

## **Zoning Board of Adjustment MINUTES (Draft)**

**Tuesday, October 10, 2017 7:00 p.m.**

**Enfield DPW building, 74 Lockehaven Rd.**

**Board Members and Staff:** Cecilia Aufiero, Tom Blodgett, Mike Diehn (Chairman), Kurt Gotthardt, Ed McLaughlin, Scott Osgood (Planning & Zoning Administrator)

**Excused:** none

**Guests:** Deb Aldrich; Susan Brown; Roberta Cegarra; Erin Darrow, Right Angle Engineering; Tony DeFelice; Tammi DeFelice; Matt Dow, MTD's Property Maintenance and Building Contractors; Cheryl Hartung; Gerry Ibey; Karen Ibey; Robert Jordan; Annette Jordan; Joe Marquay, Barb Marquay, Dan Regan; Kerrie Roy; Carol Schubert; Beth Schubert; Brian Vincent, CLD/Fuss & O'Neill Engineers

**Others:** Annabelle Bamforth, minutes; Jim Bonner, videographer

Chairman Diehn opened the meeting at 7:00pm.

### **Public Hearing**

Diehn went on to announce the purpose of this public hearing, which is to discuss and act upon two items:

- Erin Darrow of Right Angle Engineering requests a Special Exception and Variance to provide additional housing units in an existing Mobile Home Park on Maple Street (Parcel 14-48- 02).
- CLD/Fuss & O'Neill Engineers request a Variance to build a home on an existing footprint within 50 ft of a wetland area, and a Special Exception to build a driveway in a wetland area on Crystal Lake Road (Parcel 47-01- 03).

**Public Hearing #1:** Erin Darrow of Right Angle Engineering requests a Special Exception and Variance to provide additional housing units in an existing Mobile Home Park on Maple Street (Parcel 14-48- 02).

Diehn introduced Erin Darrow and briefed the public in attendance on the duties of the Zoning Board of Adjustment.

Erin Darrow explained that she is a civil engineer with Right Angle Engineering. She is proposing an expansion of units in an existing mobile home park on Maple Street in Enfield. Darrow said she had previously solicited input from the planning board. Darrow said this proposal includes 15 units, and noted that the land size on this property is estimated between 7 and 8 acres. In addition to the expansion of housing units, Darrow is also proposing a community shared septic system to go along with this expansion.

A copy of the original permit for this mobile home park, issued in 1967 by the Enfield Board of Selectmen, was submitted by Darrow accompanying the application for a variance and special exception. It was noted that the original permit requested that the town be notified of new tenants and exiting tenants. Darrow said that over the years since this permit was issued, zoning ordinances have progressed. Darrow said it's been asked whether a variance or special exception is necessary in this case; she told the Board that she wants to be sure all approvals are secured before moving forward.

Darrow said that a collective shared septic would meet DES requirements.

A new document distributed to the Board by Darrow reflected that a wetland delineation was performed on the property.

Diehn opened up discussion.

Diehn noted that before a variance or special exception can be granted, it needs to be decided which is necessary.

Celie Aufiero said this is an expansion of a nonconforming use.

Diehn stated that Enfield established zoning between 1989 and 1990 and that anything existing before then is considered a nonconforming use, so this property could be considered to be a permitted, nonconforming use.

Kurt Gotthardt referenced section 403 of the Enfield Zoning Ordinance and said he believes that this property is in a R1 special district section under M. Clustered Manufactured Housing.

According to the ordinance, the ZBA may permit special exceptions for clustered manufactured housing. Diehn noted that the units at the mobile home park are manufactured homes. Clustered developments allow houses to be placed closer together as long as they leave 50% of the buildable land open. Gotthardt noted that this section specifies individual lots.

Darrow noted that page 39 of the Enfield Zoning Ordinance states that *“a residential subdivision of a parcel of land may cluster the dwelling units on lots of reduced dimensions for the purposes of preserving fifty percent [50%] of the gross buildable land as Common Open Space.”*

Darrow confirmed that the intent is to space units comfortably far apart, but close enough to keep infrastructure costs low while ensuring open areas.

Ed McLaughlin pointed out that this is an already-approved park; this property may not be covered in zoning regulations. McLaughlin added that it’s uncertain if the ZBA has the authority to declare it a clustered development.

Aufiero said that the original permit from Selectmen required notification of incoming and exiting tenants, and notifications have not been shown. Aufiero added that it’s not shown on the tax card that this is a mobile home park; it’s assessed as all one lot. Aufiero questioned how the permit would hold up in court. Aufiero noted she had also looked up the state’s RSA Chapter 205-A regarding their definition of manufactured housing.

Darrow responded that the permit requested cooperation and did not specify that it was required. She acknowledged the lot needs maintenance.

Diehn stated that the land is being used as mobile home park, showing that use already exists. Diehn added that he could not imagine the courts determining that this would be an unreasonable expansion; it appears the property is essentially grandfathered for this use. Diehn went on to state that he sees no need for a special exception, as this property use doesn’t appear to be nonconforming. Diehn went on to say that it’s not clear where the zoning regulations would define the appropriate number of homes per lot. Gotthardt responded that it would be defined by the public sewer regulations. Darrow said that each home is listed as public user; she interpreted “public” could mean a shared community system. She added that she had searched for a definition of “public” but found none. She compared this property on Maple Street to the parks on Daniels Drive and Wilson; they were listed as “public” on assessing cards although they have a variety of septic systems.

Darrow said that a public sewer user is allowed a minimum half acre and a private sewer user is allowed a minimum of one acre. That defines home density.

Tony DeFelice, a member of the public, asked for further input on the definition of mobile homes and whether change in ownership changes the use. Diehn responded that it’s his understanding that a change of ownership would not affect use. Aufiero asked how that is

possible in light of the state's RSA. Diehn responded that if there was a problem with use, the ZBA would have to address it; the ZBA would likely need to grant a special exception were someone to come to the board today asking to build a new mobile home park.

McLaughlin said the use of this property does not mention any stipulations attached to a change of ownership. Darrow added that land use typically follows the land, rather than the owner.

Gotthardt said that in his readings of the printed definition of manufactured housing, he did not see what defines a mobile home park, and that he believes there may be an RSA someplace else.

Scott Osgood brought up NH RSA 205A 1, section 2, which defines a mobile home park. Gotthardt said it appears this park meets that definition of a mobile home park.

Diehn asked if the units need to be on individual lots. Osgood and Gotthardt said no; if that were the case, it would not be a mobile home park.

Because the property in question is less than 10 acres, the ZBA noted that the only major limit is keeping at least 50% of the lot open and fulfilling proper maintenance. Gotthardt said that there is no definition of a manufactured housing park, with emphasis on "park." Diehn said the closest document to find reference is from the clustered housing regulations. Gotthardt asked about setbacks from each home, and if that would interfere with the 50% open-area limitation.

Diehn asked if the Board should use the state's regulation in lieu of having one for Enfield.

Aufiero said it made the most sense to use the cluster regulation.

Darrow said that her concern with using the cluster regulation is the 50% open-area limitation as well as setback requirement.

Shirley Green, a member of the public, asked about the development of septic system strategy. Darrow responded that she used information from a variety sources including GIS, testing, and existing survey to determine the soil type absorbing wastewater.

Darrow added that the lot load capability is 13,920 gallons per day. She said the plan is to use Clean Solutions as a pretreatment, using aeration to reduce the septic system size. She said that it's used in small areas and while it's not cheap, it is effective. Darrow acknowledged that the septic system is subject to final design and a full survey is necessary.

Aufiero asked about the GIS system. Darrow said it's used frequently in designs. Aufiero asked how Darrow came up with her figures given the soil and slope in the area. Aufiero said that there are limits with the soil. Darrow responded she used online data which is quite recent, and acknowledged that the soil appears to be more limited further into the property. Darrow added that the septic company wouldn't want to build on bad soil.

A member of the public asked if the sewer line in town could be extended to meet the park. Darrow responded that this would be a preferred method, but far more cost prohibitive.

Darrow thanked the board for their time.

Diehn stated that neither a special exception or variance is required for Right Angle.

McLaughlin said that the planning board needs to address the issue of a lack of a mobile home park definition. Diehn agreed, and added that the matter at hand at this meeting is whether a special exception or variance can or should be granted. Diehn said there is no tool in the zoning ordinance to enable granting either one.

**Zoning Board of Adjustment Chairman Mike Diehn moved that the board find that neither a Special Exception nor variance is required for Art Conkey's proposed plans to expand a pre-existing mobile home park that was approved in 1967 by the Board of Selectmen in Enfield, in accordance with the plans submitted by Right Angle Engineering, dated September 21st, 2017 for Art Conkey.**

**Gotthardt seconded.**

**Unanimously approved, motion carries.**

Diehn called a recess at 8:00, resuming the meeting at 8:10 PM.

Diehn resumed the meeting at 8:10 pm.

**Public Hearing #2:** CLD/Fuss & O'Neill Engineers request a Variance to build a home on an existing footprint within 50 ft of a wetland area, and a Special Exception to build a driveway in a wetland area on Crystal Lake Road (Parcel 47-01- 03).

Brian Vincent of CLD/Fuss & O'Neill Engineers introduced himself as presenting on behalf of Cheryl Hartung, and also introduced Matt Dow of MTD Property Maintenance & Building Contractors.

Vincent presented the proposed projects, beginning with the proposal for a new home to replace the existing cottage. Vincent said this is a .74 acre lot that contains wooded land, wetland, and an existing cottage. Vincent said the proposal is to construct a new driveway and build a 2 story home of roughly the same footprint as the existing cottage. Vincent stated that the driveway will require building through a portion of wetlands.

The existing cottage is about 745 square feet; the proposed new house is 744 square feet. The home itself is less square footage but would have a larger porch. The new home will also need the establishment of a new septic system. Vincent said the Hartungs have received a shoreland permit from DES, with a comment from the agency asking about how the lake would be accessed from the property. Vincent said the building plan includes a crawl space foundation with 4 foot frost walls; he added that the intent is to minimize site disturbance. Vincent said the size of the driveway was reduced from 12 feet to 10 feet wide.

Tom Blodgett asked how much land will be excavated. Vincent responded with an estimate of approximately 2 feet. McLaughlin asked if there is any other way to access this house. Vincent said there is no other frontage. Diehn asked about the possibility of an easement from neighbor. Vincent said there had been conversations but they did not end with an agreement.

Aufiero said the tax card showed access came from an easement from an abutter, and added that she had visited the area and took a photo. Aufiero said that based on what was written in the application letters, she was concerned about the impact from replacing a seasonal cottage with year-round house which may affect the wetland. McLaughlin said he didn't believe there would be much more disturbance.

Gotthardt asked about the traditional method that has been used to access the property. Vincent said it appears that it had once been accessed via a larger lot; the original lot was established in 1963.

A property owner identified himself as an abutter in favor of the project, and as an owner of acreage that had been subdivided from the original lot.

Diehn asked if there was anyone in attendance who would like to speak in favor. It was asked by a property abutter whether going through the wetland affects the lake or his property. Vincent responded that there should be no impact on his lot, and added that regarding the lake, the driveway would not be touching the large wetland areas.

Carol Schubert, a property abutter, told the Board that she is speaking in favor of the project. Schubert said she has appreciated this property for a great number of years; she noted that she believes the family that once owned this property would be pleased to see this project completed.

Shirley Green told the Board that she feels that proper steps are being taken to minimize impact on the wetland.

Gotthardt asked how the property is currently being accessed. Vincent said travel is being done on foot. Gotthardt said that type of access could be defined as a prescriptive easement; 20 years of a person walking the path means the prescriptive easement is a foot path.

Cheryl Hartung said the path has not been regularly driven on since the 1970s; the road has not been used in recent years for that purpose. Gotthardt asked how she gets there. Hartung responded that she's been using an abutter's property. Diehn said it appears this property is essentially landlocked.

Aufiero discussed a product she had seen while attending a seminar about dirt roads. This seminar had presented a product made of plastic that prevents ruts and serves as an alternative to piles of gravel/fill. Aufiero described the material as a mat that equalizes the driving area, and it has been in wetlands. Aufiero said an example could be found at the field across LaSalette; there's a bit of gravel with this mat that minimizes fill in the wetlands.

Diehn called upon the Board to consider the findings of fact for a variance to build a driveway across a portion of wetland.

The Board noted that:

- There is no existing access to property.
- Both property abutters approve of the project.
- There is nowhere else to put driveway on property. Vincent added there are other ways but this is the least impacting method.
- A shoreland permit has been granted, and a wetland permit is pending.
- DES allows a 6 foot path.

McLaughlin noted a commendable job in striving to meet the 5 criteria.

Diehn read aloud the five criteria, asking the Board to speak if the following criteria would be false if a variance and special exception is granted:

- The variance will not be contrary to public interest.
- The spirit of the ordinance is observed.
- Substantial Justice is done.
- The values of surrounding properties are not diminished.
- Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

**Zoning Board of Adjustment member Ed McLaughlin moved to approve the special exception for the driveway, as requested by CLD/Fuss & Oneill Engineers on behalf of Cheryl & James Hartung, within the wetland as shown in plans submitted with the application, in accordance with plans dated July 2017 submitted by CLD/Fuss & O’Neill. Diehn seconded.**

**Unanimous in favor, motion carried.**

**McLaughlin moved to approve the variance, as requested by CLD/Fuss & Oneill Engineers on behalf of Cheryl & James Hartung, to construct a house of approximately the same size as the existing structure within 50 feet from the edge of a wetland area, in accordance with plans dated July 2017 submitted by CLD/Fuss & O’Neill. Aufiero seconded.**

**Unanimous in favor, motion carried.**

Dien called for a recess at 9:01 p.m. Diehn resumed the meeting at 9:10 p.m.

Town Manager Ryan Aylesworth spoke to the Board hoping to clear up the public vs. municipal sewer discussion. Aylesworth said that reading from the sewer ordinance, his understanding/interpretation was that “public” was intended to mean municipal sewer.

### **Approval of minutes**

The Board reviewed the draft minutes of September 12 meeting. Diehn found a few errors that could change the meaning of some statements. Diehn read through the statements that he suggested to be changed and provided the changes to Annabelle Bamforth.

McLaughlin moved to approve minutes as amended. Diehn seconded. 5 ayes; Gotthardt abstained due to absence.



## Other items

The Board engaged in discussion regarding the timeliness of informational packets being sent out to the Board. Diehn said he felt that it's important for members to receive the packets with enough time to review them. Aufiero added that it's easier for her to work with paper documents, and noted that she takes time in carefully reviewing them. Diehn said that Phil's method was to have these mailed out a day or two following the posting of the public notice. Diehn asked the board if they should hold to the original deadline or if the members were comfortable with some more leeway.

Osgood noted that everything prepared is material that the ZBA already has access to and is just putting everything together into a packet, and said that Bart, a lawyer, had offered to provide guidance to the ZBA.

Diehn pondered how to proceed in the future when it's found that an exception or variance isn't needed. He would like to hear Bart discuss dealing with the unknown. An uncertainty was pointed out tonight with the fact that there is no definition for a mobile home park.

McLaughlin said he is satisfied with digital documents. Diehn and Aufiero said they would like to see paper copies and receive them sooner; the Board indicated a general desire to have these packets sooner.

It was noted by Osgood that there are some cases that take more time to compile relevant documents. Aufiero said she typically seeks to go in-depth for more complex cases.

Gotthardt brought up his concern about receiving relevant paperwork shortly before meetings and added that he felt documents should be presented as soon as possible, preferably 21 days before the meeting. McLaughlin said the ZBA's job is to help residents. Diehn pointed out that during some hearings the Board may hear some information for the first time and said that he sees little difference between that and receiving additional documents right before the meeting. Diehn said he recognized Gotthardt's concern about wanting as much material as possible.

Diehn said that if any ZBA member feels blindsided by new information, there is the option to advise him and postpone the hearing for the next meeting.

Aylesworth said there could be some adjustments made that are neither too strict or soft.

Aufiero asked Osgood that if shoreland and/or wetland permits have been secured, if they could be included in the packet. Osgood said he would provide them as soon as possible.

Aufiero added that an important part of the ZBA's job is to protect the town's water and wetlands.

Diehn adjourned the meeting at 9:52 PM.