

**Town of Enfield
Zoning Board of Adjustment
Public Works Facility
July 8, 2014
7:00 PM**

Present: Ed Scovner-Chairman, Tim Lenihan, Cecilia Aufiero, John Pellerin, Ken May, Philip Neily-Zoning Administrator and Alisa Bonnette-Recorder

Guests: J.H. Theis, Joe Roberts, Betsy Southard, Maynard Southard, Brad Atwood-Hughes Smith Hughes & Atwood PLLC, Toby Plante, Leah Wood, Don Plante, Paul Marshall, June Marshall, Kurt Gotthardt, Nancy Smith, Lindsay Smith, Julie Rose, Bill Warren, Anita Warren, Daniel A. Bergamini, Arnold Koch, Joe Frazier, David Stewart, Anastasia Seyer, Roberta C. Morse

Approval of Minutes:

The Board was unable to approve the minutes of September 10, 2103 and October 8, 2013 due to an insufficient number of members present from those meetings.

Mr. Pellerin moved to approve the minutes of June 10, 2014 as printed, Mr. Lenihan seconded the motion. Vote unanimous in favor of the motion. Motion carried.

Business:

Mr. Scovner introduced the Board and administrative staff to the public and reviewed the rules for the meeting.

Public Hearings:

Joseph A. Roberts Jr. is requesting a Variance from Article IV, Section 401.2 L. and M., of the Enfield Zoning Ordinance. Mr. Roberts is requesting to construct a deck within the required 20 ft. setback area from the side property line and within the required 50 ft. setback area of the seasonal high water line. This property is located at 436 Lockhaven Road, Map 47, Lot 12 in the R3 Zoning District.

Mr. Neily confirmed the abutters had been notified.

Ms. Aufiero recused herself as an abutter to the subject property.

Mr. Scovner confirmed there was still a quorum present. He proceeded to announce the criteria for a variance, all of which must be met:

1. No diminution of value of surrounding properties would be suffered.
2. Granting the permit would be of benefit to the public interest.
3. Denial of the permit would result in unnecessary hardship to the owner seeking it.

4. Granting the permit would do substantial justice.
5. The use must not be contrary to the spirit of the Ordinance.

Mr. Roberts provided a summary of reasons he feels the Board should approve the variance as well as important considerations. (See Attachment "A-1")

Mr. Roberts and his wife would like to build an open porch 7-1/2' x 30' to connect the bedroom to the deck for emergency egress. He and his wife have mobility issues and are getting older. They would like to remain in this home for the rest of their lives and need a level and unencumbered emergency exit. While they hope not to need handicapped accessibility, this open porch would also provide that. The open porch fills the space in the corner created by the home and deck.

Mr. Scovner stated the burden of proof is on the applicant.

Ms. Aufiero stated that as an abutter she knows the area well. It's a very sensitive natural and recreational resource to people to fish and swim. Her thoughts on the upper deck are that it would be detrimental to people living across the way. It doesn't go with the general environment there. There are other alternatives beside the deck – two decks.

Mr. Roberts stated that the decks are approved; they are just looking for a narrow walkway.

Ms. Aufiero has that concern. She doesn't think it goes with the area, fishing and so forth. She would like to not see that deck. She also mentioned concerns for privacy. Ms. Aufiero noted Shoreland Protection and how conforming works. With non-conforming structures to encroach further into what's there...there's not much land between this house and the water. Shade, etc., brings a different kind of fish. This is a special place, for a specific fish, though she can't recall what kind of fish it is. Environmental laws don't want us to extend further and closer to the water. She also has concerns about run-off of contaminants that don't enhance the water and would interfere with what's there.

Mr. Roberts informed the Board he met with the Dept. of Environmental Services and included a quote from the Shoreland Water Quality Protection Act in his summary: "CHAPTER 483-B SHORELAND WATER QUALITY PROTECTION ACT, section 483-B: 11483-B: 11 Nonconforming Structures states in paragraph V: Notwithstanding paragraphs I and IV, between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that a deck or open porch extending a maximum of 12 feet towards the reference line may be added to nonconforming structures erected prior to July 1, 1994." Mr. Roberts took out a brick walkway in that area to add to the vegetation. He questioned Ms. Aufiero's statement that "decks don't fit." Others have decks. He simply wants a way to get out of the bedroom and is trying to make it as easy as possible for himself and his wife.

Kurt Gotthardt understands the porch is to be kept open, not enclosed. If it's approved, how is it followed up to be sure the conditions are applied if there are any future applications to enclose the porch for living space?

Mr. Neily explained that they would need a Shoreland Permit to make a change and this would trigger the State to say no. Without a State permit the Town doesn't issue a permit.

Ms. Aufiero asked if it would be possible to make the 7-1/2' maybe 3' to discourage it from being used as a deck with people partying. 3' x 7-1/2' is long.

There were no further questions or comments from the public. Mr. Scovner closed the hearing to the public and solicited the Board for comments.

Mr. Lenihan asked who the architect is that is being used. He was informed by Mr. Roberts that the architect is from Coventry Homes. Mr. Lenihan asked if pressure treated wood and footing foundations would be used. He was informed they would. Mr. Lenihan understands the presentation. It sounds like Mr. Roberts

and his wife are at a “delicate age” and understands where Mr. Roberts is coming from relating to the hardship criteria.

Mr. Roberts informed the Board that he and his wife intend to live there the rest of their lives. Their health is deteriorating.

Mr. Lenihan asked about Mr. Roberts claim that it would improve neighborhood property values.

Mr. Roberts responded that one of his companies is a development company. Building new homes and by living in them, stabilizes property values.

Mr. Scovner stated that anyone who knows this property knows Mr. Roberts is improving it.

Mr. Scovner confirmed that he’s not exceeding the height restrictions for a structure. He doesn’t see how it’s a great encroachment than what’s already there. He doesn’t see how it’s going to hurt the environment.

Ms. Aufiero stated the 7-1/2’ is just bringing it out, but there was nothing there before.

The Board considered the 5 criteria that must be met:

1. No diminution of value of surrounding properties would be suffered. Mr. Scovner, Mr. Lenihan, Mr. Pellerin and Mr. May don’t believe there would be diminution of value of surrounding properties.
2. Granting the permit would be of benefit to the public interest. Mr. Scovner stated that Mr. Roberts is getting rid of a collapsing house.
3. Denial of the permit would result in unnecessary hardship to the owner seeking it. The Board members has no problem with this. This criterion is being met.
4. The use must not be contrary to the spirit of the Ordinance. No objections were voiced.
5. Granting the permit would do substantial justice. Given the applicants’ physical limitations Mr. Scovner feels substantial justice would be done.

Mr. Lenihan pointed out to Mr. Roberts that because this is an emergency exit from that upper level and he can’t close it in he will need to get the snow off in the winter.

There were no objections voiced by the voting Board members relative to this application.

Mr. Lenihan moved to grant the Variance as presented, Mr. Pellerin seconded the motion. The vote was unanimous in favor of the motion, motion carried.

Mr. Roberts mentioned to the Board that according to the local newspaper he’s destroying the history of Enfield. He did try to give the house away and even offered someone to move it, but had no takers.

Maynard H. Southard is requesting a Special Exception under Article IV, Section 403.1, Subsection G., of the Enfield Zoning Ordinance. Mr. Southard is requesting the Special Exception to be allowed to keep horses and other farm animals. This property is located at 262 Shaker Hill Rd., Map 11, Lot 1 in the R1 Zoning District.

Mr. Neily confirmed that all abutters were notified.

Mr. Scovner stated the burden of proof is on the applicant.

Mr. Southard explained that he and his wife built a house at 262 Shaker Hill Road near the intersection of Shaker Hill Road and Wescott Road. He presented a copy of the tax map identifying the property. The property is located in Zoning District R-1. They bought the property 2-1/2 years ago from the Buckles. Their home is located across the street from Nancy Smith. They'll soon be moving into their new home. They have two horses in Massachusetts that they've had for 9 years, so they have experience with horses. They would like to bring the horses up here. The lot is oddly shaped, but large, at about 9-1/2 acres. All but about 1 acre is cleared.

The Southards are also proposing the build a barn and run-in for the horses. They want to bring them up before winter so they can become acclimated to their new home. They have lots of open pasture. They've been mowing it and keeping it clean. They would like to fence 5 acres, and perhaps another 2 acres.

Mr. Scovner invited public comment.

Anita Warren is an abutter. She said the notice said horses and other farm animals. What other farm animals?

Mr. Southard replied they want horses, maybe a few chickens, a goat or maybe a donkey as a companion to the horses.

Mrs. Warren asked, "Not pigs and sheep?"

Mr. Southard responded that he's not interested in pigs, but is trying to keep the choice of animals open.

Mr. Gotthardt asked the Board if, when a variance or special exception is granted, the allowed use runs with the land not the owner. He was assured by Mr. Neily that this was correct.

Mr. Gotthardt pointed out that if the Southards sell the exception is still there. The exception will say farm animals. Can the ZBA put restrictions on an approval? Mr. Gotthardt is not sure of Zoning rules.

Mr. Scovner noted that 5 or 6 years ago someone wanted to have pigs. It was a tough case. Many people don't like pigs.

Nancy Smith said that, pigs aside, she is supportive of this. She has horses on one side and would like more.

Ms. Aufiero said they've proposed a barn. Would it block the view?

Lindsay Smith said she and Nancy Smith are in favor of the proposal.

Bill Warren expressed concern about the other animals. He wanted to have horses allowed on Maple Street and the Board was adamant about the inventory of animals. He came back to try to increase the number of animals and was shot down. This Board has a history of taking an inventory. If they want 2 horses than the approval should say 2 horses. He lost a tenant because of the Zoning Board's restriction.

Ms. Aufiero said that the issue on Maple Street was that there wasn't enough land for the number of horses.

Mr. Scovner said it had to do with the manure.

Mr. Warren is asking only for consistent procedure, equity and fairness.

Mr. Southard would like to maintain flexibility. He has open pasture that is south facing and sun drenched. Farm animals would be consistent with the area. They have 2 horses now, but may have 3. There are a significant number of horses in the area. He has ideas for how to manage compost, away from other buildings. A topographical map shows that the land slopes gently away from Patricia Court.

Mr. Scovner said the Board can put conditions on an approval but he doesn't know how many is too many.

Betsy Southard said they won't have a fleet of horses. They are not a business. She has horses only for her own pleasure. If they had 4 horses she'd be amazed, but if you have an older horse that you can't ride you might get a companion animal. They won't have 6 or 8 horses but possibly 3 or 4 and 1 companion horse. They would like to have chickens or a goat.

They have four children now grown and on their own. This is their opportunity to move away from Massachusetts. Mr. Southard has a business there that he will continue to be involved with remotely. They are sensitive to their neighbors, but don't want to be so constrictive.

Mr. Warren said he owns three pieces of property with 3 sets of chickens that never received a permit from the Zoning Board. The property owned by the Brown's never got permission for horses either and here he is with his hands tied.

Mr. Neily reported that chickens are not considered "farm animals" by the supreme court, though Mr. Neily can't cite the case.

Mr. Warren said the horses on the Brown property are beautiful, but a violation of the Zoning Ordinance. Mr. Warren's barn had cows, but they disappeared and he then needed approvals.

Mr. Scovner responded that was a different board and the criteria were different.

There were no further public comments. Mr. Scovner closed the hearing to public comment and opened it up to discussion by the Board.

Mr. Lenihan moved to approve the special exception as presented with no restrictions, Ms. Aufiero seconded the motion. The Board voted unanimously in favor of the motion, motion carried.

Donald E. Plante, as an abutter, has filed an Appeal from the Administrative Decision relating to the interpretation and enforcement of the provisions of the Town of Enfield Zoning Ordinance. This Administrative Decision was rendered by the Planning Board during their May 14, 2014 meeting. This decision is in reference to property located at 378 Shaker Hill Rd, Map 11, Lot 16.

Ken May recused himself from this hearing.

Mr. Neily confirmed that all abutters were notified.

Mr. Scovner read the Planning Board decision of May 14, 2014: "The Board voted unanimously the Use is a Conforming Use."

Brad Atwood is an attorney with Hughes Smith Hughes & Atwood and is representing Donald Plante. A detailed memo was prepared and presented to the Board.

Mr. Plante is appealing the Planning Board decision of May 14, 2014, in accordance with Section 2.11.1 of the Site Plan Review Regulations relating to the Enfield Outing Club (EOC) proposed expansion. The

Planning Board decided the EOC's use was a permitted use under Section 401.1 I as a non-Commercial outdoor recreational activities such as hunting, fishing, hiking, cross-country skiing, snowmobiling and sailing groups. Because the Planning Board defined the EOC as conforming, the doubling in size of the shooting range did not, in their opinion, require a ZBA variance.

The EOC purchased the property in 1955 and was used for many years for archery and rifle sighting. The EOC was there when the Zoning Ordinance was adopted, but it is Attorney Atwood's and his clients' contention that it was a non-conforming use in the R-1 zone at the time of the adoption. They can continue as a non-conforming use, but if they want to expand they must come before the ZBA. The expansion is significant and will have a major impact on Attorney Atwood's clients.

Attorney Atwood went on to explain that Mr. Plante bought his property in 1986. The use of the EOC has changed dramatically. In 1993 the Enfield Police Department started using the EOC for intensive training. Semi-automatic rifles are now being used. The Massad Ayoob Group charges \$800 for a 4-day course held at the EOC. Attorney Atwood provided information with his memo showing the course they're offering, the Mag 40 course. He read the description of this course from their website: "This is an intense, four-day, 40-hour immersion course in the "rules of engagement" for armed law-abiding private citizens. The course emphasizes legal issues, tactical issues, and aftermath management. Topics will include interacting with suspects, witnesses, responding police officers, threat recognition and mind-set, and the management of the social and psychological aftermath of having to use lethal force in defense of self or others. Also covered is preparing beforehand for legal repercussions and minimizing your exposure to them. Situations in the home, at the place of business, or "on the street" will all be covered. Range work will include instruction in the use of the defensive handgun under extreme stress. Drawing from concealment, two-handed stances, shooting from cover, one-handed stances with either hand, speed reloading, and more are taught with an overall emphasis on fast, accurate shot placement. The course will culminate with a written examination covering the classroom topics and a police-style handgun qualification course." The Massad Ayoob Group pays rent to the EOC. The Massad Ayoob Group also offers a Mag 80 course and a Mag 20 Live Fire course, which require large quantities of rounds.

NH Firearms Instruction operated by Officer Scott Thompson cost \$350 for a Saturday & Sunday course. This course was limited to 6 new students and requires 1,000 rounds for each party. That's 6,000 rounds or a shot every 10.8 seconds from 9 AM – 6 PM.

It is the contention of Attorney Atwood and his clients that the shooting range is a facility and not a permitted use. Under Section 401.1 I it is a permitted non-conforming use and it can continue that way, but it requires a variance for expansion. The range lanes and berms do not come under Section 401.1 I. Attorney Atwood noted permitted uses under Section 401.1, including houses, churches, etc. A shooting range in the R-1 district is contrary to the purpose of the Zoning Ordinance. The Planning Board defines it as a conforming use under non-commercial recreational activities, and these activities are allowed under Section 401.1 I, but firing the amount of rounds – every 10.8 seconds – is not akin to cross country skiing, hunting, etc.

The key, Mr. Atwood points out, is the Planning Board misread the ordinance. The EOC shooting range is a recreational facility, not an activity and the Zoning Ordinance specifies. If you look at the dictionary definition of activity it is a "state or quality of being active," but a facility is something "designed or built to perform a specific purpose." The EOC is a facility with berms and a building, designed, built and installed with a specific purpose. The Zoning Ordinance prohibits recreational facilities in the R-1 District without a Special Exception. Section 403.1 J is recreational facilities and it does not specify commercial or non-commercial so was not a permitted use at the time of the adoption of the Zoning Ordinance.

Had the EOC not been there in 1990 they would have required ZBA approval. Because it's a non-conforming use requiring ZBA approval, commercial vs. non-commercial use is a red herring and doesn't matter. Under 403.1 J it requires a Special Exception and is a non-conforming use. It requires a Variance.

Attorney submitted, as exhibits, the Planning Board minutes of May 14, 2014, information from the EOC website and information from the Massad Ayoob Group website.

Mr. Scovner invited other public comments.

Daniel Bergamini, president of the EOC, is not sure of the merits. Some classes on the Massad Ayoob Group website have never been offered at the EOC. Other classes offered by Scott Thompson had classroom work at the EOC, but shooting was done at another site. Hunting is including under conforming uses. The EOC has these conforming uses though is not restricted to it. He's happy to provide more information if needed.

RSA Chapter 159-B provides protection for shooting ranges and largely protects against Zoning established after the range was in; specifically RSA 159-B:3 and 159-B:4.

Mr. Bergamini said the EOC would be happy to provide background information. Training has been provided for a long time, including marksmanship training. They've received a lot of complaints about noise and he understands, but the EOC clearly has protection there.

Bruce Hettleman, an abutter, said the reason they want the second line is because the rank & file members are upset about the commercial use being so much they were limited in their use of the EOC.

Mr. Hettleman owns property downstream from the EOC. He had a wetlands engineer walk the boundary of his property and his property is all wetlands. The neighboring property has wetlands. One law in the State says you can't fire into a wetlands area. They have not been good neighbors about cleaning up after themselves. There are heavy metals and moving of soil. There is a pollution issue. The additional firing line is toward his property. Mr. Hettleman expressed concern about pollution the land more than they have with lead and heavy metals with the additional firing line. NH has a law against shooting into wetlands. At the end of the day, does the Town of Enfield want this to happen?

Mr. Plante informed the Board that he has positive lead tests on 2 of 3 wells on his properties. He has taken all steps with the State and the Town to raise concerns and has come up empty.

Mr. Plante said, regarding Scott Thompson, he was screaming and yelling at people at the range. There's paramilitary stuff going on and it's a wide open space between the EOC and neighbors.

Attorney Atwood pointed out that the issues tonight are much more discreet. The Zoning Board has to address if this is a conforming use or a non-conforming use. If you look at Section 401.1 to find a distinction between a recreational activity and a recreational facility he believes it needs a Variance.

David Stewart thinks the EOC is a conforming use since the EOC is an outdoor recreational activity. He is not aware of paramilitary stuff going on. The Police Department has used the EOC for training. The characterization of rounds going off every 10.8 seconds is not accurate. There's a lot of classroom time. Commercial use there used to consist of one class per month. The Massad Ayoob Group uses the facility 4 days, once per year. Project Appleseed has used the EOC once. Mr. Stewart feels it's overblown how much activity is going on over there. It's a very quiet range. When there's noise, there's noise, but they have logs.

Mr. Stewart went on to report the EOC has tested their soil. There's lead in our berm, but elsewhere, including the wetlands, it is background lead as occurs naturally. The EOC has plans to clean up the lead in the berm. It's not polluting groundwater. That is an alarmist point of view. We're not shooting into the wetlands. The new range won't be shooting into the wetlands.

Lindsay Smith agrees with the actual issue to vote on is narrower than what is being discussed. The EOC only did one test for lead this past winter because they got caught trying to build. The issue is very small. She would like a hearing held so everyone can discuss this. Ms. Smith added that they let the Police Department train there, but they are not being good neighbors to everyone else in the area.

Mr. Scovner pointed out that he has allowed a lot time and discussion on things that are not relevant. All the Board is talking about is whether the EOC is a conforming use or not. All shooting is grandfathered. Unless someone wants to say something specific to the Planning Board decision that it's a conforming use, all other discussion will end.

Mr. Bergamini said shooting is an Olympic sport. Shooting is an activity. The youth team is one reason to expand. The EOC is talking about an outdoor recreational activity that they are providing.

Mr. Plante contends the EOC is a profit shop.

There were no other public comments. Mr. Scovner closed the hearing to public comments and invited comment by Board members.

Mr. Pellerin feels they should go for a Variance.

Mr. Lenihan said that based on the presentation heard this evening, a lot of it is what would be heard at a Variance hearing. Certainly there are some questions as to increased use. A distinction was pointed out well by Attorney Atwood that it's a facility vs. an activity.

Mr. Neily said this is about whether the EOC is conforming or non-conforming.

Mr. Scovner said the case boils down to whether it's a conforming use vs. a non-conforming use. If it's a non-conforming use it has to come for a Variance to expand. Mr. Scovner had in his possession a profit and loss statement for the EOC. He doesn't see how a group with a profit and loss statement is non-commercial.

Mr. Scovner believes the Planning Board made a mistake. If the Zoning Board grants this appeal the EOC has to come for a Variance. If we deny this appeal the applicant must appeal to Superior Court.

Mr. Scovner moved in the matter of Donald E. Plante's appeal of an Administrative Decision the Zoning Board of Adjustment agrees with the appellant that the Planning Board, in its May 14th, 2014, meeting erred in ruling that the Enfield Outing Club's planned expansion is an expansion of a conforming use, Mr. Lenihan seconded the motion. The vote was unanimous in favor of the motion, motion carried.

Communications and Miscellaneous:

Mr. Scovner moved to have Kurt Gotthardt named an Alternate Member of the Zoning Board of Adjustment. Ms. Aufiero seconded the motion. The vote was unanimous in favor of the motion, motion carried.

Citizen's Forum:

Mr. Gotthardt had a procedure question for the Board. He noted the agenda had not been posted at the Town Offices.

Mr. Scovner said he has never had an agenda posted at Whitney Hall.

Mr. Gotthardt said the agenda was posted on the Town's website but it didn't include the place of the meeting.

Mr. Gotthardt was informed the meeting, including the location, was posted on the Town's Municipal Calendar mailed to residents, was included on the general meeting calendar posted at the Town Office and was posted on the meeting calendar on the Town's website.

Mr. Gotthardt asked if a hearing is being posted about a variance or special exception can it have more detail.

Mr. Neily stated that a detailed notice is printed in the newspaper.

Adjournment:

Mr. Scovner moved to close the meeting at 8:28 PM. Mr. Lenihan seconded the motion. The vote was unanimous in favor of the motion, meeting adjourned.