



# Enfield New Hampshire

## *Zoning Board of Adjustment*

Minutes of April 26th, 2016 Meeting

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### **Call to Order**

A meeting of the Enfield Zoning Board of Adjustment to discuss process and administrative issues was held on April 26th at the Public Works Facility, 74 Lockehaven Rd, Enfield NH.. It began at 7:00 p.m. and was presided over by Mike Diehn.

### **Roll Call**

#### **Board, Alternates and Staff**

**Attending:** Mike Diehn (Chair), Tim Lenihan (Vice-Chair), Kurt Gotthardt (Clerk), Cecilia Aufiero, Tom Blodget (Alternate), Scott Osgood (Zoning Administrator)

**Excused:** Ed McLaughlin (family emergency)

**Absent:** John Pellerin (Alternate)

#### **Alternates voting**

Tom Blodget will be voting tonight as a board member.

#### **Guests**

No guests and no members of the public attended.

### **Approval of Minutes**

A motion to approve the minutes of the May 15th, 2016 meeting as drafted was made by Diehn and seconded by Gotthardt. Motion passed 5/0.

### **Public Hearings**

No public hearings.

### **New Business**

#### **Minutes Taking**

Mike Diehn recalled to the members that he had previously suggested a new procedure for taking and revising minutes with him taking the minutes and then the group revising together via e-mail and multiple drafts. He then said that after studying the OEP 2015 ZBA Handbook, he's come to believe it would be better to stick with the original procedure of one draft only, revised and approved at the following meeting.

Ms. Aufiero and Mr. Lenihan both spoke in favor of keeping the simpler procedure and working to make the minutes more accurate. No one spoke against.

Diehn will draft the minutes based on his audio recording and notes. He will e-mail that draft to the board, to the Zoning Administrator, Scott Osgood, to file for public availability, and to the Town Clerk to post on the website.

Kurt Osgood suggested that as Clerk he could record the meetings, transfer the recording to compact disc (CD) as an audio file, and then deliver that CD to the zoning administrator to be stored with the minutes. Tim Lenihan suggested that we could put the approved minutes document on that CD also and pointed out that we'd have to maintain the recording as we do other official records. Cecilia Aufiero objected to keeping the recordings; she pointed out that people in the future may use those recordings to support alternative interpretations of the board's deliberations. Mr. Diehn agreed with Ms. Aufiero and added that he wants the written minutes to stand alone as the record of the meeting.

At this point, Aufiero said that board members could keep their own recordings if they like and Lenihan objected, leading the board to the topic of board members making audio recordings of the meeting.

### **Audio Recordings**

Mr. Lenihan said he believes that if a member of the public sees a board member making audio recordings, their perception and argument in court will be that the recording is an official record. Mr. Gotthardt and Mr. Diehn argued that the RSA allows such recordings and that we could announce clearly at the start of each hearing that these recordings are not official.

Mr. Lenihan noted for the record that he disagrees with their interpretation of the law and suggested asking the town manager for a legal opinion from our town councilor, Barton Mayer. Mr. Diehn said he'll note Mr. Lenihan's objection in the minutes and suggested that he proceed to ask for Mr. Mayer's opinion.

Chairman Diehn then declared that the recordings may continue and will not be considered part of the official record at this time, but that Mr. Mayer's opinion will guide the board on the matter finally.

### **ZBA Bylaws**

The board members discussed the bylaws and the current bylaw amendment process. Under the current bylaws the board must review the changes at each of the next two meetings and then at the third meeting after this one the board may vote to adopt them.

Mr. Osgood, Zoning Administrator, asked that he be directed to have the proposed changes reviewed by Mr. Mayer before the board votes to adopt or not. The board members all agreed that would be an excellent idea.

### **Full Board or Less at Start of Hearings**

Mr. Gotthardt proposed that the bylaws be amended to offer applicants an option to start a hearing with less than a full board. Mr. Lenihan pointed out that "full board" isn't defined in the by-laws and suggested we amend them to define it. Mr. Lenihan and Ms. Aufiero both pointed out that our current practice is to offer the applicants that choice.

Mr. Diehn moved and Mr. Gotthardt seconded that the bylaws be amended with the following change:

In section MEETINGS, renumber paragraph 4 to 5 and 3 to 4. End paragraph 2 at the period following "... which it is required to pass." Delete the sentence "For this reason, the Board will insure a full Board is present for consideration of any appeal." Insert a new paragraph 3 starting with the bold text below and then continuing with the remainder of original paragraph 2:

**3. Full board: the board will attempt to sit a full board of five members to start a hearing. The applicant may choose to proceed with fewer members sitting as long as there is a quorum.** If any regular board member is absent from a meeting or hearing or disqualifies himself/herself, the Chairman will designate one of the alternate members to sit in their place, and such alternate shall be in all respects a full member of the Board. Only elected members and alternate members of the Board present at all sessions of the public hearing are empowered to vote on the final decision of a particular case.

The motion carried unanimously.

### **Restore Public Notice 200' Language**

Ms. Aufiero pointed out that language in the 1993 edition of the bylaws about notifying owners of property within two hundred feet of the applicant's property is missing from the current bylaws and would like it restored. Some members of the board held that the term abutter is defined in our zoning ordinance and that we don't need the 200' language. The board also realized we don't know when or by whom the change was made. After discussion and study, the board arrived at the conclusion that we should do as Celie proposes.

**Motion:** Ms. Aufiero moved that the language present in the 1993 edition of the bylaws and missing from the current edition should be restored; in the APPLICATION/DECISION section, paragraph 2. Public Notice, sub-paragraph b., insert text indicated by boldface to restore the 1993 language:

*"... to all abutters to the applicant's property **and/or property owners within two hundred feet of the property**, not less than five days before a hearing."*

Mr. Lenihan seconded. Motion passed unanimously.

### **Replace Clerk with administrator in Public Hearing**

Mr. Gotthardt proposed and after discussion all agreed to make the bylaws conform to long standing practice by replacing the word Clerk with the word administrator throughout paragraph 3. Public Hearing of section APPLICATION/DECISION so that it's the administrator, not the Clerk, who is called to and then reads the application and his/her noticing report. Changes indicated below with strikeouts and boldface.

- a. The Chairman shall call the hearing in session and ~~ask the Clerk's~~ **for the administrator's** report on the first case.
- b. The ~~Clerk~~ **administrator** shall read the application and report on how public notice and personal notices were given.

**Motion:** Mr. Diehn moved that we replace Clerk with Administrator in section APPLICATION/DECISION paragraph 3. Mr. Gotthardt seconded. Motion passed unanimously.

### **Adopt Sections of OEP 2015 ZBA Handbook**

Appendix A OEP Nov 2015 ZBA Handbook is a recommended set of procedures. Our bylaws appear to have been based largely on an older edition of this appendix.

Mr. Gotthardt proposes that we adopt from Appendix A paragraphs for our APPLICATION/DECISION section that we don't have: after our paragraph 4. Decisions, we should insert the Appendix A paragraphs 6. Voting, 7. Reconsideration by the Board, and 8. Motions for Rehearing (pp A-4, A-5). In our bylaws, those would become paragraphs 5, 6, and 7 because we don't have Appendix A's paragraph 2. Forms.

Mr. Gotthardt proposes that we replace our AMENDMENTS section with the simpler one from Appendix A. The Chair noted that we'll have to follow the current AMENDMENTS section for these current amendment proposals.

Mr. Gotthardt proposes that after our AMENDMENTS section, we insert the new Waivers section from Appendix A (p. A-5)

**Motion:** Kurt Gotthardt moved that we adopt from the Nov 2015 NH OEP ZBA Handbook on page A-4 paragraph 6. Voting, 7. Reconsideration by the Board, and 8. Motions for Rehearing, also Amendments, Waivers. Mr. Lenihan seconded. Motion passed unanimously.

### Miscellaneous Notes

During various discussions, the board digressed into topics of interest. Here are summaries of some of those discussions.

1. Mr. Lenihan said that once the public hearing is closed, it would help keep order if board member wanting more information were to ask the Chair to ask their questions of the presenter or other speakers for them instead of addresses the people directly. All agreed.
2. Mr. Diehn told of reading minutes of the Lebanon ZBA in which the board heard all three presentations, speakings for and against and collected facts in each case and then closed the public hearing. Only then did the begin deliberations on the first case. All agreed this board would rather not do things like that and would prefer to continue to deliberate each case in turn as we've always done.
3. Mr. Gotthardt brought up the topic of wording the questions during voting on the variance criteria. Mr. Diehn pointed out that the worksheet he proposed using is from page C-10 the ZBA Handbook. Gotthardt pointed out that the even the worksheet's wording is confusing. He suggests making the statements true or false and that they should all evaluate to either true or false so that it's easy to see quickly if one stands out. Mr. Diehn will re-write the worksheet to make it like that.

### Communications and miscellaneous

Mr. Osgood offered to e-mail to the board links to a number of resources he uses in his work that he believes we may benefit from also.

He told the board that Alisa in the Town Clerk's office has a CD of the NH OEP Planning and Land Use Regulation 2015-2016 Edition (red book) and will look into getting more copies, at least to have one in the Planning Office.

Scott mentioned the book *A Hard Road to Travel* handy for road issues and suggested also that we study Paul Sanders' power point on the ZBA Decision Making Process.

The new Zoning Ordinance should be ready for our next regular meeting.

### Non-public Session

**Motion:** Mr. Lenihan moved that the board move into non-public session under RSA 91-a:3 II (c) to consider a sensitive matter which may adversely affect the reputation of the subject. Mr. Diehn seconded. Motion passed unanimously: Aufiero: aye; Lenihan: aye; Gotthardt: aye; Diehn: aye; Blodgett: aye.

The board entered non-public session at 9:17 PM.

**Motion:** Aufiero moved the board exit non-public session. Diehn seconded. Motion passed unanimously: Aufiero: aye; Lenihan: aye; Gotthardt: aye; Diehn: aye; Blodgett: aye.

The board exited non-public session at 9:20 PM

The board discussed sealing the minutes. We all recognize that it turned out after all that nothing was said that will adversely affect anyone’s reputation. However, we note, leaving the minutes unsealed will spoil a surprise and so...

***Motion:** Ms. Aufiero moved we seal the minutes of the non-public session. Lenihan seconded. Motion passed unanimously.*

Mr. Gotthardt pointed out that after the surprise, we can always move and vote to unseal those minutes.

**Announcements**

None

**Adjournment**

Mr. Lenihan moved like lightning that the meeting be adjourned. Blodgett seconded. Motion passed unanimously, happily and loudly.

Meeting adjourned at 9:22 PM

(Signed) Mike Diehn

AUGust 9th, 2016

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Chairman  
Enfield Zoning Board of Adjustment

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Date of Approval