

# **Enfield Zoning Board of Adjustment – Meeting Minutes**

## **DEPT OF PUBLIC WORKS/ZOOM PLATFORM**

### **December 14, 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, Whitney Banker-Recording Secretary

**GUESTS:** Brad and Rose Hollis, Ryan Bergeron, Bruce Bergeron, Bobbi Lynds (via Zoom Platform)

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

Chair McLaughlin called the meeting to order at 7:14 p.m. and took attendance of members present.

Chair McLaughlin let the hearing applicants know that they have four board members present, and have a right to have five, they may elect to move to the next meeting if they wish. The applicants, Mr. B. Bergeron and Mr. R. Bergeron elected to continue the meeting.

Chair McLaughlin and board members agreed to move the approval of minutes to after the public hearing for this and future meetings.

Mr. Diehn arrived at this time. Chair McLaughlin elevated Mr. Diehn to a full board member for tonight.

#### **II. PUBLIC HEARINGS:**

Mr. Taylor read the case: **Land Use Case # Z21-12-01, BMB Real Estate is requesting a variance to Enfield’s Zoning Ordinance (Article IV, Section 401.1) to allow for a self-storage business to be constructed and operated in the “R1” Residential Zoning District. The subject property is located at 223 US Route 4 (Tax Map 33, Lot 5) and is currently owned by Walter Brown III and Janine Brown. This parcel is partially within both the “CB” District and the “R1” District.**

Chair McLaughlin opened the public hearing. Chair McLaughlin ensured the applicants understood the criteria for approval of a variance.

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42 Mr. Bruce Bergeron and Mr. Ryan Bergeron, applicants, introduced themselves. Mr. B. Bergeron  
43 said they are applying for a variance for the unique property they have a purchase and sale  
44 agreement on at this time. They intent to have the property have a car wash at the lower part of  
45 the property, and self-storage at the upper part of the property. Some of the upper part of the  
46 property changes from the CB zone to the R1 zone. The R1 zone does not allow the businesses  
47 they intend to place on the property. Mr. B. Bergeron said that they have a survey in progress.

48  
49 Their plan is to have four self-storage buildings on the upper part of the property. They  
50 emphasized the fact that they have a unique property with two different zones. Mr. Diehn asked  
51 is this all one lot. Mr. B. Bergeron confirmed it is a single lot.

52  
53 Mr. Taylor projected the GIS map of the property. He showed on the screen where about the  
54 back 1/3 of the property is in the R1 district.

55  
56 Mr. Diehn asked would the Brownie's building be taken down. Mr. B. Bergeron said that the  
57 plan would be to take it down, and to build a new building for the car wash. Ms. Brown said  
58 there is another car wash a few miles apart, does Enfield need another car wash. Mr. B. Bergeron  
59 said that they believe it would be a good location on this end of town, and they currently run  
60 several car washes with success. Mr. Diehn said that the board should focus on whether they will  
61 grant the variance (for the self-storage facility, part of which is proposed in the R1 zone). Chair  
62 McLaughlin asked we are not being asked to look at any of the setbacks at this time. Mr. Taylor  
63 said correct, this is a use variance.

64  
65 Chair McLaughlin asked why there is a property with two districts split within it. Mr. Taylor said  
66 the history there is that when the zoning districts were defined, measurements were used that  
67 sometimes lined up with property lines and sometimes did not. Mr. Taylor shared that this lot  
68 does have town sewer and water available as well.

69  
70 Mr. Taylor said that the unique characteristic from his perspective is that within a single lot one  
71 thing is allowed and not allowed within the same lot.

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73 Chair McLaughlin asked if the existing business used the back lot at all. Mr. B. Bergeron said he  
74 believed there were some old cars stored there, but the majority was mowed.

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76 Mr. Diehn said that he is inclined to approve the variance. He said that because this is such a  
77 unique property, with the majority in the CB district, it is not a stretch to allow a quiet, low  
78 impact use to intrude into the R1 district a little bit. He pointed out that it would not change the  
79 zoning boundaries..

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81 Chair McLaughlin said that the paperwork for the variance does not mention the car wash. Mr.  
82 Taylor said that the variance is for the self-storage facility, a portion of which would go in the R1  
83 zone.

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85 Mr. Taylor asked Mr. B. Bergeron to explain to the board the impact of a self-storage facility.  
86 Mr. B. Bergeron said that it is used minimally, and very low traffic and low noise impact to the  
87 surrounding R1 community.

88  
89 Vice Chair Johnson asked if it would be possible to realign the buildings so that not so much was  
90 in the R1 area. Mr. B. Bergeron explained they had considered this, however the requirement for  
91 space between buildings for travel, plowing, etc. requires the amount they have planned. Vice  
92 Chair Johnson asked what sort of surface would be planned for the self-storage facility. Mr. B.  
93 Bergeron said it would likely be hard pack. Ms. Brown asked would the area be fenced. Mr. B.  
94 Bergeron said it would be, with limited access. Ms. Brown asked if there would be an attendant.  
95 Mr. B. Bergeron said there would not be an attendant.

96  
97 Ms. Aufiero said that she is very concerned that the location is surrounded by a lot of housing.  
98 She feels it goes against providing a harmonious development of the land and development. She  
99 suggested this may be why the property has the CB district line within the middle. She asked the  
100 applicants: will this be like the one in Lebanon where the car wash access must go in through  
101 and around the storage units. Mr. R. Bergeron said no, the car wash access would only be from  
102 the front of the property, on Route 4. Mr. B. Bergeron clarified car wash customers would only  
103 access the facility from Route 4, and storage customers would only access the facility from  
104 Flanders Street. Mr. Taylor reviewed the R1 and CB district lines on the GIS map on screen for  
105 the board to review.

106  
107 Chair McLaughlin asked for public comments at this time. Mr. Hollis said he is the abutting  
108 property against the proposed self-storage facility. He does not feel this will be an appropriate  
109 place for the facility. He does not want a self-storage facility with a fence, lights, etc. right next  
110 to his property. He said he does not think Enfield needs two car washes. He also said he is  
111 concerned about wildlife that currently passes through the area, as well as what he believed to be  
112 residential. Mrs. Hollis said that she wondered about a fence and how many lights would be part  
113 of the business. They like privacy and are concerned about fencing and lighting shining onto  
114 their property. Mr. B. Bergeron offered to provide additional detail to Mr. Hollis' concerns. He  
115 showed on the GIS map on screen that the entrance to the self-storage would be on Flanders  
116 Street where the existing driveway is. The gate would be at this location. He emphasized that no  
117 one would have access to the facility after 7PM and prior to 7AM. He said that light can also be  
118 mitigated to the desire of the Planning Board as well. Mr. Hollis asked how the gated access  
119 would be managed. Mr. B. Bergeron said that it is automatic and would not work between 7PM  
120 and 7AM. There is not key card access.

121  
122 Mr. Hollis said that he continued to feel that it was not an appropriate place for the proposed  
123 business. They frequently see game animals in the location. Vice Chair Johnson asked how tall  
124 the proposed storage facility buildings would be. Mr. B. Bergeron said they would be a single  
125 story, shorter than many of the homes on Flanders Street.

126

Ms. Brown asked how many feet would be between the fence and Mr. Hollis' property line. Mr. B. Bergeron responded it would be whatever the setback is. Ms. Brown said so there is some room there. Mr. B. Bergeron said there would be.

Mr. Taylor said that as part of the site plan review process, concerns of the neighborhood would be addressed. In other cases, neighbors have asked for fence screening, such as plantings. Lighting is also required to be "dark sky compliant".

Mr. B. Bergeron said that he had introduced himself to neighbors and generally received very positive responses and positive feedback.

Ms. Aufiero said that she remains stuck about the residential portion of the lot. She asked what is the neighboring property (to the left on the GIS map). Mr. B. Bergeron said there is a hill there. Ms. Aufiero said that she does not like changing the use of the zone. If it is residential, it should stay residential. When the zones were developed, it was intended to go with the rest of the area. Chair McLaughlin said that the issue is part of the single lot is already CB district. He does not understand the issue. Vice Chair Johnson said that the lot's two districts seem like an unfortunate fluke.

Mrs. Hollis said that the field within the R1 district gets and stays very wet all year long. She asked where would the drainage go. Mr. B. Bergeron said that construction and drainage issues would be addressed and engineered to work according to all state and town requirements. Mr. R. Bergeron said that there was a wetlands study done, referenced as the picture within the engineering drawing. Ms. Aufiero said she felt it was a good point that the lot stays wet all year. Mrs. Hollis said that she was also under the impression that the neighbors across on Flanders Street are concerned about their property drainage from this property. Mr. Diehn said that perhaps the Bergerons would be able to improve this. Mr. B. Bergeron agreed this was likely.

Chair McLaughlin asked for any further comments from the public. There were none.

Chair McLaughlin moved the meeting forward to the executive session (where the board only will discuss issues and questions). He explained that once this portion of the hearing is complete, the board would take a vote on the variance request.

Mr. Diehn asked do we have self-storage as a defined use in our zoning ordinance. Chair McLaughlin said no we do not. He said his concerns for possible future businesses and things the board may wish to consider as conditions of approval:

- Business being run in a storage unit

- Use of the storage units and potentially hazardous waste, etc.

- Lighting and hours of operation, impact on the neighbors

- Traffic for the CB section of the property could not be allowed to extend onto the R1 section of the property.

Vice Chair Johnson asked, if we grant a variance, does it change the zoning. Mr. Diehn said yes, when a variance is granted, it is giving permission for the ordinance to be broken with special conditions, but the ordinance remains and the current zones on the property remain.

Chair McLaughlin moved the conversation forward to the definition of a self-storage business. It is a retail service business. It is not a warehouse.

Chair McLaughlin asked Mr. B. Bergeron to explain the restrictions for storage use. Mr. B. Bergeron said that there is a very thorough contract that states what is and is not allowed as part of the storage.

Chair McLaughlin asked is the issue of lighting and screening an issue for Zoning or Planning Board. Mr. Diehn said he believed it was an issue for Planning Board.

Chair McLaughlin asked will there be gates on both Flanders Street and Route 4. Mr. B. Bergeron state there would be an access gate on Flanders Street, and likely another gate toward Route 4 that would be used only for snow removal. The Flanders Street gate is the only gate that would be accessed by customers.

Ms. Brown said that she understands if a storage unit is put in, and later torn down, that 1/3 of the property would remain the R1 district – so someone else could not necessarily put another type of business there. Mr. Diehn said that the property would still have a variance for a self-storage business, but nothing else. Vice Chair Johnson asked can we restrict this. Mr. Diehn said they could put conditions for use of the property only for self-storage with the variance. Vice Chair Johnson said that most of the property is already zoned for CB. As it stands now, anything commercial could be put up to the back 1/3 of the property.

Chair McLaughlin moved forward to the five criteria:

1 – The granting of the variance will not be contrary to the public interest.

Ms. Aufiero said she felt it would be contrary to the public interest of the neighboring homes.

Vice Chair Johnson and Ms. Brown felt that since 60% of the lot is already commercial it is not an issue.

Mr. and Mrs. Hollis left the meeting at this time.

2 – The spirit of the ordinance is observed:

Mr. Diehn said he felt the spirit of the ordinance is observed. Most other business or residential uses that may be put in this location would likely have a bigger impact.

Ms. Brown said she agreed, the self-storage facility is one of the lowest impact businesses that can be put in this location.

Vice Chair Johnson agreed that since most of the property is commercial, this is the spirit of the ordinance.

Chair McLaughlin said he agreed with Vice Chair Johnson.

Ms. Aufiero said that she continued to disagree.

3 – Substantial Justice is done.

Chair McLaughlin said he believed that since the single lot 60% of the lot is commercial, it does substantial justice to allow the remaining 30% of the lot to be used in this low impact way that is proposed.

Ms. Brown, Vice Chair Johnson, and Mr. Diehn agreed.

Ms. Aufiero disagreed.

4 – The value of the surrounding properties would not be diminished.

Chair McLaughlin said he believed the value of the surrounding properties would likely go up.

Ms. Aufiero said that she disagreed. She said she felt it set a bad precedent. She was not sure that the 1-acre zone would not be changed from R1 to CB if the variance is granted.

Mr. Diehn said it would not, they do not change the zoning ordinance. Vice Chair

Johnson said the variance is for the specific case. The ZBA would be giving the property a pass to follow CB zoning for the entire lot.

5 – Special conditions of the property, where denial of the variance would result in unnecessary hardship.

Ms. Aufiero said she felt the property had no special conditions.

Mr. Diehn and Vice Chair Johnson said they felt that it is a unique property, divided between zones by no fault of the owner – this will be the issue no matter what is done to the property. Mr. Diehn said the guidance in recent case law falls in line with special conditions like this where a single lot with multiple zones can pose hardship. He feels the hardship criteria is met based on this recent case law guidance.

Ms. Brown said, when the zoning ordinance was created, property lines were not considered.

Chair McLaughlin shared his findings of fact:

- The zoning boundary line is arbitrary and runs through a lot.

- The encroachment in R1 is a minor portion of the overall lot.

- The Planning Board must approve the site plan.

- The use is reasonable and is the best use to the community to have property taxes coming from a commercial business.

- The Planning Board should take into consideration existing lot lines when drawing zoning boundaries.



251 -No unfair and substantial relationship exists between the public purposes of the ordinance  
252 provision and the specific application of that provision to the property.

253  
254 ***Ms. Brown MOVED that the Enfield Zoning Board of Adjustment grant BMB Real Estate a***  
255 ***variance to Enfield's Zoning Ordinance (Article IV, Section 401.1) to allow for a self-storage***  
256 ***business to be constructed and operated in the "R1" residential zone district. The subject***  
257 ***property is located at 223 US Route 4 (Tax Map 33, Lot 5) and is currently owned by Walter***  
258 ***Brown III and Janine Brown. This parcel is partially located within both the "CB" district***  
259 ***and the "R1" district.***

260 ***Seconded by Mr. Diehn, who wished to amend the motion to add conditions.***

261  
262 The revised motion will be contingent upon:

263 The sale of the property to BMB Real Estate.

264 Hours of operation are to be between 7AM and 7PM.

265 The exclusive retail customer entrance is from the existing driveway on Flanders St.

266  
267 Mr. B. Bergeron asked for clarification that the CB zone use would not be limited by the R1 zone  
268 restriction. Mr. Diehn clarified that they do not want to see car wash traffic backing up into the  
269 self-storage units. Mr. B. Bergeron asked for clarification of the contingency to state that traffic  
270 cannot go into the R1 zone, but that it is not restricted within the CB zone. Vice Chair Johnson  
271 suggested that the R1 zone could only be used for access to the self-storage units. Mr. Diehn  
272 suggested: traffic in the R1 section of the property may only be used to carry out the activities  
273 used for a self-storage unit. Ms. Brown asked if the variance can be restricted until the property  
274 is sold. Chair McLaughlin said a variance goes with the land. Mr. Diehn asked can we put a  
275 condition that the variance expires with transfer of title. Mr. Taylor and Chair McLaughlin said  
276 no.

277  
278 Board members made further edits for the contingencies of the revised motion to:

279 The sale of the property to BMB Real Estate.

280 Hours of operation are to be between 7AM and 7PM.

281 The portion of the lot designated R1 may only be used by customers for accessing their storage  
282 units.

283  
284 ***Ms. Brown MOVED that the Enfield Zoning Board of Adjustment grant BMB Real Estate a***  
285 ***variance to Enfield's Zoning Ordinance (Article IV, Section 401.1) to allow for a self-storage***  
286 ***business to be constructed and operated in the "R1" residential zone district. The portion of***  
287 ***the lot designed R1 can only be used by customers for access to their units. The subject***  
288 ***property is located at 223 US Route 4 (Tax Map 33, Lot 5) and is currently owned by Walter***  
289 ***Brown III and Janine Brown. This parcel is partially located within both the "CB" district***  
290 ***and the "R1" district. Contingent on the sale of the property to BMB Real Estate. Hours of***  
291 ***operation are limited to 7AM to 7PM.***

**Seconded by Mr. Diehn**

**Roll Call Vote:**

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

**Celie Aufiero voted Nay.**

**None Abstained.**

**\* The Vote on the MOTION was approved (4-1-0).**

### **III. APPROVAL OF MINUTES: Executive Session and Regular September 14, 2021 & October 12, 2021**

**Mr. Diehn MOVED to approve the Executive Session September 14, 2021, Minutes presented in the December 14, 2021, agenda packet as presented and amended.**

**Seconded by Vice Chair Johnson**

Executive Session September 14, 2021, Amendments:

Overall – remove “roll call” and change to “took attendance”

**Roll Call Vote:**

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

**None voted Nay.**

**None Abstained.**

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

**Mr. Diehn MOVED to approve the September 14, 2021, Minutes presented in the December 14, 2021, agenda packet as presented and amended.**

**Seconded by Chair McLaughlin**

September 14, 2021, Amendments:

Overall – remove “roll call” and change to “took attendance”

Overall – do not use “share” and replace with “said”

Line 43 – change “introduced” to “said”

Line 57 – applicated to application

Line 61/62 – move “of the lots” after brief explanation

Overall – questions – put a colon or “asked if” and no question mark

Page 3 – remove question marks under the criteria – change to periods

Line 101 – remove comma, add “that”

Line 112-114 – change to “did not accurately depict the clearing in which the house was situated”



335 Line 119 – precedence to precedents  
 336 Line 157/158 – delete “she envisions a small business on this site”  
 337 Page 5 – overall “asked” edits  
 338 Line 189 – “that” to “them”  
 339 Line 220 – remove extra “it”  
 340 Line 266 – remove “50’ access” sentence, add “zoning permits”.  
 341 Line 292 – “asked” to “said”  
 342 Line 297-300 – change to “Chair McLaughlin asked why are we considering setbacks from a  
 343 property line that does not exist. Mr. Taylor said that there was a proposed subdivision,  
 344 which is why they were doing it”.  
 345 Line 307 – “noted” to “said” and add ;  
 346 Line 310 – remove question mark  
 347 Line 319 – distribution to disturbance  
 348 Line 344 – change to “he said that there were no significant differences between the 2016  
 349 and 2019 versions, even though previously it had been thought there were.  
 350

351 **Roll Call Vote:**

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

354 **None voted Nay.**

355 **None Abstained.**

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 357 *\* The Vote on the MOTION was approved (5-0-0).*  
 358

359 **Mr. Diehn MOVED to approve the Executive Session October 12, 2021, Minutes presented**  
 360 **in the December 14, 2021, agenda packet as presented and amended.**

361 **Seconded by Chair McLaughlin**

362  
 363 October 12, 2021, Amendments:

364 Line 18 – “roll call” adjustment  
 365

366 **Roll Call Vote:**

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

369 **None voted Nay.**

370 **None Abstained.**

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 372 *\* The Vote on the MOTION was approved (5-0-0).*  
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374 **IV. NEW BUSINESS:**

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 376 **V. OLD BUSINESS:**

377 **None.**

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**VI. ZBA RULES OF PROCEDURE – SIGN FINAL DRAFT:**

***Ms. Brown MOVED* to approve and sign the ZBA Rules of Procedure Document Final Draft as presented in the December 14, 2021, agenda packet.**

***Seconded by Mr. Diehn***

**Roll Call Vote:**

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

**None voted Nay.**

**None Abstained.**

Board members each signed the final document.

**VII. NEXT MEETING:** January 11, 2022

Chair McLaughlin said that he would not be present physically at the meeting but will be on Zoom.

**VIII. ADJOURNMENT:**

***A MOTION was made by Chair McLaughlin to adjourn the meeting at 9:00 p.m.***

***The MOTION was seconded by Ms. Aufiero.***

**Roll Call Vote:**

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

**None voted Nay.**

**None Abstained.**

Respectfully submitted,

Whitney Banker

Recording Secretary