



Town of Enfield Zoning Board of Adjustment

**April 12, 2016 Meeting
MINUTES - Approved 5/10/2016**

Present: *Chairman Mike Diehn, Ed McLaughlin, Celie Aufiero, Tim Lenihan, Kurt Gotthardt, John Pellerin, and Paula Rowe-Recorder. Scott Osgood – Town of Enfield Zoning Administrator*

Regrets: None.

Guests: David and Sue Hazelton – residents of Rollins Point, Scott Hazelton, the applicants consultant. Jim Bonner, Channel 8 Videographer.

I. CALL MEETING TO ORDER

Chairman Diehn called the meeting to order at 7 p.m. The order of the agenda has been changed. The Minutes will be discussed at the end of the meeting.

II. NEW BUSINESS:

We welcome Scott Osgood as the new administrator of the Zoning Board.

Tim Lenihan made a motion to appoint John Pellerin as an alternate, Celie Aufiero seconded and the motion passed unanimously.

Ed McLaughlin made a motion to appoint Tom Blodgett as an alternate, Kurt Gotthardt seconded this and the motion passed unanimously with thanks from Tim Lenihan.

The newly appointed alternates were reminded to be sworn in by the Town Clerk at their earliest opportunity.

III. CITIZENS FORUM

None.

IV. PUBLIC HEARING

- I. The continuation of the Robert W. Foley – Variance from setback on March 15, 2016.
Chairman Diehn accepted Ed McLaughlin and Kurt Gotthardt's abstention from this hearing. He appointed John Pellerin, Alternate as a voting member for this hearing.
Mr. Scott Hazleton, consultant for the applicant, opened his presentation for Mr. Foley by providing a photograph of the Foley property and the schematic of those cottages in the immediate vicinity. A pervious path will replace the impervious path. The existing living area is 864 feet and they propose to triple that. Mr. Hazleton noted that the Dept of Environmental Services dictates pervious and impervious materials within the shore lines.

Zoning Admin Scott Osgood reminded the Board that the applicant has the right to choose a full board and not the three that remain here this evening.

David Hazelton, resident of Rollins Point, asked where the boulders are going to be placed when moved. Chairman Diehn asked David to state any other concerns, as well as referencing the letter he

wrote and read at a past meeting. David gave a brief history of the property. Also feels that this will crowd the area of ‘the point.’

Kurt Gotthardt asked what is going to happen with these boulders. Scott Hazelton said that they will be taken off site permanently.

Scott Hazelton pointed out that people can live there year round or not and pay the same annual tax.

Chairman Diehn closed the public hearing at 7:31 p.m.

Chairman Diehn provided a form entitled Individual Board Member Variance Worksheet. Each voting member was asked to place their comments and thoughts in the appropriate area covering the five criteria.

Chairman Diehn called action to this form starting with

1. Granting the variance (would/would not) be contrary to the public interest.
 - Celie Aufiero felt that the new size of the house would interfere with the neighborhood.
 - Tim Lenihan did not think it would be contrary.
2. Spirit of the ordinance
 - Tim Lenihan felt it would not be observed.
 - Celie felt that it would not be observed.
 - Mike Diehn felt it was a violation of the spirit of the ordinance – overcrowding of the land and the future impact.
 - John Pellerin felt it is not within the spirit of the ordinance – impacting – and not conforming to the neighborhood.
4. Would surrounding property values be diminished?
 - Nobody on the board thought they would be.
3. Would granting this variance do substantial justice?
 - Nobody felt it would not.
5. Would denying this variance cause the applicant an unnecessary hardship?
 - No board member felt it would.

Chairman Diehn enumerated the board’s findings of fact as follows:

- Existing structure is one floor with 864 square feet of living space. The new structure would be two stories plus a single story garage with a deck and the total living space would be approx. 2500 sf. and would enclose nearly triple the volume of the existing structure.
- Total impervious area on the lot is currently 864 square feet for the house plus 170 sf for the path; a total of 1,034 sf.
- New total impervious area would be 1834 sf, but building 700 sf of rain gardens should offset the effect of that increase resulting in an effective increase of only about 100 s.f.
- The planned removal of seven trees will be offset by the planting of ten replacements. However, noted Aufiero, the removal will still disturb that ground held in place by the old trees root structures.
- Existing structure extends one foot into the lakeside property line setback and the new structure will be entirely outside of that setback.

- DES said that they would come and look at the deck – decision making of allowing the deck within the shoreland setback could depend on medical reasons.
- New and improved septic
- Existing structure is within the front and side setbacks and the new structure will be only within the front setback.
- The boulders will be permanently removed.

Chairman Diehn reopened the public hearing at 7:58 p.m. if there are any comments on the finding on the facts. There were none. The reopened public hearing was closed at 7:59 p.m.

Chairman Diehn called for a straw poll vote; based on the discussion of the criteria, the evidence presented and the facts found: members wishing to **deny** the variance at the stage, please raise your hands. Tim Lenihan, Mike Diehn and John Pellerin raised their hands.

Tim Lenihan made a motion that the application as submitted be denied as it fails to meet criteria 2 Spirit of the Ordinance would not be observed because the proposed building would promote overcrowding of the land. Mike Diehn seconded the motion.

Celie Aufiero made a motion to amend the motion as follows because it does not follow the spirit of the ordinance, specifically, paragraphs e, h and i of section 202 and also the entirety of section 103 of the Zoning Ordinance. There was no second to this amendment. This amendment died.

The original motion was read again and moved forward for the vote.

Tim Lenihan and Mike Diehn voted in favor. John Pellerin, Celie Aufiero voted against; motion died..

John Pellerin made a motion to approve the variance as requested. There was no second. This motion died.

Chairman Diehn moved that we deny the application for variance as requested on the grounds that the evidence presented does not support criteria 2, the spirit of the ordinance will be met, that we believe granting this variance will promote overcrowding of the neighborhood and would alter the unique character of Rollins Point. Celie Aufiero seconded this.

Tim Lenihan said there is no evidence in the record to support any position that there will be some damage to Rollins Point. Tim continued saying he didn't hear any evidence of harming The Point being the problem. John Pellerin felt there is a balance in the applicants plan, an example being the cutting of the trees and new tree's being planted.

Mike Diehn and Celie Aufiero were in favor of this motion, John Pellerin and Tim Lenihan voted no.

While Chairman Diehn sought a new motion in discussion with the voting board members, Tim Lenihan noted the board appeared to "dead-locked" and suggested a re-hearing asking for a full membership board of 5 members, which would eliminate the two-two voting. Chairman Diehn asked Admin Osgood if it there would be any problems with such an action by the board. Osgood had no ready answer for that question.

Scott Hazelton, agent for the applicant, asked for a re-hearing and full board consisting of 5 members.

Chairman Diehn made a motion to grant the applicant a new hearing and that the town waive the application fee; which would include a new presentation with a full board of five. Tim seconded this.

Tim Lenihan, Mike Diehn and John Pellerin voted yes. Celie Aufiero voted no.

Chairman Diehn closed this hearing at 8:31 p.m.

Ed McLaughlin asked Chairman Diehn for point of order of hearings such as this. He does not want what happened tonight to happen again. Chairmen Diehn agreed.

V. APPROVAL OF MINUTES:

Chairman Diehn reviewed the Minutes of the March 15, 2016 with the board. Chairman Diehn read a legal opinion that was sent to Admin Osgood to the rest of the board members. **Correspondence accompanies these minutes.** Tim Lenihan informed Scott Osgood he should not go to another attorney that was not the vote of this board and is out of order. Mr. Osgood noted that the attorney is with the New Hampshire Municipal Association, of which the Town is a member. A benefit of membership is legal advice, a service that is often used by the Town.

Corrections as follows:

(Bottom of page 2) Chair Diehn called for discussion with the board.... Change problem with the land to problem with the slope of the land.

Ed McLaughlin asked that the minutes of the March 15th meeting be amended to add that the motion to accept the variance for Todd H Vreeland was made after reviewing the five criteria using the statement of facts approach and that all of the five criteria having been met.

Paragraph beginning Roll call vote to grant this continuance, add all yes votes by Mike Diehn, Ed McLaughlin, and John Pellerin.

Add John Pellerin left the meeting and Ed McLaughlin rejoined the zoning board.

Kurt Gotthardt made a motion to accept the Minutes of March 15, 2016 with the noted corrections. Tim Lenihan second this. Motion carried by all members.

VI. COMMUNICATIONS and MISCELLANEOUS:

The next meeting will be May 10, 2016 (subject to change).

Kurt Gotthard and others suggested a meeting devoted to procedural matters so that we can run more smoothly in future. Chairman Diehn will speak with Admin Osgood about arranging a date and time outside the normal schedule.

VII. ADJOURNMENT

John Pellerin made a motion to adjourn at 9:02 p.m. Celie Aufiero second this. All members were in favor. Motion carried, meeting adjourned approx. 9:00 PM