



# Town of Enfield

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## Zoning Board of Adjustment Meeting Minutes

September 12, 2017

**DRAFT**

**Present:** Mike Diehn - Chairman, Ed McLaughlin, Tom Blodgett, Ceily Aufiero, Jim Bonner- Videographer, Scott Osgood-Town Planner/Zoning Administrator and temporary minute taker

**Regrets:** Kurt Gotthardt

**Guests:** Mat & Janis LaBounty, Scott Sanborn – Cardigan Mountain Survey, Don Wyman – Granit Northern Real Estate, Jon Stanford, Colby W. Brow, Ronald Dupuis, Bruce Bergeron - Sugar face and Company, Nik Fiore – Engineering Ventures, Jim McClammer – Connecticut Valley Environmental Services, John Loupis, Mary Bailey, Sharon Beaufait

- I. CALL TO ORDER - 7:07 pm.
- II. CITEZENS FORUM – None requested
- III. PUBLIC HEARINGS
  1. **Cardigan Mountain Survey will request a Special Exception and a Variance for a two lot subdivision.**

Zoning Administrator Osgood noted the application was reviewed prior to the deadline with a request for a Special Exception. On later review of the document, the Surveyor noticed setbacks to a shed on the property were not outside the required setback limit and that this detail would require a variance to meet the Zoning Ordinance. This item was not specifically included in the published notice. The Board was asked to consider if this factor could be discussed and acted on in this meeting.

Board was informed the lot has two homes on it, and is grandfathered. The new lot line will create the non conformance.

A motion was made by Chairman Diehn and seconded by ? to allow the setback non conformance to be reviewed in this meeting. The Board vetoed 3 in favor, with one abstention ( Aufiero) to hear the request in this meeting

Surveyor Scott Sanborn presented the request for the Special Exception to the Board. He noted the residential use existed prior to the new Route 4 Zoning District, which does not allow first floor residential use within 600 ft of Rte 4 without a Special Exception. He noted there are no changes to the lot except a new lot line to divide the lot into two parcels, each with an existing residence on it. It is currently owned by Mat and Janis LaBounty.

A motion was made by Ed McLaughlin, 2<sup>nd</sup> by Tom Blodgett to approve the request for a Special Exception and the Variance. Ceily asked if there could be two individual motions for the requests. Ed agreed to the request.

A motion was made to address the lot line variance first.

Ceily made a motion to approve the request for a two lot subdivision to have a Special Exception to allow a first floor residential unit within 600 ft of the Rte 4 District. Mike 2<sup>nd</sup>. There was no further discussion. Motion was approved unanimously.

Question was raised as to whether the shed setback could be resolved with a request for an equitable waiver. Administrator Osgood noted it cannot, in that the waiver is to address a pre-existing condition. Without the new lot line the condition does not exist, thus the resolution would need to be addressed as a request for a variance. Chairman Diehn asked Administrator Osgood to read the five variance criteria for the board to consider.

Criteria 1 - The Spirit of the Ordinance will not be contrary to the Public Interest. There was unanimous consent that this would not be the case

Criteria 2 – The Spirit of the Ordinance is observed – Majority ruled it will be observed

Criteria 3 - Substantial Justice is done – Consensus felt an injustice would be done if the variance was not approved

Criteria 4 – The values of surrounding properties would not be diminished. – Consensus property values would not be diminished.

Criteria 5 – Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship – Consensus agreement this would be the case.

All five criteria were considered by all attending members of the Board.

A motion was made by Ed to approve a variance to allow a structure to be within the 20 foot setback to be created by a sub-division created by a new lot line. 2<sup>nd</sup> by Chairman Diehn.

Vote was 3 approved – 1 abstention, none opposed. Motion passed.

## **2. John Loupis and Deb Truman will ask for an Appeal to the Planning Board Conditional Approval of the Jakes Market Site Plan**

Chairman Diehn read the request for an appeal. He noted the question as to whether the applicant filing the appeal has standing to ask for an appeal. Chair note the case law which addresses this question. Ed noted the case law states one must be directly affected by the approval. Chair Diehn wishes he had standing for the appeal. Tom noted that the appellant hired a wetland scientist to identify the issues presented in the appeal. Tom further noted that some of the items in the appeal were identified by the Planning Board and not considered a cause for rejection. It was noted that Kurt, a member of the ZBA and Planning Board is quoted in the minutes addressing the wetland issues. It was stated the Planning Board approved the Site plan in one meeting. Conjecture by this Board noted they would very likely have needed a second meeting or more to act on the proposal. Administrator Osgood noted a detailed conceptual hearing was held with the board, and a number of comments were presented to the applicant prior to acceptance of the packet for approval.

Chairman Diehn asked if the board can determine if there is sufficient cause to recognize if the applicants have standing. It was noted the board would vote to determine standing. Ed noted that the applicant is the owner of Georges AG Market. Mike noted he would have like having the issue before this Board. Further noted that no abutters challenged the decision. Two abutters in the audience noted they were unable to make the hearing. They raised questions regarding the setbacks and the buried fuel tanks.

Wetland Scientist Jim McClammer asked for permission to speak. He noted the current wetlands on the site and those affected by this work are already impaired. As well as the buffers on the site. He stated the Superior Court has issued decisions regarding impacts to impaired areas.

He further noted that this is also a process issue. He felt the process should have begin with the Zoning Board and not the Planning Board. He noted process issues affect everyone, all the real estate and many of the natural resources in the Town. It not just the wetlands that are affected.

Mr. McClammer asked Administrator Osgood if the conditions of approval from the Planning Board would be approved in a Noticed Public Hearing. Osgood noted it would be a noticed public hearing and that all abutters and parties to the case will be notified by certified mail.

Mr. Loupis noted he shouldn't even be at this meeting. He noted that the new building is in the setback. He stated the vote by the Planning Board should not have happened and that the plans are not complete and should have been sent to the Zoning Board.

Abutter Sharon Beaufait was allowed to speak. She noted that she had discussion with Administrator Osgood regard the wetlands and had questions about the underground tanks.

Chairman Diehn noted the discussion was still on the question of Standing, and not the site plan itself or the wetlands.

Chairman Diehn noted to the Board members that what he has heard is citizens concerned that a proper process was not followed. Also it looks like this is mostly a wetlands issue.

Don Wyman asked as to Jim McClammer qualifications. Jim stated he is a licensed wetland scientist, has numerous degrees in the field, and other certifications, lots of experience on large and small scale projects, and his State Wetlands Scientist license number is #3. The third one ever issued in the State.

Bruce Bergeron of Jakes Market asked to speak regarding the standing to make the appeal. He said he does not see it had been shown to exist. Bruce notes he feels the appeal is more to protect economic concerns and that the wetlands issues are not a problem, but that the increased competition is the concern. Bruce added that the site will be improved with the new, larger culvert, so as to alleviate future potential flooding, and the rain garden will treat storm water this not being treated now.

Chairman Diehn noted the Board sees the competition as a possible issue for the request for appeal. It was noted that John owns the business, his dad owns the land the AG Market is on. John said he wasn't aware of the hearing until he read it the paper. He reiterated it should have gone before the Zoning Board first.

Board member Ed noted the process should be looked at more carefully in the future. Celie questioned if the plan was approved. Scott noted it had a conditional approval.

Mike asked the Engineer Nik for input . He noted that non abutting taxpayers are not usually granted standing in these types of cases. He further stated that he, the designer, did not feel the design needed a special exception, and did not apply for one.

7:55 pm -Chairmen Diehn asked if the board would call for a motion. Ed stated that it's a hard choice to make. He feels the process is broken. He wonders if it the Boards role to adjudicate this, but he doesn't see it as valid if the applicant does not have standing. And that legally, it can't be granted for the reason listed. Tom agreed with these positions. Chairman noted the board does not see where the applicant has standing.

John Loupis interjected that the Planning Board did not have the right to approve the plan. Ed says that position cannot be enforced. Chairman Diehn reiterated the only question on the floor is of standing. He stated if the Zoning Board heard the appeal with no standing it too would be violating process.

John asked if there will be any future meetings. Mike noted this hearing is not the end of the road.

Administrator Osgood noted that per current State Law the approval of the conditions placed on the Planning Board action will be done in a public hearing , and will be noticed to all parties and abutters.

Chairman made a motion that the applicant does not have standing to appeal this case. Seconded by Ed. Three Voted in favor of denying standing, one abstained.

The appeal will not be accepted due to the fact that the applicant does not have standing to appeal.

Ceily asked if there could she ask special exception considered. The Board noted that with no standing, no exception could be discussed.

Ceily made a motion to task the Planning Board to review the Jakes market plan to assure that it meets the requirements of Section 406.1 Wetland Areas. Mike 2<sup>nd</sup>. Vote was: one approved, two rejected, one abstained. Motion failed.

IV. COMMUNICATION and MISCELLANEOUS.

A motion was made by made 2<sup>nd</sup> by ? for The Zoning Board to recommend to the Planning Board to look more closely at submitted plans so as to detect any zoning violations and to address abutter concerns the deliberations.

V. APPROVAL OF MINUTES

Review of Minutes of August 8, 2017 was tabled

VI. NEXT MEETING – To be determined

VII. ADJORNMENT - Motion to adjourn at 8:10 p.m. and seconded. Motion carried unanimously.