PROCEDURE REVIEW AND SIGN

Chair McLaughlin reopened the meeting at 8:47 PM. He clarified that they would go through the document at this meeting, then review it and vote at the next meeting. He said that there were no significant differences between the 2016 and 2019 versions, even though previously it had been thought there were.

Review was done of each page.

Page 1. Changes were highlighted and/or strikethrough. Highlights are new additions, and strikethrough is removal.

Page 2. Ms. Brown suggested changing him/herself to him/her OR himself/herself. The board agreed on himself/herself where appropriate, and "that person's place".

Page 3. Change "presiding officer" to "roll call" only.

Chair McLaughlin outlined that materials should be sent 7 days before the meeting. Mr. Taylor said that this had recently come up at Planning Board as well. He can email ZBA members when the materials are ready 7 days prior, and he can notify members to pick up hard copies or can send them electronically. This is what Mr. Taylor is doing for Planning Board and will do the same for ZBA.

Page 4. In 3b, change "which" to "that". In 3c, add notice to be sent to Selectboard. In 4l. RSA 673:15 to be added. Change "his request" to "his/her request".

Page 5. First paragraph remove the "e" from therefor.

VII. REVIEW MEETING MINUTES: July 13, 2021 & August 10, 2021

Chair McLaughlin MOVED to approve the July 13, 2021 & August 10, 2021 Minutes presented in the September 14, 2021 agenda packet as presented and amended.

Seconded by Mr. Degnan

July 13, 2021 Amendments:

Enfield Zoning Board of Adjustment Minutes, September 14, 2021

376 Line 19 – called the roll of members present.
 377 Line 51 – “introduced” to “said”
 378 Line 53 – remove apostrophe
 379 Line 69 – resided to reside
 380 Line 81 – repeal to appeal
 381 Line 82 - Bo cash to Bocash
 382 Line 140 – himself to his
 383 Line 145 – Vernier to Vanier (2X)
 384 Line 162/163 – remove capitals
 385 167 – remove capitals
 386 181 – remove dash to that
 387 204 – McConnel to McConnell
 388 234 & 238 – remove ‘zone’
 389 253 – remove brackets
 390 261 – he clarified to “he asked for a clarification” and “Ms. Aufiero said yes”.
 391 310 – remove brackets, remove dash and add “that”
 392 383 – Petolla spelling to Pettola
 393 385 – unclear language, eliminate through 388
 394 392 – clean up sentence.
 395
 396 August 10, 2021 Amendments:
 397 30 – done to taken
 398 67 – remove “asked for clarification”
 399 Throughout – Carrol to Carroll
 400 81 – line that to line, which and “respect” to “meet”
 401 104 – be aesthetically, remove brackets
 402 105/106 -remove brackets in 105,
 403 111 – now to not
 404 114 – with the way to: to the way
 405 117 – the build to they build
 406 120 – add comma after next door, and combine lots
 407 132 – remove it with
 408 136 – remove with
 409 140/141 – remove Chair McLaughlin... sentence.
 410 143 – if it is possible
 411 150 – only on their own property
 412 153 – capitalize Google
 413 156 – squished in change to dense
 414 161 – insignificant to significant
 415 167 – intent to intend
 416 177 – Mr. Taylor should begin separate paragraph
 417 184 – asses to assess and he to the case
 418 191 – Remove Vice Chair Johnson extended...

419 220 – applicants did not leave (had stayed in the room) (remove reference to applicants
 420 leaving)
 421 243 – period after discussed
 422 265 – remove apostrophe

423

424

425 **Roll Call Vote:**

426 Ed McLaughlin (Chair), Madeleine Johnson (Vice Chair), Brian Degnan, Cecilia Aufiero, Susan
 427 Brown, **all voting Yea.**

428 **None voted Nay.**

429 **None Abstained.**

430

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

432

433 **VII. NEXT MEETING:** October 12, 2021

434

435 **IX. ADJOURNMENT:**

436

437 *A MOTION was made by Chair McLaughlin to adjourn the meeting at 9:25 p.m.*

438

439 **Roll Call Vote:**

440 Ed McLaughlin (Chair), Madeleine Johnson (Vice Chair), Brian Degnan, Cecilia Aufiero, Susan
 441 Brown, **all voting Yea.**

442 **None voted Nay.**

443 **None Abstained.**

444

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

446

447 Respectfully submitted,

448 Whitney Banker

449 Recording Secretary