



Enfield New Hampshire

Zoning Board of Adjustment

Minutes of August 9th, 2016 Meeting (approved September 13th, 2016)

Call to Order

A regular meeting of the Enfield Zoning Board of Adjustment was held on August 9th at the Enfield Public Works Building. It began at 7:02 PM and was presided over by Mike Diehn.

Attendance

Board, Alternates and Staff

Attending: Mike Diehn, Chair; Tim Lenihan, Vice-Chair; Kurt Gotthard, Clerk; Cecilia Aufiero; Ed McLaughlin; Tom Blodgett, Alternate; Steve Schneider, acting Zoning Administrator

Guests

Christopher Rollins, The Nicholsons

Approval of Minutes delayed

McLaughlin moved, Lenihan seconded that the conduct the public hearings before doing the approval of minutes of earlier meetings. Motion passed.

Public Hearings

Application for Variance

Zoning Administrator's report

Mr. Schneider read the public notice for the Nicholson's hearing, a portion of which is presented here:

1. Nicholson Revocable Trust, is requesting a Variance from Article IV, Section 401.2, sub-section L. of the Town of Enfield Zoning Ordinance. They are requesting a variance from existing building setback from the lot-line in order to submit a subdivision application to the Enfield Planning Board. The property is located at 353 Crystal Lake Road, Map 46 Lot 14 in the Residential 3 (R3) zoning district.

Abutters (list in the hearing file) were notified by registered mail, the notice was posted in the Valley News.

Presentation of Appeal

Christopher E. Rollins of Rollins Land Survey presented the case for the Nicholsons. In brief, the Nicholsons and their neighbor Sarah Anderson learned recently that one of the Nicholson's outbuildings sits partially on the Anderson lot. The two parties wish to alter the line between their lots to effect a swap of equal land area, 127 s.f.. The Nicholsons would come to own the land under their building and Ms. Anderson would get an extra sliver of land along the dividing lot line from the midpoint to the north end of the line. None of this is visible from the road, there would be no change to the buildings, and both parties are agreed.

The resulting lot line, however, would pass only approximately 1.7 feet behind the outbuilding in question. Therefore, the parties have asked the ZBA for a variance to ease their application to the planning board.

Board members asked a few clarifying questions that Mr. Rollins answered and which answers are incorporated in the summary above.

Support and Opposition

A letter from Sarah Anderson indicating her agreement with the plan and saying she is in favor of this variance request is included in the file was read aloud.

No one present opposed the variance. No letters of opposition were received.

Facts Found

a list of facts found by the board in this hearing

- The Nicholsons and Andersons created this plan and are agreed to the swap of 127 s.f. of land.
- At present, the setbacks are violated in the extreme, there being actual negative setback. This variance would improve the situation.
- The new lot line would run approximately 1.7 feet from the outbuilding wall.
- There aren't any much better lot lines to be drawn that would not violate the setback.
- No one from the public objects
- The Nicholson house is situated in the setback already, also about 2 feet from the line.

The chair asked if anyone present had corrections or additions to make. No one offered any.

Public Hearing Closed

The Chair declared the public hearing on this case closed at 7:35 PM.

Deliberation of Variance Criteria

Per RSA 674:33, I(b) [the board] may authorize a variance if [the following are all true]:

1. the variance will not be contrary to the **public interest**;
2. the **spirit** of the town zoning ordinance is **observed**;
3. **substantial justice** is done;
4. the **values** of the surrounding properties are **not diminished**; and
5. literal enforcement of the [...] ordinance would result in **unnecessary hardship....**

Noteworthy Points of Deliberation

After a brief discussion to ensure all members were considering each of the criteria it became clear that all members supported granting this variance request.

Motions

Motion: Moved by McLaughlin and seconded by Aufiero that the board grant the variance as requested. The motion carried with five (5) in favor and zero (0) against.

Decision

Granted

Application of Nicholson Revocable Trust for variance from the lot line setback requirement on the Enfield Zoning Ordinance for the R3 district has been **granted**, subject to the conditions listed below, by the vote of at least three members of the Zoning Board of Adjustment.

Conditions of approval

1. Enfield Planning Board approves the lot line adjustment.
2. The lot line change be made as described in the Rollins Land Survey presentation at this meeting.

Approval of Minutes

4/26/2016 meeting

A motion to approve the minutes of the 4/26/2016 meeting was made by Lenihan and seconded by Diehn. During discussion, Gotthardt said that at the top of page 3 after the first paragraph, we need to add that Diehn moved and Gotthardt seconded and that the motion passed unanimously.

Motion to approve 4/26/2016 minutes as amended carried unanimously.

5/10/2016 meeting

A motion to approve the minutes of the 5/10/2016 meeting was made by Diehn and seconded by Aufiero.

Ms. Aufiero offered the following changes:

1. Page 5, bottom, strike words "very well"
2. Page 6. 3rd line, replace "with his daughter and care-giver" with "with his daughter as caregiver"
3. Page 10. Change "will crowd the road contrary to..." to "will crowd the property contrary to ..."

Motion to approve 5/10 minutes as amended by the changes proposed in this session carried unanimously.

Unfinished Business

The board passed four motions in the 4/26 meeting to amend the ZBA bylaws. Under current bylaws, each proposed change must be approved during two meetings after the proposal and then may be adopted in third meeting. This was the first three reviews of these proposals since they were first put forward during the 4/26/2016 meeting.

The proposals are motions are duplicated here from the minutes of the 4/26 meeting and numbered for ease of reference.

The four proposals

1. 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 proposed the following change:

4/26/2016 Motion: *Mr. Diehn moved that the bylaws be amended thus: 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."; the*

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 as shown here:

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.

Mr. Gotthardt seconded. The motion passed unanimously.

8/9/2016 Motion: Diehn moved the board approve proposal 1 as written, McLaughlin seconded. The motion carried 5/0.

2. 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.

4/26/2016 Motion: Mr. 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.

In discussion, the board noted that since the version of by-laws we should have been working from **did** contain this language, we should just drop this proposal.

8/9/2016 Motion Mr. Lenihan moved we strike the second proposal, McLaughlin seconded. No discussion. Motion passed unanimously.

In future reviews of these proposals, we will simply not have a number 2.

3. 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.

4/26/2106 Motion: Mr. Diehn moved that we replace Clerk with Administrator in section APPLICATION/DECISION paragraph 3. Mr. Gotthardt seconded. The motion carried unanimously.

8/9/2016 Motion: Gotthardt moved the board approve proposal 3 as written, Diehn seconded. No discussion. The motion carried 5/0.

4. 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)

4/26/2016 Motion: Mr. 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 carried 5/0.

8/9/2016 Motion: Lenihan moved the board approve proposal 4 as written. Gotthardt seconded. No discussion. Motion carried 5/0.

Next Meeting

The Zoning Board of Adjustment will next meet in regular session at 7:00 PM on September 13th, 2016 at the Enfield Public Works building. (Subject to change)

Adjournment

McLaughlin moved that the meeting be adjourned, and this was agreed upon at 8:35 PM.

September 13th, 2016

Chairman
Enfield, NH Zoning Board of Adjustment

Date of Approval