

**Town of Enfield  
Zoning Board of Adjustment  
Ed Scovner Chairman  
September 1, 2015  
7 p.m.**

**PRESENT:** Ed Scovner, Chairman, Tim Lenihan, Mike Diehn, Celie Aufiero, Phil Neily-ZBA Admin, Paula Rowe-Recorder and Kurt Gotthardt, alternate sat with the board after the first hearing.

**Guests:** Roger Rodewald, Brad Atwood, Joby Plante, Paulette Dunbar, Donald Plante, Ed and Julie McLaughlin, Tallis Diehn, Nick Burke, Marcia Herrin, Charlie Hirshberg, Paul Mirski, Nancy Smith, Anita Gonzalez, David Stewart, Arnold Koch, Gordon Bagley, Lindsay Smith, Mike Crate, Mike Ibey, Attorney Napan.

***Chairman Scovner called the meeting to order at 7:05 p.m. Announcing the rules and procedures of this board and public hearings.***

- I. Donald E Plante, by his attorney, Bradford T. Atwood Esq., are appealing an Administrative Decision of July 6, 2015 regarding use of the Enfield Outing Club Inc. This property is located at 378 Shaker Hill Road in the Residential District Map 11, Lot 16.

Previous decision was formally placed in writing and set to Mr. Plante on July 6, 2015 from Zoning Administrator Phil Neily as follows:

The Enfield Outing Club, Map 11 Lot 16, is located within the R-1 Zone District. The Enfield Outing Club operates a shooting range at that site. The use existed prior to the adoption of the zoning ordinance of March 13, 1990. Based upon my review of the Zoning Ordinance, I will not take action on your request. If you do not agree with this decision it may be appealed within 30 days to the Zoning Board of Adjustment under section 506 of the ordinance. S/Phillip K Neily.

Attorney Atwood represented Mr. Plante this evening. Atty. Atwood briefed the history of the property belonging to the Enfield Outing Club (EOC). Atty. Atwood referenced statutes of 1990 enacting the Zoning seat of Enfield. He pointed out the uses as determined by the EOC members only. Currently firearms are being used all days of the week year round. They note uses are by people of other states as well as commercial entities such as the Masaad Ayoob group out of Florida. Ayoob says he has paid rent to use the facilities. Atty. Atwood said that this is an intense that is being taught by the Ayoob group for \$800.00. Atty. Atwood explained this use is completely different from what the intent was in 1990. An audio of 60 seconds of firearms discharging was played. Atty. Atwood listed a number of classes that have been held on this property. Atty. Atwood felt that this was a 'far cry,' from the original intent of the EOC in 1990.

Another change explained by Atty. Atwood was facility changes of the berm and a water line coming into the clubhouse. Heavy equipment has been photographed in operation on the property and no known appearance before the ZBA or other boards in the town.

Permitted uses as described in the ordinances, does not include close quarter battle training in the zone. The intent was for residents practicing for hunting and the like.

Atty. Atwood said the town assessor has lowered the value of Mr. Plante's home due to its proximity to the EOC.

Atty. Atwood stated that the residents and neighbors are frightened. Ms. Paulette Dunbar spoke and said that the area is unsafe. She viewed the night shooting where two adults and two children were there and the children were running around. A horse with a rider was spooked while passing once and reared. They keep their doors locked because they do not know who is over at the EOC. They have bullet proof their home as a bullet has come through a window. She is not comfortable in her own home, it is not the community she use to live with since the changes at the EOC.

Mr. Plante spoke of a town employee who has PTSD and works at the transfer station experienced a flashback hearing the sounds (the employee was found in a fetal position), additionally the town has relocated this employee. An employee has been moved but the neighbors have not.

Mr. Plante spoke and said he deals with people with PTSD and he has spoken to this employee and informed him when the Ayoob group would be shooting again. The employee is a Vietnam veteran. Mr. Plante felt the town should have taken care of the EOC situation and not move the employee. Mr. Plante continued and said he confronted Asaad Ayoob and Ayoob was armed (admitted) and he asked Ayoob to stand 20 feet from him. Mr. Plante said he has lived there since 1986. He recalled Tracy Stone as President – at this time Plante had a key to the club – he had good repoire that went sour with Stone. Plante said soon after Thompson arrived to the club and things went down hill with multiple encounters with Mr. Thompson. Mr. Plante described a conversation with the current president David Stewart who said something to the effect that he may have to kill someone tonight at the mini mart.

Mr. Plante had written his thoughts down and read it to the board and public. His thoughts consisted of the noise, changes, lead, metal (300 pounds from an Ayoob training). He remarked on the lead in his water and he is in the water protection zone, concerned about towns water testing practice , does not contact him anymore.

Mr. Plante spoke on the berm change. The monitoring of the club is not done. He has concrete in the front of his house (1000 blocks in place of windows and front door) to keep bullets from coming through, and does not have windows in his bedroom. Mr. Plante said that guns and ammo is sold on the property. Exhibit 7 – letter from Mr. Ayoob describes the club as protecting the neighbors. Further Mr. Plante said the EOC does not pay taxes and the town has failed his family. A former State Trooper looked at the EOC and said it was illegal experiencing this in another town.

Atty Atwood said that they would like the EOC to go back to the spirit of the ordinance as stated in 1990. Atty Atwood feels they are practicing a non conforming use.

ZBA Administrator, Phil Neily felt that Mr. Plante was asking for a specific use for a specific group from his e-mail. RSA 159 B cannot rule on by this board or by the town. Neily's decision on shooting ranges has been dealt with by the State and is beyond this boards ruling and outside of the Town of Enfield Zoning Ordinance.

Paul Mirski, provided the board with 159 B for their view, which they already have. Mr. Mirski said there isn't much the ZBA can do about noises. Expansion of use and area Shooting sport is wide and varied. Mr. Mirski said he feels bad for Mr. Plante, but the issue is beyond this board.

Kurt Gotthardt referenced 159 B IV prohibit or limit the activities. Activities previously conducted were not the new commercial businesses coming in now. The EOC is in the R1 district and inviting outside groups to come and make money and leave and liked this to selling electricity from solar panels in the R1 district as heard in a previous hearing.

Evan Napan, Attorney for the Enfield Outing Club spoke. Atty. Napan said that this is not a non conforming use. There has not been a determination by this board and this is a conforming use. The town ordinance of R1 allows non-commercial outdoor recreational activities such as hunting, and this is a hunting use, and describes recreation activity as this club is. Atty. Napan stood his ground that this is a conforming use. Expanded use is not in expanding hours. Atty. Napan asked if the board wants to go forward with a variance.

Atty. Napan cited New London Land Use Assoc v New London ZBA – challenge use is a different manner than what it was intended for.

EOC President David Stewart stood and asked the board to listen to his attorney and not to smirk.

Chairman Scovner closed the public hearing at 8:08 PM abruptly and informed the public that there is only one issue here that they will voted on, the decision made by Administrator Neily.

Chairman Scovner said that the noise is not an issue because there is not an ordinance for the noise. Shooting is legal.

Atty Atwood said that noise is not being mentioned here.

Celie Aufiero feels that the EOC has changed is a real safety issue. She referenced an Army situation, no longer a kid learning to use a .22, and no longer a community activity, and no longer belongs there.

Chairman Scovner, pointed out that Neily is only referencing one event (MAG 20 event). This dictates an email from Plante to the Zoning Admin and the administrative decision of the Administrator.

Tim Lenihan said that the board does not have knowledge of the EOC expanding. Plante said expanding since 1990.

Mike Diehn said regardless how a member feels; this is an appeal of an Administrative Decision.

Ed Scovner made a motion to remain with the Administrative Decision of the Zoning Administrator, affirm. This was second by Tim Lenihan. Scovner and Lenihan were in favor of the motion. Diehn and Aufiero said no. This is a tie. The tie means that the decision stands. (Gotthardt, alternate was late and not sitting with the board.)

Mike Diehn sees this event of a rental course and feels that the EOC were not a renting facility in 1990.

Chairman Scovner called Mr. Gotthardt to the board as a seated alternate for the next hearing.

- II. Ed McLaughlin, by his agent CLD Consulting Engineers, Inc., is requesting a Variance from Article IV, Section 401.1 sub-section M. of the Town of Enfield Zoning Ordinance. He is requesting to locate a 24x 32 garage within the 50 foot required setback of a wetland. This property is located on Meadow Lane, Map 21 Lot 43 in the Residential 1 (R1) zoning district.

Chairman Scovner asked Zoning Admin Neily if all of the abutters were notified and he replied yes.

Charlie Hirshberg represented Mr. McLaughlin providing a map of the property informing that the wetlands are B wetlands, acting as filters. Mr. Hirshberg asked for a specific explanation of seasonal high water in the 50 foot setback. There is a leach field up to the 50 foot setback. Run off from roof is phosphorous which is not highly polluting and that they have drainage planned around the proposed building.

Mike Crate said that water runs in the spring on both sides of the road. The culvert is at least 30 years old and this will put pressure on that culvert to perform. The field below on the East side of the garage will be wet. Crate described the depth of the water that comes down through. Mr. McLaughlin said Steve Patten didn't think another culvert was needed across the driveway entrance. Hirshberg felt gravel would help the problem. Celie Aufiero feels the soils are poorly drained and hydric.

Celie Aufiero said she stands by her original decision and does not approve this variance.

Tim Lenihan said he would be in favor of approving this variance.

Mike Diehn said he would support a variance.

Kurt Gotthardt pointed out that our ordinance does not point out different wetlands. Impact on the buffer zone will be an impact on the wetland. Gotthardt referenced to Supreme Court decisions in Enfield – Bacon and Shopland – the court upheld this boards decision to deny the variance. Thus, Gotthardt does not approve of this variance.

Chairman Scovner read the five criteria

No Diminution Celie yes, Scovner yes, Tim no, Mike no, Kurt no

Not contrary to public interest – Celie yes, Tim no, Mike no, Kurt yes, Scovner yes.

Unnecessary hardship – Tim yes, Celie yes, Scovner yes, Kurt yes, Mike yes

Spirit of the ordinance observed – Celie no, Tim yes, Scovner no, Mike yes, Kurt no

Substantial justice – Tim yes, mike yes, Celie yes, Scovner yes, Kurt no.

Ed Scovner made a motion to deny the variance, with a second from Tim Lenihan. Vote was 3 to 2 and passed. Variance denied.

- III. Michael S. Michalenoick by his agent Roger Rodewald of Riverside Ecological Designs, LLC, is requesting a Variance from Article IV, Section 401.1, sub-section M. of the Enfield Zoning Ordinance. He is requesting to locate new deck area within the 50 foot required setback of Mascoma Lake. This property is located at 217 Main Street, Map 32 Lot 48 in the Residential 1 (R1) zoning district.

Roger Rodewald represented Mr. Michalenoick and presented. This unique property is extremely restricted. The property is being renovated and improved. They would like to have decks added to the structure. These decks would be in the 50 foot setback and on the second level.

Tim Lenihan asked Rodewald asked about the use of this property. Mr. Rodewald said a residential property.

Celie Aufiero asked about the amount of land and the boundary lines and Mr. Rodewald showed her. 400 feet of frontage and will have 3 docks.

Kurt asked if the decks would be covered and chemically treated. Rodewald said they will not be chemically treated. Rodewald said they could make drainage paths and gutters down. There will be no roofs over the deck.

Mike asked about the area underneath the deck. Rodewald said it would be impervious. It already is around the house.

Chairman Scovner went through the criteria as follows:

Diminution - all no

Public Interest – Celie yes, Tim no, Scovner no, Mike no, Kurt no.

Hardship – Kurt-yes, Mike-yes, Scovner- no, Tim-yes, Celie-no

Substantial justice – Celie yes, Tim yes, Scovner yes, Mike yes, Kurt yes.

Spirit of the Ordinance Observed – Celie-no, Tim yes, Scovner yes, Mike yes, Kurt yes.

Ed Scovner made a motion to accept this variance with a second from Tim Lenihan.

Kurt made a motion to amend this motion to include conditions. Second from Mike Diehn. Motion passed unanimously.

Motion now reads as follows:

Ed Scovner made a motion to accept this variance with the following conditions: no roof over the decks, the decks shall be constructed so the rainwater flows through the deck floor, the surface area underneath the decks shall remain pervious. Tim Lenihan seconds this.

Motion passed with 4 yes and 1 no.

### **New Business:**

Gordon E Bagley has submitted a motion for rehearing. Chairman Scovner said that the motion has to have new material or show error of the board.

Nick Burke represented Mr. Bagley. Atty. Burke said that this rehearing would add substantial improvement to the neighborhood, contrary to the public interest, consistent with the character of the neighborhood. The granting of the deck will make it more consistent with the neighborhood. This variance does not alter the neighborhood. This variance does not threaten the public safety and welfare. There is a door on the second floor that was built before the ordinance presenting an undue hardship to the applicant. Noting his reasons he asks for a rehearing to bring these forward formally.

Tim Lenihan has read a case with the Town of Chichester similar to this. He would like to go forward and hear more from Atty. Burke in a rehearing.

Celie Aufiero did not feel that the information given this evening is new.

Mike said he would like to rehear it.

Chairman Scovner said he would not like to rehear it.

Kurt abstained.

Chairman Scovner made a motion to deny the rehearing. Tim Lenihan seconds this. Celie yes, Scovner yes, Tim no, Mike no. 2-2. Motion carried as 3 affirmative votes are required to pass.

Review Dog Park Sign Information. They graciously excused and asked for a new scheduled meeting. They are asking for their \$75.00 for noticing abutters as they are a non profit.

Chairman Scovner made a motion to give the \$75.00 back to the Mascoma Dog Park. Mike Diehn seconds this. Tim-no, Celie-yes, Scovner-yes, Mike yes, Kurt-yes. Motion carried. The board reviewed the Dog Park sign design, and was in favor as submitted.

Zoning Administrator Phil Neily passed out the ZBA Rules of Procedure to all board members prepared by Kurt for board members to review. Discussion will be at a later meeting.

### **Approval of Minutes:**

The Minutes of July 14, 2015 need corrections. Celie Aufiero would like the minutes to reflect what she said in regards to the Bagley hearing, as follows:

‘Any addition would add to additional impact to shoreline as the surround properties are not within the shoreland protection area. The purpose of Ordinance was to protect the lakes and ponds from over crowding of land and lesson impact to lakes in the best interest of the public good.

Maintaining water quality – Increase in Phosphorus and sediments input. Which could change the shoreline and its water quality. [Meant to protect the body of water] ‘

At the start of the hearing, Celie stated this was not a new hearing but a rehearing.

**Next Meeting:**

Scheduled for October 13, 2015 – subject to change.

**Adjournment:**

Motion to adjourn came at 10:20 PM from Chairman Scovner with a second from Mr. Diehn and carried.